CIVIL

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC

ATTORNEYS AT LAW
MONMOUTH EXECUTIVE CENTER
4 PARAGON WAY
SUITE 100
FREEHOLD, NEW JERSEY 07728
(732) 414-0300
FAX (732) 431-4043

Website:
WWW.LOMURROLAW.COM

Joshua S. Kincannon, Esq.
Direct Dial - (732) 414-0358
NJ Attorney ID: 034052000

jkincannon@lomurrofirm.com
Reply to Freehold
Dept. Fax – (732) 431-4043

May 14, 2018

VIA HAND DELIVERY
The Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625

Re: Application Pursuant to R. 4:38A ("Centralized Management of Multicounty Litigation") Request for Multi-County Litigation Designation for Ethicon Multi-Layered Hernia Mesh

Dear Judge Grant:

The undersigned submit this letter in further support of the February 28, 2018 MCL application. Our application seeks consolidation of (now) approximately 75 product liability actions against Ethicon and Johnson and Johnson for their multi-layered hernia mesh products, currently pending in Bergen County New Jersey.

We received Defendants' May 11, 2018 response to the MCL application, in which they agree that consolidation is warranted—but only for Physiomesh claims. At the outset, Plaintiffs wish to point out that our MCL request, requesting consolidation of several products, is far from unusual. In fact, in the Fall of 2010, this Court ordered the centralization and consolidation of two separate MCLs, not only for different products, but for different defendants: Ethicon/J&J and Bard. A copy of the Order is attached as Ex. A. And the Court did the same in 2015 in the Talcum Powder Litigation. *See* Order attached as Ex. B.

Nonetheless, ignoring the Orders, Defendants seek to exclude the other mesh products in Plaintiffs' application. They argue first that the products are different; and also that there are "relatively few cases in New Jersey" for non-Physiomesh claims. Hence, they conclude, consolidation would not be appropriate.

Defendants are less than forthright. They state at 6-7 that "it is expected that discovery for each product will be materially different from the discovery for the other products." Defendants double down on this position, later contending "there is no meaningful advantage to be gained by consolidating all of these cases into one MCL because the discovery will be very different in each set of cases."

Plaintiffs were surprised to see Defendants make this representation, as they have offered the same exact document production from the Physiomesh MDL to Plaintiffs in all of the New Jersey cases, no matter which product was implanted. Defendants' response to Form C, #14 interrogatory states in relevant part: "Ethicon refers Plaintiff to the Global Document Production referenced in Ethicon's Preliminary Statement, which will be produced subject to the entry of an appropriate protective order." It certainly appears Defendants are willing and able to litigate these cases collectively when it suits them.

Further, Defendants have sought to engage counsel with cases in New Jersey to agree to a uniform protective order and evidence preservation order, the same orders that were used in the MDL. Additionally, Defendants have recently cross-noticed the New Jersey Physiomesh plaintiffs for the depositions of corporate witnesses that were noticed in the MDL.

Despite the many issues with their improper and premature deposition notices—including Defendants' failure to produce even one document in the New Jersey litigation while expecting Plaintiffs to conduct meaningful depositions—Defendants' conduct, including their attempts to serve the Physiomesh document production on non-Physiomesh claimants, have the signatories to the MCL application agree to a uniform protective order and evidence preservation order for the New Jersey cases, illustrates why coordination of these cases is entirely appropriate. Absent coordination, Plaintiffs' counsel cannot confer with, speak for, or bind other counsel who have filed cases in New Jersey, or who will do so in the future. Further, limiting the deposition questions in the New Jersey cases to Physiomesh-related discovery will almost certainly result in the need to redepose these witnesses with regard to the other products contemplated in the pending MCL application. These issues highlight the need to coordinate these related products into one litigation.

Moreover, although Defendants attempt to separate the hernia mesh products at issue, they are more related than distinguishable. Contrary to Defendants' contention at 5, all products requested to be included in the MCL are multi-layered products. "Multi-layered" refers to the multiple layers of polypropylene as opposed to a single layered, flat mesh, such as Ethicon's Prolene hernia mesh.[1]

The sourcing, testing, validation, clearance for use, and discussions related to polypropylene will be highly relevant to every Ethicon multi-layered hernia mesh product. Plaintiff's believe that the quality and source of polypropylene changed numerous times among all Ethicon multi-layered hernia mesh products, and that comparing the internal testing of these meshes will be critical. Issues related to the polypropylene utilized in these products will dominate

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[1] The Prolene Hernia System includes one layer of polypropylene connected to another layer of polypropylene by a polypropylene tube. The Prolene 3D includes a layer of polypropylene connected to a polypropylene "plug" by a polypropylene strand.

large portions of this litigation, and these issues are common across the products named in Plaintiffs' MCL application.

In addition to all of these products utilizing polypropylene, they all fail to properly warn about the risk related to polypropylene. Risk such as degradation, contraction, chronic inflammatory response, and chronic foreign body reaction. The polypropylene in each device will cause the formation of dense adhesions when placed next to internal organs.

The PHS and Prolene 3D are both typically used for inguinal repairs, but are also used and fail in abdominal repairs. Similarly, the Physiomesh and Proceed are typically used for abdominal repairs, but are also used with some regularity for inguinal repairs. It is true that each product underwent its own unique 510(k) application as every product is supposed to undergo. The 510(k) history for each Ethicon multi-layered hernia mesh can be traced back to Ethicon's original "PROLENE polypropylene mesh nonabsorbable synthetic surgical mesh" 510(k). For 510(k) approval, the devices must all be "substantially similar" to the predicate device.

Further, many patients were implanted and subsequently injured by multiple Ethicon multi-layered hernia mesh devices. Separating these cases would be a logistical nightmare, if not impossible.

In short, there will likely be overlapping witnesses and experts for each of these products. To the extent that there are differences, the judge to which these cases are ultimately assigned can create separate tracks for these differences.

Defendants continue by arguing at 10 that the current Bergen County caseload of eight MCLs weighs in favor of coordination in another county. But as stated in the original MCL application, that is no longer the case: (1) the Stryker Trident Hip Implant Litigation is all but completed; (2) the DePuy ASR Hip Implant litigation announced a global settlement in November 2013; (3) the Stryker Hip/ABG II litigation announced a global settlement in December 2016; and (4) the Pompton Lakes MCL has also recently concluded. The resolution of those matters will reduce the Bergen County MCL caseload significantly.

Additionally, Atlantic County has received the two most recent MCLs (Abilify and Firefighter Hearing Loss), and the other recent MCL request (Taxotere) seeks to be venued in Middlesex County. Furthermore, the pelvic mesh MCL (also involving multiple products) is venued in Bergen before Judge Harz. While Defendants go out of their way to try to distinguish these two respective litigations, in many respects the two MCLs overlap: the parties; the materials used in the respective products and the suppliers from which those materials were obtained; the manufacturing and sterilization processes utilized on the mesh products; and the nature of the injuries relating to the use of polypropylene.

Also, Defendants' statement that there are "relatively few cases in New Jersey...involving Ethicon's other hernia mesh products" is misleading. Plaintiffs' MCL application represented to this Court that several hundred more cases will be filed in the near future. In conversations with Defendants since the application, Plaintiffs have openly discussed that volume with them in an effort at transparency, allowing the parties to work effectively to administer these cases efficiently and expeditiously, even in the absence of formal consolidation. Defendants' feigned ignorance of

the large number of additional cases should not alter this Court's analysis or the goal of the orderly administration of these cases.

In conclusion, Defendants' opposition and their conduct further support consolidation, as requested in the February 28, 2018 MCL application. Therefore, the undersigned respectfully request that the New Jersey Supreme Court designate all Ethicon Multi-Layered Hernia Mesh cases for MCL management in the Bergen County Superior Court before Judge Harz.

Respectfully submitted,

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC
4 Paragon Way, Suite 100
Freehold, NJ 07728
(732) 414-0300
(732) 431-4043 (fax)
jkincannon@lomurrofirm.com

JOSHUA S. KINCANNON, ESQ.

THE HOLLIS LAW FIRM, P.A.
5100 W. 95th St., Suite 250
Overland Park, KS 66207
(913) 385-5400
(913) 385-5402 (fax)
adam@hollislawfirm.com

ADAM EVANS, ESQ.

