IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

MATTHEW HUFF	)	
	)	
VS.	)	**CIVIL ACTION NO.** 3:16-cv-368
	)	
ETHICON, INC.	)	**JURY TRIAL REQUESTED**

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

This is a negligence, strict liability, and breach of warranty action arising out of the serious personal injuries of Matthew Huff as a result of the Ethicon Physiomesh® Flexible Composite Mesh tested, designed, manufactured, and marketed by Ethicon, Inc.

I.
Parties

1. Parties to this suit are:

Plaintiff: Matthew Huff, a natural person who resides in West Frankfort, Illinois.

Defendant: Ethicon, Inc., is a foreign corporation licensed to do business in the State of Illinois who may be served by serving its Registered Agent for Service, C. T. Corporation System, 208 So Lasalle St., Suite 814, Chicago, Illinois 60604.

II.
Venue

2. Venue of this suit is proper and maintainable in the Southern District of Illinois in that Plaintiff's causes of action accrued, at least in part, in the Southern District of Illinois. Venue of this suit is proper herein under 28 U.S.C. § 1391 as the Defendant is a resident of the Southern District of Illinois with sufficient contacts to subject it to personal jurisdiction.

III.
Jurisdiction

3. Matthew Huff is a resident of the State of Illinois. Defendant Ethicon, Inc. is a New Jersey corporation with its principal place of business in some state other than the State of Illinois, thereby creating a diversity of citizenship between Plaintiff and Defendant. The amount in controversy, exclusive of interest and costs, exceeds the sum of $75,000.00. The Court has jurisdiction of this action under 28 U.S.C. § 1332.

IV.
Nature of the Action

4. In 2013, Plaintiff Matthew Huff was treated for a hernia of the abdominal wall. The surgeon, Udaya Liyanage, M.D. used Ethicon Physiomesh® Flexible Composite Mesh for the hernia repair. Ethicon Physiomesh® Flexible Composite Mesh was manufactured, designed, tested, and marketed by Defendant Ethicon, Inc. The Ethicon Physiomesh® Flexible Composite Mesh is an implantable tissue-separating mesh designed to be physiologically compatible with the abdominal wall. In July of 2015, Mr. Huff began experiencing severe pain in his abdomen, along with fever, nausea, chills, and redness which developed on the skin of his abdomen. Mr. Huff was hospitalized and found to have an infection in and around the mesh causing two abdominal abscesses, intestinal fistula, and underwent a procedure to debride the two abscesses, and the placement of a V.A.C. Since that time, Plaintiff Matthew Huff has suffered severe and serious problems and complications with two open abdominal wounds which have to be cleaned and packed daily, and continues to suffer various infirmaries due to complications caused by the

product, Ethicon Physiomesh® Flexible Composite Mesh, that was designed, marketed, tested, and manufactured by Defendant Ethicon, Inc.

Strict Liability

5. Plaintiff Matthew Huff continues to suffer with pain, mental anguish, and other problems associated with the defective Ethicon Physiomesh® Flexible Composite Mesh product in question.

6. Plaintiff alleges that the product in question was designed, manufactured, marketed, packaged, labeled, and tested by Defendant Ethicon, Inc.

7. At all times relevant herein, Defendant Ethicon, Inc. was engaged in the business of designing, manufacturing, marketing, packaging, labeling, and testing products such as the Ethicon Physiomesh® Flexible Composite Mesh for hernia repair.

8. The product, Ethicon Physiomesh® Flexible Composite Mesh, was defective, unreasonably dangerous, and not suitable for implantation in Matthew Huff and others similarly situated and was the producing cause of the injuries and damages to Plainitff.

9. The mesh at issue was not reasonably tested to determine if it was fit for its intended purpose of implantation into the human body.

10. Plaintiff believes and alleges that the specific mesh in question was unreasonably dangerous in that the benefits of the specific mesh were outweighed by the risks of harm.

