

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**CHRISTINE L. COLLIER and
DENNIS COLLIER**

Plaintiff,

VERSUS

**ETHICON Inc. and JOHNSON AND
JOHNSON**

Defendants.

Civil Action No.:

Judge:

Magistrate Judge:

COMPLAINT FOR DAMAGES

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA AND THE JUDGES THEREOF:

The complaint of Christine L. Collier and Dennis Collier, persons of the full age of majority, through undersigned counsel, alleges the following upon personal knowledge and belief, and investigation of counsel:

NATURE OF THE CASE

1. This is a product liability action seeking recovery for substantial personal injuries and damages suffered by **Christine L. Collier** (“Plaintiff”) and **Dennis Collier** (“Spouse Plaintiff”), after Christine L. Collier was seriously injured when an Echelon 29mm Circular Powered Stapler EEA misfired during colon surgery performed at Ochsner Northshore Medical Center, Slidell, Louisiana.
2. Ethicon, Inc., is a part of the Johnson and Johnson Medical Devices segment and a subsidiary of Johnson & Johnson (referred herein collectively as “Defendants”), and designs, manufactures, markets, imports, distributes and sells a wide range of surgical products, including the Echelon 29mm Circular Powered Stapler EEA at issue in this case.

3. On or about February 8, 2021, Plaintiff suffered serious and substantial injuries as the direct and proximate result of the Echelon 29mm surgical stapler misfiring during a surgery that was originally intended to remove a small portion of plaintiff's sigmoid colon due to diverticulitis. The misfire caused extensive tissue damage in the colon and rectum, requiring the surgeon to convert from a minimally invasive scope surgery to a laparotomy with a midline incision. An extended left colectomy was then required to be performed with colorectal anastomosis. A substantial portion of the large colon was removed and resected due to tissue damage caused by the misfire. A hole in the rectum also had to be repaired.

4. The Plaintiff suffered post-surgical complications. Post-operatively, she required blood transfusions. The Plaintiff suffered an abdominal wall abscess at the site of the incision. The midline incision dehiscd, requiring it to be opened and the Plaintiff placed on a wound vac for months. The Plaintiff underwent two procedures caused by the stapler misfire: 1) debridement of the infected abdominal incision, and 2) surgery to repair an incisional hernia and the weakened abdominal wall.

5. As a direct and proximate result of Defendant's conduct, the Plaintiff in this case incurred significant and painful bodily injuries, medical expenses, wage loss, physical pain, mental anguish, and diminished enjoyment of life.

THE PARTIES

6. Plaintiff and Spouse Plaintiff were at all relevant times, residents and citizens, and domiciled in the city of Picayune, Mississippi. Plaintiff Christine L. Collier commuted to work at Slidell Memorial Hospital in Slidell, Louisiana prior to the February 8, 2021 surgery. The February 8, 2021 surgery was performed at Ochsner Medical Center – North Shore, Slidell, Louisiana. Plaintiffs are citizens of Mississippi for purposes of diversity jurisdiction under 28 U.S.C §1332.

7. Defendants design, manufacture, market, import, distribute and sell a variety of surgical products, including the subject Echelon 29mm Circular Powered Stapler EEA, upon information and belief Product Code CDH29P.

8. Defendant Johnson & Johnson (“J&J”) is a corporation organized and existing under the laws of New Jersey, maintaining its principal place of business at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. J&J organizes its subsidiary businesses into individual Business Units to coordinate the development, manufacture, testing, marketing promotion, training, distribution and sale of its pelvic floor repair products. Within J&J there are three business segments: medical devices, pharmaceutical, and consumer. Ethicon, operating in the medical devices segment, is charged by J&J with the design, development, promotion, marketing, testing, training, distribution and sale of the surgical stapler product at issue in this case. The Executive Committee of J&J oversees and coordinates the activities of three business segments, including the medical devised segment.¹ J&J is a citizen of New Jersey.

9. Defendant, Ethicon, Inc., is a wholly owned subsidiary of Defendant J&J located in Somerville, New Jersey. Ethicon, Inc. is a corporation organized and existing under New Jersey law, maintaining its principal place of business at 555 US Route 22, Somerville, New Jersey, 08876. Ethicon, Inc. is a citizen of New Jersey.

10. J&J and Ethicon, Inc. are collectively referred to herein as “Ethicon” or “Defendants.”

11. All acts and omissions of the above-referenced Defendants as described herein were done by its agents, servants, employees and/or owners, acting in the course and scope of their respective agencies, services, employments, and/or ownership.

¹ See J&J Annual Report 2020 pg. 1, <https://www.jnj.com/annual-report> (accessed January 8, 2022).

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this case pursuant to diversity jurisdiction prescribed by 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to this claim occurred in this district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because Defendants have sufficient minimum contacts with the State of Louisiana and intentionally availed themselves of the markets within Louisiana through the promotion, sale, marketing, and distribution of their products.

CHOICE OF LAW

14. In tort actions, under article 3542 of the Louisiana Civil Code, the court must apply “the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.”

15. In an exceptional case, Article 3547 provides:

“The law applicable under Articles 3443-3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542 that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply.”

16. Plaintiffs assert that Louisiana law should be applied to their causes of action detailed herein.

17. Plaintiffs reserve the right to move for leave to file an amended complaint to add punitive damages should be determined that the law of another state should apply to this claim.

FACTUAL BACKGROUND

18. On February 8, 2021, Plaintiff, Christine L. Collier, was scheduled to undergo a robotic sigmoid colectomy surgery at Ochsner Northshore Medical Center, Slidell, Louisiana, due to acute diverticulitis. Dr. Joshua Parks, according to his operative report, had no issues dissecting in the retroperitoneal space and continuing the dissection on the right side to the rectum. He freed the proximal sigmoid colon and descending colon robotically. He picked a point of proximal resection in the mid descending colon. A purse string suture was then placed for the anvil of the Echelon 29mm stapler. The stapler was passed through the rectum and the anvil connect to the stapler. Dr. Parks stated in part in his operative report that the stapler “is closed and attempted to fire. It does not fire. The stapler misfired requiring mini laparotomy to release the stapler. In releasing the stapler, a colectomy was made as well as proctotomy.” Dr. Parks made the decision to convert to an open extended left colectomy with colorectal anastomosis and resect in the distal transverse colon due to tissue injury. He then turned his attention to the rectal stump. “Patient has approximately one inch hole on the anterior wall of the rectum” from the misfired stapler.

19. On February 9, 2021, Christine Collier developed acute surgical blood loss anemia from blood loss during surgery. She received a blood transfusion of two units.

20. On February 13, 2021, Mrs. Collier developed a fever. Purulent drainage came from the midline incision with cellulitis. The wound was opened and dressed.

21. On February 15, Mrs. Collier’s wound dehiscd and she developed abdominal wall cellulitis and abscess. She was examined by the general surgeon. She was placed on intravenous Vancomycin and Zosyn antibiotic therapy. A wound vac was placed over the open incision.

22. Ms. Collier’s wound infection continued for months. By May, 2021, Mrs. Collier was still using the wound vac. She requested extended leave from her employment at Slidell Memorial

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