FLEMING NOLEN & JEZ, LLP
2800 Post Oak Blvd., Suite 4000
Houston, TX 77056
(713) 621-7944
(713) 621-9638 (fax)
Kelsey_stokes@fleming-law.com

KELSEY L. STOKES, ESQ.

KRAUSE & KINSMAN, LLC
4717 Grand Avenue, Suite 250
Kansas City, MO 64112
(816) 760-2700
(816) 760-2800 (fax)
robert@krauseandkinsman.com

ROBERT L. KINSMAN, ESQ.

POGUST BRASLOW & MILROOD, LLC
Eight Tower Bridge, Suite 940
161 Washington Street
Conshohocken, PA 19428
(610) 941-4204
(610) 941-4245 (fax)
tmillrood@pbmattorneys.com

TOBIAS L. MILLROOD, ESQ.

LOCKS LAW FIRM
801 North Kings Highway
Cherry Hill, NJ 08034
(856) 663-8200
(856) 661-8400 (fax)
mgalpern@lockslaw.com

MICHAEL GALPERN, ESQ.

JAMES BARRY, ESQ.

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, P.A.
316 S. Baylen Street, Suite 600
Pensacola, FL 35202
rprice@levinlaw.com

ROBERT E. PRICE, ESQ.

JSK/slm
Encl
Cc: Kelly S. Crawford, Esq. (via regular and electronic mail)
David R. Kott, Esq. (via regular and electronic mail)
G. Brian Jackson, Esq. (via regular and electronic mail)
Fred E. Bourn, III, Esq. (via regular and electronic mail)

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A, it is hereby ORDERED that, all New Jersey state court actions currently pending seeking damages or other relief involving the use of pelvic mesh products manufactured by Ethicon, Inc., Ethicon Women's Health and Urology, Gynecare, and/or Johnson & Johnson (collectively hereinafter referred to as "the J & J litigation"), though not designated as a mass tort, shall be assigned for centralized case management purposes to Superior Court, Law Division, Atlantic County for handling by Superior Court Judge Carol Higbee, with venue in such cases transferred to Atlantic County; and

Also on application made pursuant to Rule 4:38A, it is hereby FURTHER ORDERED that, all New Jersey state court actions currently pending seeking damages or other relief involving the use of pelvic mesh products manufactured by C.R. Bard, Inc. ("the Bard litigation"), though not designated as a mass tort, shall be assigned for centralized case management purposes to Superior Court, Law Division, Atlantic County for handling by Superior Court Judge Carol Higbee, with venue in such cases transferred to Atlantic County; and

It is FURTHER ORDERED that the centralized case management of the J & J litigation and the Bard litigation shall be kept separate, but shall be coordinated; and

It is FURTHER ORDERED that any and all such complaints that have been filed in any other county shall be transferred to Superior Court, Law Division, Atlantic County and assigned to Judge Higbee; and that, pursuant to *N.J. Const.* (1947), Art. VI, sec. 2, par. 3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed such that all future such complaints, no matter where

they might be venued, shall be filed in Atlantic County and assigned to Judge Higbee; and

It is FUTHER ORDERED that Judge Higbee shall oversee all management and trial issues in these matters and may, in her discretion, return such cases to the original county of venue for disposition; and

It is FURTHER ORDERED that no Mediator or other Master (in accordance with the provisions of Rule 4:41) may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: September 13, 2010

NOTICE TO THE BAR

MULTICOUNTY LITIGATION (MCL) DESIGNATION OF CERTAIN NEW JERSEY STATE-COURT LITIGATION INVOLVING TALC-BASED BODY POWDER PRODUCTS USED FOR FEMININE HYGIENE PURPOSES

A previous Notice to the Bar requested comments on an application for multicounty litigation (MCL) designation of certain New Jersey state court litigation involving talc-based body powder products used for feminine hygiene purposes. This Notice is to advise that the Supreme Court, after considering the application and comments received, has determined to designate litigation alleging personal injuries resulting from use of talc-based body powder products for feminine hygiene purposes as multicounty litigation. The Court has assigned this litigation to Atlantic County for centralized case management by Assignment Judge Julio L. Mendez and Judge Nelson C. Johnson.

Published with this Notice is the Supreme Court's October 20, 2015 MCL designation order. This order and Judge Johnson's November 20, 2015 Initial Case Management Order are both posted in the Multicounty Litigation Information Center (http://Judiciary.state.nj.us/multicounty/index.htm) on the Judiciary's Internet website (www.njcourts.com).

Questions concerning this matter may be directed to Taironda E. Phoenix, Chief, Civil Court Programs, Civil Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 292-8471; email address: taironda.phoenix@judiciary.state.nj.us.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: November 25, 2015

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines promulgated by Directive # 08-12 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc., f/k/a Luzenac America and Personal Care Products Council, involving certain talc-based body powder products used for feminine hygiene purposes be designated as multicounty litigation ("MCL") for centralized case management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to Superior Court, Law Division, Atlantic County and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par. 3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where venued, shall be filed in Atlantic County; and

It is FURTHER ORDERED that Assignment Judge Julio L. Mendez and Judge Nelson C. Johnson shall oversee management of such cases, with Judge Johnson to handle all trial issues for such cases, which cases may, in the court's discretion, be returned to the original county of venue for disposition; and

If is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

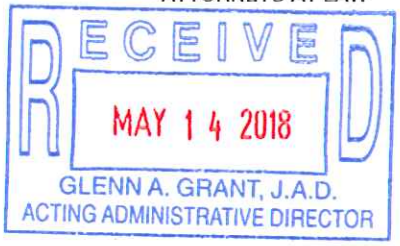
For the Court

Chief Justice

Dated: October 20, 2015

CIVIL

McCARTER &ENGLISH
ATTORNEYS AT LAW



May 11, 2018

VIA FEDERAL EXPRESS

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08611

David R. Kott
Partner
T. 973-639-2056
F. 973-624-7070
dkott@mccarter.com

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
T. 973.622.4444
F. 973.624.7070
www.mccarter.com

Re: Ethicon Hernia Mesh Litigation

Dear Judge Grant:

This Firm, along with Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represents Defendants Ethicon, Inc., and Johnson & Johnson (collectively "Defendants") in cases involving hernia mesh products that are the subject of a Rule 4:38A Multi-County Litigation ("MCL") application, dated February 28, 2018, that is pending before the Administrative Office of the Courts ("AOC"). Please accept this letter in response to the Plaintiffs' application.

Defendants do not oppose the creation of an MCL for cases involving only PHYSIOMESH™ Flexible Composite Mesh ("Physiomesh"). Creation of an MCL limited to Physiomesh cases would mirror the federal multidistrict litigation pending in the United States District Court for the Northern District of Georgia (Hon. Richard Story presiding) and would thus promote judicial efficiency.

Plaintiffs' application is broader, however, than Physiomesh cases. Rather, Plaintiffs seek an MCL for five different hernia mesh products, including a product that is not even at issue in any case pending in New Jersey. As explained below, such a broad MCL involving so many distinct products would create complex and unworkable discovery issues, making coordination inefficient and unfairly prejudicial.

Should the Court choose to create any MCL, Middlesex County is the most suitable venue.

PROCEDURAL HISTORY

Beginning in late 2017, Plaintiffs (primarily represented by a small number of law firms) began filing complaints in New Jersey Superior Court, Bergen County, alleging product liability claims related to hernia mesh products manufactured by Ethicon, Inc. None of the 62 Plaintiffs who filed the motion resides in Bergen County, nor does any plaintiff's counsel have an office in Bergen County. Sixty of these plaintiffs live outside of New Jersey, and the remaining two live in Monmouth or Essex County, New Jersey.

On January 11, 2018, the Lomurro Firm, which represents a significant number of the Plaintiffs, wrote Bergen County Civil Presiding Judge Robert Polifroni asking for a case management conference to discuss consolidation or an MCL created for all hernia mesh cases then-pending in Bergen County. (See Ex. A: Plaintiffs' 1/11/18 Letter to Judge Polifroni). Defendants opposed this request. (See Ex. B: Def.'s 1/26/18 Letter to Judge Polifroni).