11. Plaintiff believes and alleges there were, at the time of the original manufacture and sale of the mesh in question, reasonable economically and technologically alternative

feasible designs which would have afforded users such as and including Plaintiff with the same or greater benefits, while reducing the risk of harm.

12. Plaintiff believes and alleges that the mesh in question did not, at the time of manufacture and sale, comport with Ethicon, Inc's own standards and requirements for the product.

13. Plaintiff believes and alleges that the deviation from intended design has made the product unreasonably dangerous.

14. Plaintiff believes and alleges that this defect existed at the time the product left the manufacturer.

15. Plaintiff believes and alleges that the defect caused the product to adhere to Plaintiff's internal organs in such as way that has caused him severe infection and further injuries.

16. Defendant Ethicon, Inc. did not provide foreseeable customers such as and including Plaintiff, his physicians, hospital staff, and/or other members of the medical community with reasonably sufficient technical information about the risks of using the Ethicon mesh in question and was negligent in such conduct which was a proximate cause of Plaintiff's injuries and damages.

Negligence

17. Plaintiff alleges that Defendant Ethicon, Inc. was required to provide the Plaintiff with a reasonably safe product.

18. Plaintiff alleges that Defendant Ethicon, Inc. did not provide Plaintiff with a reasonably safe product, such failure was negligent which was a proximate cause of Plaintiff's

injuries and damages.

19. Plaintiff believes and alleges that Defendant Ethicon, Inc. has caused Plaintiff significant pain and consequences of future surgeries as a result of Defendant not providing Plaintiff with a reasonably safe product.

20. Plaintiff further believes that Defendant Ethicon, Inc. was on notice of the problems with the product due to adverse event reports and complaints that were made to Ethicon, Inc. by users such as physicians and patients after which a reasonably prudent manufacturer would have removed the product from the market prior to the time that Matthew Huff was implanted with the Ethicon Physiomesh® Flexible Composite Mesh.

Breach of Warranties

21. Plaintiff alleges that the surgical mesh in question was negligently manufactured, tested, distributed, and marketed by Defendant Ethicon, Inc. therefore Ethicon, Inc. is liable under a theory of implied warranty in that the Ethicon, Inc. mesh was not reasonably suited for its intended purposes, such as implantation in the human body. The mesh was also unfit for the ordinary purposes for which it was used and the implied warranty of merchantability was breached. Such breach of implied warranties were a proximate cause of Plaintiff's injuries and damages. Plaintiff has provided the required notice for breach of warranties to Defendant Ethicon, Inc.

V.
Actual Damages

22. Plaintiff asserts that Defendant Ethicon, Inc.'s acts and/or omissions were a producing cause and/or a proximate cause of Plaintiff's damages.

23. As a direct and proximate cause of the defective mesh in question, and the injuries resulting there from, Plaintiff Matthew Huff would show he has suffered the following damages:

a. Medical expenses, past and future;

b. Physical impairment, past and future;

c. Loss of enjoyment of life, past and future;

d. Lost wages, past and future;

e. Loss of wage earning capacity, past and future;

f. Physical pain and mental anguish, past and future.

VI.
Punitive Damages

24. Plaintiff makes claim that Defendant is liable to Plaintiff Matthew Huff for punitive damages for their gross negligence in the manufacture, design, marketing and testing, or lack thereof, for their Ethicon Physiomesh® Flexible Composite Mesh as implanted in Plaintiff Matthew Huff.

VII.
Jury Demand

25. Plaintiff demands a jury trial.

VIII.
Prayer

26. Plaintiff requests that the Defendant be cited to appear and answer, and that on final trial Plaintiff have:

a. All actual, economic and compensatory damages in an amount in excess of the minimum jurisdictional limits of the Court;

b. Punitive damages;

c. Prejudgment and post-judgment interest at the legal rate, costs of court, and

d. Such other and further relief as Plaintiff may be entitled to receive

Respectfully submitted,

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