Judge Polifroni rejected Plaintiffs' "informal" attempt to achieve MCL designation in Bergen County and reminded the Lomurro Firm of New Jersey's MCL application process. (See Ex. C: Judge Polifroni's 1/25/18 Letter to Pls.' Counsel). In his letter, Judge Polifroni explained that "[d]ecisions by counsel to select a county of venue, and then request to have the matters consolidated and handled by one judge outside the MCL format, will not be validated by this Court." (Id.) The court also noted that "unless the individual plaintiffs live in Bergen County, it seems reasonable the most convenient venue would be the corporate location of the defendants, which appears to be outside of Bergen County." (Id.) (emphasis added).

Despite Judge Polifroni's suggestion, Plaintiffs' counsel continue to file hernia mesh lawsuits against Defendants in Bergen County, even though that venue has no connection to the parties or their suits' allegations.

BACKGROUND

A hernia is a hole in the muscular layer of the abdominal wall, through which pre-peritoneal or intra-abdominal contents can protrude. This protrusion results in a bulge, which is often associated with abdominal discomfort and cosmetic deformity. An untreated hernia can also lead to further medical complications.

There are multiple different types of hernias, each characterized largely by their anatomical location and presentation. Three of the most common hernias include inguinal, ventral, and umbilical.[1] For many years, surgeons have repaired hernias using medical devices made of mesh. There are over one million hernia repair surgeries performed each year in the United States alone. By the year 2000, fewer than 10% of hernia repair surgeries for groin hernias did not utilize a mesh product.[2] The mesh in many, but not all, of these devices is made from sterile, polypropylene-based materials. Depending on the surgeon's repair technique, the mesh is

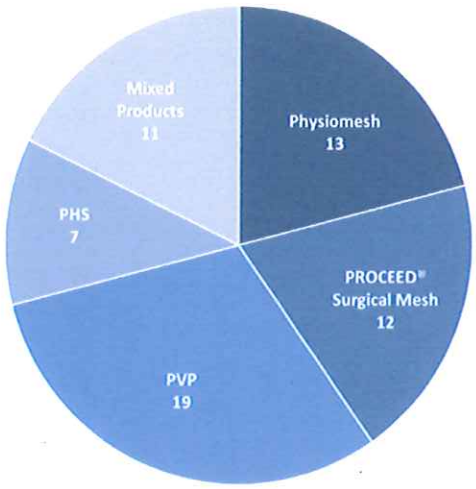
[1] An inguinal hernia is a defect in the abdominal wall that occurs through an area of weakening of the muscle layers of the lower abdominal wall. A ventral hernia is a defect in the abdominal wall (usually midline) that occurs along the scar formed by prior abdominal surgery. An umbilical hernia is a hernia that develops at the umbilicus through a weakened layer of the abdominal wall.

[2] https://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ImplantsandProsthetics/HerniaSurgicalMesh/default.htm.

typically placed either under or over the hernia and held in place utilizing one of several methods. The mesh acts as "scaffolding" for new growth of the patient's own tissue, which eventually incorporates the mesh into the surrounding area to provide the needed support.

For more than 50 years, Ethicon, Inc. ("Ethicon") has manufactured and sold a number of distinct hernia mesh devices. In 2010, Ethicon launched Physiomesh, a mesh device comprised of Prolene fibers that is laminated between Monocryl and polydioxanone films. The Monocryl layers dissolve and allow for a gradual in-growth of tissue into the mesh. Ethicon voluntarily withdrew Physiomesh from the market in 2016. In 2017, a federal multi-district litigation ("MDL") was created for cases alleging claims exclusively related to Physiomesh. That MDL is assigned to Judge Richard Story in the United States District Court for the Northern District of Georgia.

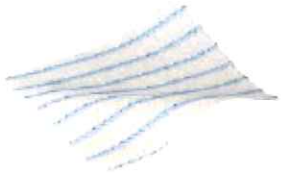
As indicated in Plaintiffs' application, there were then approximately 62 cases filed in the Bergen County Superior Court asserting product liability claims related to one of the following hernia mesh products: (1) Physiomesh; (2) PROCEED® Surgical Mesh; (3) PROCEED® Ventral Patch ("PVP"); and (4) Prolene Hernia System ("PHS").[3] A spreadsheet depicting all cases currently pending in New Jersey state courts is enclosed herewith as Exhibit D. The following chart depicts the pending cases by product that are subject to the moving Plaintiffs' application:

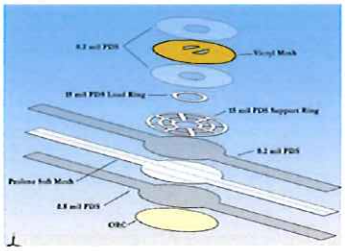
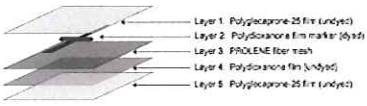


** There are an additional 8 Physiomesh cases filed in this state, 7 PVP cases, 4 PROCEED® Surgical Mesh cases, 5 PHS cases, and 5 mixed product case. No cases involving Prolene 3D Patch are pending in New Jersey.

[3] Although Plaintiffs' application also references Prolene 3D Patch Polypropylene Mesh, no such cases are pending in New Jersey. Nevertheless, Defendants address that product in this response because it is referenced in Plaintiffs' application.

A brief description of the various products identified by Plaintiffs in their application is set forth below:

Device	Type of Mesh	Year Launched	Status
PHS	3D with onlay and underlay patch, non-absorbable 	1997	Currently marketed
Prolene 3D Patch	3D with patch, non-absorbable 	2001	Currently marketed
PROCEED® Surgical Mesh	Flat, partially absorbable  	2004	Currently marketed

PVP	3D patch, partially absorbable  	2008	Currently marketed
Physiomesh	Flat, partially absorbable. Mesh is laminated between MONOCRYL™ and PDS™ films  	2010	Withdrawn in 2016

Although Plaintiffs' application repeatedly refers to each of these products as "Multi-Layered Hernia Mesh products," PHS and 3D Patch are not multi-layered products. In addition, each of these five products is materially different with respect to development, design, materials, method of manufacture, place of manufacture, primary uses, method of placement, and labeling. Some of the products were manufactured in Germany, while some were manufactured in the United States. The products were conceived and designed at different times over several decades with different individuals involved. These differences render the instant cases particularly unsuitable for consolidation.

ARGUMENT

I. The Court Should Deny Plaintiffs' Request to Consolidate the Cases into a Single MCL Because the Cases Involve Distinct Hernia Mesh Products, Each Involving Different Witnesses, Documents, and Discovery.

Plaintiffs' application should be denied because consolidation of all hernia cases, without regard for the product type at issue, would burden the court and parties with inefficiencies and because the cases fail to meet the criteria required for MCL designation under Rule 4:38A and AOC Directive #08-12.

In determining whether centralization of cases is warranted, the Court applies the factors contained in AOC Directive #08-12. Specifically, they include whether the cases possess, among other things, the following characteristics: Many claims with common recurrent issues of law and fact "that are associated with **a single product**"; a large number of parties; and a high degree of commonality among injuries or damages among plaintiffs. See AOC Directive #08-12, at 1-2 (emphasis added). The Court also should consider administrative factors including, but not limited to: Whether there is a risk that centralization will unreasonably delay the progress, increase the expense, or complicate the processing of any action; whether centralized management is fair and convenient to the parties, witnesses, and counsel; whether coordinated discovery would be advantageous; and whether there are related matters pending in federal court or in other state courts that require coordination with a single New Jersey judge. Id.

Applying these factors to the Plaintiffs' application, the Court should conclude that, other than the Physiomesh claims, the cases are not suitable for MCL designation. Most important, when viewed in their entirety, the claims in these cases do not involve a "single product," but rather, implicate several separate and distinct products that have significantly different design and manufacturing histories. It is expected that discovery for each product will be materially different from the discovery for the other products.

Further, there are material differences between the products such that "one size does not fit all," either with respect to design defect claims, failure to warn claims, or claimed injuries. Physiomesh, PROCEED® Surgical Mesh, and PVP are tissue-separating mesh devices such that they are placed laparoscopically on the inside of the abdominal wall and a tissue separating barrier is used to reduce the risk of adhesions between the mesh and the bowel. Unlike those tissue-separating devices, PHS and Prolene 3D Patch are not typically used for intra-peritoneal placement, are typically used for inguinal repairs, and do not contain adhesion prevention barriers. Moreover, the tissue-separating devices are very distinct from each other. For example, Physiomesh has a unique double-sided Monocryl barrier.

Each of these products also has different instructions for use, so the failure to warn claims will be different for each device. Plaintiffs with inguinal hernia repairs typically allege different injuries than patients with other types of repairs. Defendants also anticipate separate, unique discovery issues related to the regulatory history of each one of the other devices. For example, each of the products was subject to its own unique 510(k) FDA application and regulatory process that was based, at least in part, on data specific to that device.

There is no meaningful advantage to be gained by consolidating all of these cases into one MCL because the discovery will be very different in each set of cases. Indeed, there is a real risk that centralization will delay the progress, increase the expense, and complicate the proceeding of the actions. For instance, resolution of the limited cases involving claims related to Physiomesh will be significantly delayed and backlogged in the event fact and expert discovery are conducted at the same time as the PHS cases. In the same vein, the discovery and pretrial proceedings related to several different products will be extremely complicated, and it will be difficult for the Court and the parties to keep straight which product is at issue during each proceeding.

Thus, coordinated discovery under these circumstances will not be advantageous, and consolidation would be unfair and prejudicial to Defendants, as well as contrary to the core goal of the MCL system—efficiency. An MCL would not be created for all General Motors vehicles merely because they are all motor vehicles and were manufactured by the same company. Each product has its own unique background with unique discovery and pleading issues.[4]

For all of these reasons, the Court should deny Plaintiffs' request to establish a single MCL for all of the various hernia mesh cases. Otherwise, Defendants would face unfair prejudice, there would be a delay in the resolution of the cases, and judicial resources would be wasted.

II. Defendants Do Not Oppose MCL Designation for Cases Involving Physiomesh Only.

Defendants recognize that, unlike the cases involving Ethicon's other hernia mesh products, the Physiomesh complaints satisfy several of the criteria for centralized case management. As such, Ethicon does not oppose the consolidation of those cases into an MCL.

[4] Ethicon acknowledges that a number of different pelvic mesh products were coordinated in the Ethicon pelvic mesh MCL. But that MCL, which was created in 2010, remains unresolved, nearly eight years later. One reason for this delay has been the complexities presented by the number of companies and products involved, and Plaintiffs in that litigation have expressed frustration at the perceived delays in resolution.

Of the 62 cases, there are approximately 13 cases filed in New Jersey alleging claims related to Physiomesh. As set forth above, there are unique facts about the design, manufacturing, and marketing of Physiomesh that are not present for the other products. For instance, Physiomesh was the most recently developed device, and it is the only device that has been discontinued. Following Ethicon's announcement that it was discontinuing Physiomesh, a significant number of Physiomesh cases has been filed nationwide, and discovery has begun and will be taking place in the federal MDL which should be coordinated with discovery for New Jersey plaintiffs. These factors weigh in favor of designating an MCL in this State for this product only.

Defendants also respectfully request that a Physiomesh MCL be designated expeditiously. Discovery is underway in the federal Physiomesh MDL, and it is important that such discovery be coordinated with the New Jersey proceedings. In particular, four depositions are currently scheduled in the Physiomesh MDL, one of which is in Europe. More depositions are expected to be scheduled soon. Many of the anticipated deponents are Defendants' former employees, medical doctors and/or residents of other countries. Those witnesses should not be required to give multiple depositions if it can be avoided. Defendants have already met and conferred with Plaintiffs' counsel in an effort to reach an agreement that will allow New Jersey counsel to participate in the scheduled and upcoming depositions. Defendants respectfully request that a Physiomesh coordinating judge be appointed as quickly as possible to avoid unnecessary disruption to the MDL schedule, or having to duplicate MDL witnesses.

III. The Cases Involving the Other Hernia Mesh Devices Are Not Suitable for Individual MCL Designations.

The factors warranting creation of a Physiomesh MCL do not merit creation of an MCL for PROCEED® Surgical Mesh, PVP, Prolene 3D Patch, and/or PHS. When separated by product, these cases do not involve a large number of parties, common issues of law and facts, or a commonality among injuries or damages among the Plaintiffs. Additionally, because there is a limited number of cases involving those four distinct products, consolidation of these cases would suffer from the same administrative inefficiencies as a single MCL for all cases.

In contrast to Physiomesh, there are relatively few cases in New Jersey (or other parts of the country) involving Ethicon's other hernia mesh products. Indeed, Physiomesh is the only product that is the subject of significant related matters in federal court.

Thus, when viewed in the context of these other specific products, the number of cases and parties is not so numerous as to warrant consolidation. Should the Court find it prudent to create an MCL for one or more of the other products, Defendants alternatively request that the Court create separate MCLs for each such product so that discovery related to each product may proceed at its own pace.

In no event should Prolene 3D Patch be included in any MCL. Not only have none of the 62 Plaintiffs alleged that they were implanted with Prolene 3D Patch, there are no such cases pending in any county in New Jersey. Therefore, there is no case or controversy relating to Prolene 3D Patch, and Plaintiffs have no standing to request that this Court create an MCL to include cases involving that device.

IV. Middlesex County Is the Most Suitable Venue for an MCL.

Venue selection should not be controlled by the county in which a small number of plaintiffs' counsel has strategically chosen to file cases. This is particularly so when the county bears no relation to the parties, the events at issue, the witnesses, or the location of the pertinent documents. In the event the Court is inclined to create one or more MCLs, Defendants respectfully submit that Middlesex County is the most appropriate venue for each MCL.

Plaintiffs initially filed all of their cases in Bergen County, undoubtedly in a strategic attempt to "stack the deck" in favor of a venue that they perceive to be somehow favorable. The Court, however, should not allow such a transparent attempt at forum shopping.

"Issues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage" are factors to be considered in determining where to assign an MCL. See MCL Guidelines and Criteria for Designation, as promulgated by Directive #08-12 pursuant to Rule 4:38A.

Based on the factors contained in the MCL guidelines, an MCL would be most suitably placed in Middlesex County (and assigned to Judge James Hyland). First, the geographical location of the parties weighs markedly in favor of Middlesex County. Johnson & Johnson is located in New Brunswick in Middlesex County. Ethicon's headquarters are in the Borough of Somerville in Somerset County, which is only 12 miles from New Brunswick. Accordingly, the convenience of Defendants' witnesses and the availability of many pertinent documents and other information weigh in favor of Middlesex County.

As already explained, none of the Plaintiffs identified in the 62 cases listed in the MCL application is from Bergen County, nor do any plaintiffs in the other cases live in Bergen County. Indeed, out of the 62 cases, only two Plaintiffs are residents of New Jersey.[5] Although Plaintiffs are represented by counsel from across the country, their primary New Jersey counsel are located in Freehold Township. Middlesex County is also the closest MCL vicinage to Plaintiffs' New Jersey law firm.

[5] Daniel Aaron (BER-L-870-18) is a resident of Monmouth County, and Elena Schaeffer (BER-L-914-18) is a resident of Essex County.

In fact, none of the Plaintiffs or their attorneys has any apparent connection whatsoever to Bergen County. Defendants had no input as to where Plaintiffs chose to sue them. Defendants should not be disadvantaged or prejudiced by the strategic decision of Plaintiffs' counsel attempting to manipulate the choice of forum. Cf. In re Vioxx Litig., 395 N.J. Super. 358, 364-65 (App. Div. 2007) ("[L]ess deference is accorded to plaintiff's forum choice in this case than would normally be accorded because of plaintiff's residence in the U.K., not in this state"); Lanard Toys Ltd. v. Toys R US-Delaware, Inc., No. CIV.A. 2:14-1939-SDW, 2015 WL 3794595, at *4 (D.N.J. June 16, 2015) (noting that "Plaintiff's choice of forum here is also accorded less deference because New Jersey is not Plaintiff's home forum" and that "a plaintiff's choice deserves little deference when the chosen forum has little connection to the facts underlying the claims").

The current civil and multicounty litigation caseload in the three MCL vicinages also weighs in favor of selecting Middlesex County for an MCL for the Physiomesh cases. Bergen County currently has the most MCL actions with eight, and Judge Polifroni's response to Plaintiffs' "informal" request for a case management conference demonstrates that Bergen County is not an appropriate vicinage for an MCL involving Physiomesh. (See Ex. C: Judge Polifroni's 1/25/18 Letter to Pls.' Counsel). As Plaintiffs have noted, Atlantic County currently has five active MCLs, including the most recent MCL involving firefighter hearing loss created in January 2018.

Middlesex County is currently assigned six MCLs, excluding the asbestos cases, which are continuing to be handled by a separately designated judge and special master. Further, the Propecia MCL assigned to Middlesex County will soon conclude as a consequence of settlements.

Although an MCL involving Ethicon's pelvic mesh products is currently pending in Bergen County, the issues presented in that MCL are distinct from the issues presented in hernia mesh cases. Hernia mesh implantation surgeries are different than pelvic mesh implantation surgeries and are performed by different kinds of surgeons. Unlike pelvic mesh implantations, which are performed on the female pelvic floor by urogynecologists and other pelvic floor surgeons, hernia repairs are performed in the abdominal and other spaces by general surgeons.

As already explained, hernia surgeries are intended to repair a defect (i.e., a hole) in the abdominal wall or other area with the intent of eventual tissue ingrowth to repair the defect. In contrast, pelvic mesh is implanted with the goal of treating female stress urinary incontinence (unintentional loss of urine with physical activity or movement) or pelvic organ prolapse (the "dropping" of an organ so that it presses against the vaginal wall). Though both involve surgical mesh, Plaintiffs' theories related to the alleged defects of hernia mesh appear to be very different from those alleged as to pelvic mesh. Thus, issues presented in hernia mesh cases will be very different than the issues presented in the pelvic mesh cases. Judge Nelson

Johnson, who is retiring, is the only New Jersey judge with any meaningful experience considering substantive issues involving these hernia mesh cases.

Finally, there is no reason to burden Judge Harz with another MCL given that she already is presiding over more than 1,000 cases included in the pelvic mesh MCL.

V. The Court Should Authorize the MCL Court to Return Each Case to an Appropriate County for Trial.

Finally, the Court should specify in its order that the MCL court has the discretion to transfer any case to another county for trial. Ethicon reserves all of its rights under New Jersey law and the Court Rules to object to venue with respect to the trial of any individual case. As noted above, none of the Plaintiffs involved in any of the 62 cases resides in Bergen County, and Defendants' principal places of business are in Somerset and Middlesex Counties. Thus, Ethicon reserves the right to object to venue before the initiation of any trial in a county in which venue is improper and to ask the MCL judge to return the case to a county in which venue is properly laid, as is routinely done in federal court proceedings.

Under Rule 4:3-2(a), venue is appropriate in "the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement . . . ." Subsection (b) provides that "[f]or purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business." Id. Although case law analyzing the rule is limited, in Crepy v. Reckitt Benckiser, LLC, 448 N.J. Super. 419, 437-38 (Law Div. 2016), the trial court concluded that the term "actually doing business" requires a level of business activity by a corporate defendant in the county of venue that exceeds merely conducting incidental or minimal business such as ordinary advertising or marketing.

After Crepy, a subcommittee of the New Jersey Supreme Court Rules Committee drafted a proposed Amendment to Rule 4:3-2 which would clarify the venue rules consistent with Crepy. The proposed amendment reads as follows:

> (b) Business Entity. For purposes of this rule, a business entity shall be deemed to reside in the county in which its principal office in New Jersey is located or, if it has no office in New Jersey, in the county in which it has the most significant contacts.

(See Ex. E: New Jersey Law Journal, 2016-2018 Supreme Court Rules Committee Reports – Publication for Comment) (emphasis added). This proposed rule embraces the rationale set forth in Crepy and clarifies the intended meaning of "actually doing business" found in the New Jersey Court Rules.

Indeed, in its July 14, 2015 Order designating an MCL in the Benicar litigation, this Court stated that the MCL judge "may, in his discretion, return such cases to the original county of venue for disposition." (See Ex. F: 7/14/15 Benicar Order). Defendants request that the Court issue similar language in its order designating a Physiomesh MCL and Defendants, through their response, do not waive their right to object to venue or request that the MCL judge return or transfer any individual case to a county in which venue is proper prior to trial.

CONCLUSION

In conclusion, Defendants do not oppose Plaintiffs' application to the extent that it seeks to create a Physiomesh-only MCL. The remaining cases involving other hernia mesh devices should not be consolidated into an MCL. The small volume of the remaining cases does not involve any efficiencies of scale that justify their consolidation. They also involve significantly different products with different regulatory histories and different witnesses, and their consolidation would create an unmanageable MCL and would unfairly prejudice Defendants and waste judicial resources. [6]

Respectfully submitted,

David R. Kott

cc: Joshua Kincannon, Esq. (via regular mail and email)
Kelsey Stokes, Esq. (via regular mail and email)
Adam Evans, Esq. (via regular mail and email)
Robert Price, Esq. (via regular mail and email)
Michael Daly, Esq. (via regular mail and email)
Tobias Millrood, Esq. (via regular mail and email)
James Barry, Esq. (via regular mail and email)
Robert Kinsman, Esq. (via regular mail and email)
Kelly S. Crawford, Esq. (via email)

[6] In the event that the Court should choose to create an MCL governing cases involving Ethicon's other hernia mesh products, the Court should exclude Tabor v. Johnson & Johnson, (ATL-L-830-14). Judge Johnson has managed that case for nearly four years. Most recently, on May 1, 2018, he conducted a Lopez hearing, after which he indicated that he will issue a ruling on Defendants' dispositive motion very soon.

EXHIBIT A

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC

ATTORNEYS AT LAW
MONMOUTH EXECUTIVE CENTER
4 PARAGON WAY
SUITE 100
FREEHOLD, NEW JERSEY 07728

(732) 414-0300

Website:
WWW.LOMURROLAW.COM

Abbott S. Brown
Certified by the Supreme Court
Of New Jersey as a Civil Trial Attorney
Direct Dial - (732) 414-0303

abrown@lomurrolaw.com
Reply to Freehold
Fax - (732) 431-4043
NJ ATTORNEY ID NUMBER 19831978

January 11, 2018

VIA REGULAR MAIL
Hon. Robert L. Polifroni, P.J. Cv.
Bergen County Superior Court
Bergen County Justice Center
10 Main St.
Hackensack, NJ 07601

Re: In re Ethicon Hernia Mesh Litigation

Dear Judge Polifroni:

Our office, in conjunction with several other firms, has filed 16 product liability cases in Bergen County against Ethicon, Inc. and Johnson & Johnson. The complaints assert that various hernia mesh products manufactured, marketed, and sold by these defendants are defective. All lawsuits involve the same defendants, and all involve the failure of one or more of their hernia mesh products. We anticipate filing well over one hundred such lawsuits in the near future.

To date, the 16 cases have been assigned to 9 different Judges: Judge Thurber (4 cases), Judge Perez-Friscia (3 cases), Judge O'Dwyer (3 cases), Judge DeLuca (1 case), Judge De La Cruz (1 case), Judge Farrington (1 case), Judge Powers (1 case), Judge Padovano (1 case), and Judge Harz (1 case). A list of the cases is attached. Defendants have filed timely answers on two of the 16 cases. Discovery has not yet begun.

Due to the nature and breadth of this litigation, we feel that it would be most efficient to schedule a case management conference with all counsel to discuss the consolidation of these cases for discovery or an MCL application.

I am sending a copy of this letter to defense counsel, and to all attorneys who have indicated they have or may be filing a similar claim. I am confident that all counsel will work together to efficiently and expeditiously handle these cases.

Your Honor's kind consideration of this request will be most appreciated.

Respectfully submitted,

ABBOTT S. BROWN, ESQ.

ASB/slm
Encl
cc: Hon. Estela M. De La Cruz (via regular mail w/encl)
Hon. James J. Deluca (via regular mail w/encl)
Hon. Christine A. Farrington (via regular mail w/encl)
Hon. Rachelle L. Harz (via regular mail w/encl)
Hon. John D. O'Dwyer (via regular mail w/encl)
Hon. Gregg A. Padovano (via regular mail w/encl)
Hon. Lisa Perez-Friscia (via regular mail w/encl)
Hon. Charles E. Powers (via regular mail w/encl)
Hon. Mary F. Thurber (via regular mail w/encl)
Kelly S. Crawford, Esq. (via regular mail w/encl)
Kelsey Stokes, Esq. (via electronic mail w/encl)
Adam Evans, Esq. (via electronic mail w/encl)
Robert Price, Esq. (via electronic mail w/encl)
Michael Daly, Esq. (via electronic mail w/encl)

PENDING ETHICON HERNIA MESH CASES - as of January 11, 2018

DOCKET NUMBER	PLAINTIFF	JUDGE
BER-L-7065-17	JASON COTTLE	JUDGE JAMES J. DELUCA
BER-L-7836-17	RICHARD BASSETT	JUDGE JOHN D. O'DWYER
BER-L-8037-17	ILENE GOLD	JUDGE JOHN D. O'DWYER
BER-L-8276-17	KENNETH NOAKES	JUDGE CHRISTINE A. FARRINGTON
BER-L-8572-17	SUSIE FOWLER	JUDGE RACHELLE L. HARZ
BER-L-8827-17	CHARLES GRIFFIN	JUDGE MARY F. THURBER
BER-L-8829-17	CHRISTINA LINNENBRINK	JUDGE MARY F. THURBER
BER-L-8998-17	CASSANDRA CAMPBELL	JUDGE LISA PEREZ-FRISCIA
BER-L-9127-17	MARVIN MARTIN	JUDGE MARY F. THURBER
BER-L-9130-17	JOHN RUIZ	JUDGE MARY F. THURBER
BER-L-9133-17	WALTER TREBOLO, JR.	JUDGE JOHN D. O'DWYER
BER-L-9151-17	BRENDA GATELEY	JUDGE ESTELA M. DE LA CRUZ
BER-L-184-18	SHONNA REDDING	JUDGE CHARLES E. POWERS
BER-L-197-18	MELISSA RICE	JUDGE LISA PEREZ-FRISCIA
BER-L-198-18	NORMAN BEAN	JUDGE LISA PEREZ-FRISCIA
BER-L-207-18	ALAN ALUMBAUGH	JUDGE GREGG A. PADOVANO

EXHIBIT B

COPY

McCARTER &ENGLISH
ATTORNEYS AT LAW

January 26, 2018

VIA HAND DELIVERY

Hon. Robert L. Polifroni, P.J. Cv.
Bergen County Superior Court
Bergen County Courthouse
10 Main Street, 3rd Floor Rotunda
Hackensack, NJ 07601

Re: Ethicon Hernia Mesh Litigation

Dear Judge Polifroni:

David R. Kott
Partner
T. 973-639-2056
F. 973-624-7070
dkott@mccarter.com

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
T. 973.622.4444
F. 973.624.7070
www.mccarter.com

BOSTON
HARTFORD
STAMFORD
NEW YORK
NEWARK
EAST BRUNSWICK
PHILADELPHIA
WILMINGTON
WASHINGTON, DC

This Firm, along with our co-counsel Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represent Defendants Ethicon, Inc. and Johnson & Johnson (hereinafter collectively "Ethicon") in sixteen recently filed actions in Bergen County related to hernia mesh products.[1] We are in receipt of plaintiffs' counsel, Abbot S. Brown, Esq.'s letter to the Court requesting a case management conference with all counsel involved in these actions. We write to clarify and respond to some of the statements contained in that letter.

Ethicon manufactures more than a dozen different mesh products indicated for the treatment of hernia. Plaintiffs implicitly suggest that any case involving any hernia mesh product manufactured by Ethicon would be appropriate for consolidation. However, there are many important differences among these products, including differences in design, materials, method of manufacture, place of manufacture, and indications. The products were developed, and manufactured at different times and different locations over decades. Indeed, plaintiffs acknowledge that the sixteen filed cases involve at least three distinct hernia mesh products. Some of the cases assert claims related to Ethicon Physiomesh™ (which was withdrawn from the market in 2016), whereas the majority of the other cases involve claims related to different products, namely the Proceed Ventral Patch and Proceed (which are currently marketed). Both on discovery and the merits, there will not be sufficient common factual and legal issues arising out of the same series of occurrences required for consolidation.

Specifically, it would be wholly improper under New Jersey law and Rule 4:38-1, as well as Rule 4:38A and Directive #08-12, to consolidate cases involving different hernia mesh products, i.e. non-Physiomesh™ and Physiomesh™ cases. Accordingly, Ethicon objects to any attempt by plaintiffs to consolidate all cases involving any Ethicon hernia mesh product, and will oppose any application seeking such relief. Similarly, it would also be improper under New Jersey law and the Court

[1] While not changing our analysis, for completeness there are other additional cases not referenced in Plaintiffs' letter. Two cases are venued in Bergen County, and one of the plaintiffs in those cases is from Essex County and the other is an out of state plaintiff. There are five other cases pending in Monmouth County, Middlesex County, Atlantic County (2) and Ocean County. Of these seven cases, three are Physiomesh.

Rules to consolidate all of the cases involving the various non-Physiomesh™ products, and Ethicon likewise will object to and oppose any such application as well.

With respect to the cases involving Ethicon Physiomesh™ products, we do not believe consolidation or an MCL application is ripe for discussion. To date, only two of the cases referred to by Mr. Brown in his letter have been filed alleging claims involving an Ethicon Physiomesh™ product: Martin v. Ethicon, Inc. et al., Docket No. BER-L-9127-17 and Ruiz v. Ethicon, Inc., et al., Docket No. BER-L-9128-17. Both of those cases are pending before Judge Thurber. Respectfully, we do not believe that the filing of these two cases warrants a discussion of an MCL application at this time. Indeed, it is inconceivable that the Supreme Court would grant an MCL application based on the filing of two cases.

Moreover, plaintiffs' counsel's request is also premature because Ethicon is still in the process of reviewing the various Complaints filed in these actions to determine whether venue is proper in Bergen County, or whether venue would be more convenient in another New Jersey vicinage. In fact, not a single plaintiff in any of the sixteen filed actions is a resident of Bergen County; indeed, not a single plaintiff is a resident of New Jersey. It is likely that the issues related to venue could be the subject of a motion in the near future. Accordingly, it would be inefficient to engage in consolidation discussions regarding cases that could be transferred to a different venue.

We will be prepared to discuss these matters with Your Honor in the event that Your Honor decides to conduct a conference. Please do not hesitate to contact us if the Court has any questions.

Respectfully submitted,

David R. Kott

cc: Hon. Estela M. De La Cruz (via regular mail)
Hon. James J. Deluca (via regular mail)
Hon. Christine A. Farrington (via regular mail)
Hon. Rachelle L. Harz (via regular mail)
Hon. John D. O'Dwyer (via regular mail)
Hon. Gregg A. Padovano (via regular mail)
Hon. Lisa Perez-Friscia (via regular mail)
Hon. Charles E. Powers (via regular mail)
Hon. Mary F. Thurber (via regular mail)
Abbott S. Brown, Esq. (via regular mail and email)
Kelsey Stokes, Esq. (via regular mail and email)
Adam Evans, Esq. (via regular mail and email)
Robert Price, Esq. (via regular mail and email)
Michael Daly, Esq. (via regular mail and email)

EXHIBIT C

SUPERIOR COURT OF NEW JERSEY

ROBERT L. POLIFRONI, P.J.Cv.
CIVIL DIVISION

BERGEN COUNTY JUSTICE CENTER
10 MAIN STREET
HACKENSACK, NEW JERSEY 07601-7689
(201) 527-2690

January 25, 2018

Abbott S. Brown, Esq.
Lomurro, Munson, Comer, Brown & Schottland
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, NJ 07728

RE: **Ethicon Hernia Mesh Litigation**

Dear Mr. Brown:

This will acknowledge receipt of your correspondence dated January 11, 2018.

As counsel are aware, the New Jersey Supreme Court has developed a specific procedure regarding the type of cases you describe. Specifically, at the earliest available opportunity, counsel are to seek to have the matters designated as Multi-County Litigation (MCL). It appears counsel acknowledge the issues at the heart of the litigation are best handled by one judge, in one county. However, that goal will not be achieved informally.

You request a "global" case management conference to discuss the consolidation of these matters for discovery or an MCL application. Respectfully, counsel's only option is the latter. Decisions by counsel to select a county of venue, and then request to have the matters consolidated and handled by one judge outside the MCL format, will not be validated by this court. Indeed, unless the individual plaintiffs live in Bergen County, it seems reasonable the most convenient venue would be the corporate location of the defendants, which appears to be outside Bergen County.

Respectfully, the court will not accommodate counsel's efforts to secure case management by one designated judge in one particular county without seeking an MCL designation in situations where such designation is clearly appropriate. There is no need to conduct a case management conference. Therefore, your request is denied. The cases will be handled by the individual judges assigned via the standard docket number system, pending any Supreme Court decision on an MCL designation.

This letter does not serve to comment on the discretion of the Assignment Judge to address issues involving venue, either via a conference or sua sponte.

Please be guided accordingly.

Very truly yours,

Robert L. Polifroni, P.J.Cv.

RLP/len

cc: Hon. Bonnie J. Mizdol, A.J.S.C.
Hon. Estela M. De La Cruz, J.S.C.
Hon. James J. DeLuca, J.S.C.
Hon. Christine A. Farrington, J.S.C.
Hon. Rachelle L. Harz, J.S.C.
Hon. John D. O'Dwyer, J.S.C.
Hon. Gregg A. Padovano, J.S.C.
Hon. Lisa Perez Friscia, J.S.C.
Hon. Charles E. Powers, Jr., J.S.C.
Hon. Mary F. Thurber, J.S.C.
Kathleen Stylianou, Civil Division Manager
Kelly S. Crawford, Esq.
Kelsey Stokes, Esq.
Adam Evans, Esq.
Robert Price, Esq.
Michael Daly, Esq.

EXHIBIT D

Case Name Only	Current Docket #	Products Used	NJ MCL Response: Current NJ County of Residence
Tabor, Steve	ATL-L-830-14	Prolene Hernia System	Out-of-State
Dorsey, Timothy	MON-L-3639-17	Proceed Ventral Patch	Monmouth County
Cottle, Jason	BER-L-7065-17	Proceed Ventral Patch	Out-of-State
Bassett, Richard	BER-L-7836-17	Proceed Ventral Patch	Out-of-State
Gold, Ilene	BER-L-008037-17	Proceed	Out-of-State
Lane, Calvin	BER-L-008142-17	Physiomesh; Securestrap	Essex County
Noakes, Kenneth B.	BER-L-8276-17	Proceed Ventral Patch	Out-of-State
Fowler, Susie E.	BER-L-8572-17	Physiomesh; Proceed Ventral Patch	Out-of-State
Linnenbrink, Christina	BER-L-8829-17	Proceed Ventral Patch	Out-of-State
Griffin, Charles	BER-L-8827-17	Physiomesh; Proceed Ventral Patch	Out-of-State
Campbell, Cassandra	BER-L-8998-17	Proceed; Proceed Ventral Patch	Out-of-State
Gateley, Brenda	BER-L-9151-17	Proceed	Out-of-State
Ruiz, John	BER-L-9130-17	Physiomesh; Proceed	Out-of-State
Trebolo, Jr., Walter	BER-L-9133-17	Proceed	Out-of-State
Martin, Marvin	BER-L-9127-17	Physiomesh; Proceed	Out-of-State
Redding, Shonna	BER-L-184-18	Proceed Ventral Patch	Out-of-State
Alumbaugh, Alan	BER-L-207-18	Proceed Ventral Patch	Out-of-State
Rice, Melissa	BER-L-197-18	Proceed	Out-of-State
Bean, Norman	BER-L-198-18	Proceed	Out-of-State
Reynolds, Burton	BER-L-279-18	Proceed	Out-of-State
Hopes, Millicent	MID-L-006931-17	Physiomesh	Middlesex County
Mangan, Michael	OCN-L-003093-17	Physiomesh	Ocean County
Smith, Diane M.	BER-L-652-18	Proceed Ventral Patch	Out-of-State
Gaddis, Troy	BEL-L-658-18	Proceed Ventral Patch	Out-of-State
Miller, Tracee	BER-L-695-18	Physiomesh; Proceed	Out-of-State
Hollimon, Thomas	BER-L-694-18	Physiomesh; Proceed	Out-of-State

Clark, Jeneen	BER-L-691-18	Physiomesh; Proceed Ventral Patch	Out-of-State
Fielding, Chad	BER-L-693-18	Physiomesh; Proceed	Out-of-State
Adams, Donna	BER-L-728-18	Physiomesh	Out-of-State
Sollis, Jamie	BER-L-703-18	Physiomesh; Proceed Ventral Patch	Out-of-State
Denney, Robert	BER-L-732-18	Physiomesh	Out-of-State
Crossland, Stephanie	BER-L-729-18	Physiomesh	Out-of-State
Rodriguez, Kelly	BER-L-699-18	Physiomesh; Proceed	Out-of-State
Moore, Tammy	BER-L-697-18	Physiomesh; Proceed Ventral Patch	Out-of-State
Westerbeck, Mike	BER-L-733-18	Physiomesh	Out-of-State
Jennings, Jerry	BER-L-777-18	Physiomesh	Out-of-State
Dollanmeyer, Terry	BER-L-774-18	Physiomesh	Out-of-State
Jerrell, Sara	BER-L-775-18	Physiomesh	Out-of-State
Kennedy, Bryan	BER-L-779-18	Physiomesh	Out-of-State
Robins, Janice	BER-L-809-18	Physiomesh	Out-of-State
Morgan, Karrie	BER-L-781-18	Physiomesh	Out-of-State
McKinney, Earl	BER-L-780-18	Physiomesh	Out-of-State
Johnson, Steven	BER-L-778-18	Physiomesh	Out-of-State
Schaeffer, Elena	BER-L-914-18	Physiomesh	Essex County
Aaron, Daniel & Heather	BER-L-00870-18	Proceed Ventral Patch	Monmouth County
Diloreto, Edward	BER-L-1018-18	Proceed Ventral Patch	Out-of-State
Pikulsky, Jamie & Jeffrey	BER-L-1052-18	Proceed Ventral Patch	Out-of-State
Lang, Christine M.	BER-L-1067-18	Proceed Ventral Patch	Out-of-State
Gibson, Renee C.	BER-L-1110-18	Proceed Ventral Patch	Out-of-State
Shackelford, Cecelia	BER-L-1200-18	Proceed Ventral Patch	Out-of-State
Matias, Marissa & Antonio	ESX-L-9128-17	Physiomesh	Essex County
Usey, Christina	BER-L-1244-18	Proceed	Out-of-State
Schriner, Yesenia	BER-L-1222-18	Proceed Ventral Patch	Out-of-State
Alexander, Diane	BER-L-1241-18	Proceed Ventral Patch	Out-of-State
Lindsey, Scott E.	BER-L-001210-18	Proceed Ventral Patch	Out-of-State

Mack, Edward & Robin	BER-L-01220-18	Proceed	Out-of-State
Hart, Dennis	BER-L-1349-18	Proceed	Out-of-State
Galvez, Michael	BER-L-1393-18	Prolene	Out-of-State
Lindly, James	BER-L-1402-18	Prolene	Out-of-State
Senkel, William	BER-L-1433-18	Prolene	Out-of-State
Mountjoy, James & Nancy	BER-L-1480-18	Proceed	Out-of-State
Alvarado, Daniel & Jessica	BER-L-1479-18	Proceed	Out-of-State
Krampen-Yerry, Denise	BER-L-1466-18	Proceed Ventral Patch	Out-of-State
Anawaty, Viola	BER-L-1516-18	Proceed	Out-of-State
Fontenot, Emily	BER-L-1513-18	Proceed Ventral Patch	Out-of-State
Szaroleta, Christopher	BER-L-1458-18	Prolene	Out-of-State
Lotridge, Robin	BER-L-1467-18	Prolene	Out-of-State
Dias, Alexsandro	BER-L-1471-18	Prolene	Out-of-State
Maestas, Joseph	BER-L-1456-18	Prolene	Out-of-State
Capshaw, Clifton	BER-L-1530-18	Proceed	Out-of-State
Smith, Joseph W.	BER-L-01692-18	Proceed Ventral Patch	Out-of-State
Briscoe, Anthony & Francelia	BER-L-01691-18	Prolene Hernia System	Out-of-State
Bradford, William	BER-L-1806-18	Prolene	Out-of-State
Johnson, Heather	BER-L-2003-18	Prolene Hernia System	Out-of-State
Collier, Greg	BER-L-2214-18	Proceed	Out-of-State
Scobee, Jerry	BER-L-2355-18	Proceed Ventral Patch	Out-of-State
Williams, James	BER-L-2337-18	Proceed Ventral Patch	Out-of-State
Ward, Sue E.	BER-L-2353-18	Proceed	Out-of-State
Miller, Ronald	BER-L-2345-18	Prolene Hernia System	Out-of-State
Shepherd, Terry R.	BER-L-2354-18	Proceed Ventral Patch	Out-of-State
Fontana, David	BER-L-2511-18	Physiomesh	Out-of-State
Wojtusiak, Gregory & Karen	BER-L-2456-18	Physiomesh	Monmouth County
Hardy, Edwin B.	BER-L-2512-18	Physiomesh	Somerset County
Snyder, David	BER-L-2513-18	Proceed Ventral Patch	Out-of-State
Hodge, Pamela	BER-L-2577-18	Proceed	Out-of-State
McCormick, Julius Don	BER-L-2856-18	Physiomesh; Proceed Ventral Patch	Out-of-State

Kruggel, Tammy, as the Personal Representative of the Estate of Barbara Bradbury, deceased	BER-L-2694-18	Physiomesh; Proceed Ventral Patch	Out-of-State
Lloyd, William	BER-L-2952-18	Proceed Ventral Patch	Out-of-State
Henley, James G.	BER-L-003015-18	Prolene Hernia System	Out-of-State
Ortiz, Moises	BER-L-003016-18	Physiomesh; Proceed	Out-of-State
Robinson, Franklin C.	BER-L-003014-18	Proceed	Out-of-State

EXHIBIT E

New Jersey Law Journal

SECTION 4

2016-2018 SUPREME COURT RULES COMMITTEE REPORTS — PUBLICATION FOR COMMENT

VOL. CCXXXVI – 497 NEW JERSEY'S LEGAL NEWSPAPER MONDAY, FEBRUARY 19, 2018 An ALM Publication

NOTICE TO THE BAR
2016-2018 SUPREME COURT RULES COMMITTEE REPORTS — PUBLICATION FOR COMMENT

The Supreme Court invites written comments on the 2016-2018 reports of the Supreme Court rules committees for this rules cycle. In these reports, the committees (as listed below) make numerous recommendations to the Supreme Court for rule amendments and other routine administrative actions. As noted previously, the Court has staggered the reporting cycles of its rules committees, such that approximately half submit their respective reports each year.

The committees whose 2016-2018 reports are published with this notice for comment are as follows: (1) Civil Practice Committee, and (2) Special Civil Part Practice Committee. The report of the (3) Committee on the Tax Court will be separately published at a later date. The Arbitration Advisory Committee did not submit a report this cycle.

Also published for comment with this notice is (4) the Supplemental Report of the Criminal Practice Committee, submitted out of cycle.

Some of the appendices referenced in the reports may not be included in this publication; copies of any omitted appendices are available on request. The reports are also available on the Judiciary's Internet web site at http://www.njcourts.gov/courts/supreme/reports.html.

Please send any comments on the Committees' proposed rule amendments or other recommendations *in writing* by **Friday, April 6, 2018** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments on the Committee reports and recommendations may also be submitted via Internet e-mail to the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure upon receipt.

The Supreme Court will conduct a public hearing on these reports in May and will be acting on the reports and recommendations in June-July, with any rule amendments to become effective September 1, 2018.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Dated: February 14, 2018

2018 Report of the Supreme Court Civil Practice Committee

February 2018

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APPENDICES

D. Proposed Amendment to *R.* 4:3-2 - Venue in the Superior Court

In *Crepp v. Reckitt Benckiser, LLC*, 448 *N.J.* Super. 419 (Law Div. 2016), a wrongful termination case, the trial court concluded that the term "actually doing business" within *Rule* 4:3-2(b) requires a level of business activity by a business entity defendant in the county of venue that exceeds merely conducting a minimal or incidental amount.

A Committee member suggests that the Committee consider amending paragraph (b) of the Rule to define the phrase "actually doing business." This language has been used in the Rule, without explanation, since 1948 with regard to where matters involving business entity defendants may be venued.

A subcommittee was formed to address this issue. The subcommittee presented two alternatives: (1) do not amend the Rule and let case law develop to provide guidance on the issue; or (2) amend the Rule to provide venue based on residence – "in the county where the principal office is located or in which the cause of action accrued." After discussion, the Committee agreed with alternative one and determined that there should be no rule amendment to *Rule* 4:3-2(b) at this time, in part with an expectation the issue might be addressed in future case law.

Subsequent to the Committee's decision, the *Crepp* opinion was published. The Committee reopened discussion as to whether *Crepp* has provided sufficient guidance on the standard of "actually doing business." While noting that the opinion provides helpful guidance, it does not clearly specify exactly what level of business activities or nexus will suffice to create venue in a particular county. A subcommittee member presented various scenarios regarding venue for the Committee's consideration:

- If the cause of action arose in New Jersey, venue should be in the county where the cause of action arose;
- A business entity with a principal office in New Jersey "resides" in the county of the principal office;
- A business entity with one office in New Jersey but a principal office in a different state or nation "resides" in the county of the New Jersey office;
- A business entity with multiple offices in New Jersey but a principal office in a different state or nation "resides" in the county of the principal New Jersey office;
- A business entity with no offices in New Jersey, "resides" in the New Jersey county with which it has the most significant contacts; and
- For a business entity with no contacts with New Jersey (as in situations of personal jurisdiction based on consent, or a contractual forum selection clause designating New Jersey as the forum state but not any particular county), if venue in New Jersey is not otherwise available, venue should be available in any New Jersey county.

The member proposed that *Rule* 4:3-2(b) be amended to provide that a business entity should be deemed to reside in the county in which its principal office in New Jersey is located, and if there is no office in New Jersey, in the county with the most significant contacts. A new paragraph (d) of the Rule would provide that if there is no county in which venue would be proper, venue is proper in any county. The subcommittee's report, including the subcommittee member's detailed proposal, is included as Appendix 5.

Committee members again discussed whether the Rule should be amended. A majority of Committee members continued to believe that a rule amendment is not necessary at this time, but there was substantial sentiment to favor the member's proposed alternative if a rule amendment is pursued at the Supreme Court's direction.

separately from the Committee report.

B. Proposal Regarding the Complex Business Litigation Program

A subcommittee was formed outside of the Civil Practice Committee to review the practices and procedures of other state business or commercial courts and with exploring and making recommendations for court rules for complex commercial and construction actions. The subcommittee also was charged with investigating and reporting on the feasibility of creating standalone rules for the Complex Business Litigation Program.

The subcommittee has proposed rules for the Complex Business Litigation Program that will be submitted to the Court for consideration. The proposed rules, which the Committee did not vote upon, will be published for public comment separate from the Committee's report.

Respectfully submitted,

Hon. Jack M. Sabatino, P.J.A.D., Chair
Justice Peter G. Verniero (Ret.), Vice-Chair
Joy Anderson, Esq.
Hon. Jeffrey B. Beacham, J.S.C.
Hon. Thomas F. Brogan, P.J.Cv.
Hon. Karen M. Cassidy, A.J.S.C.
Hon. Paula T. Dow, P.J.Ch.
Philip J. Espinosa, Esq., DAG
Hon. Clarkson S. Fisher, Jr., P.J.A.D.
Lloyd Freeman, Esq.
Amos Gern, Esq.
Hon. Kenneth J. Grispin, P.J.Cv.
Professor Edward A. Hartnett
Robert B. Hille, Esq.
Craig S. Hilliard, Esq.
Hon. Paul Innes, P.J.Ch.
Herbert Kruttschnitt, III, Esq.
Julia A. Lopez, Esq.
Professor J. C. Lore, III
Deborah L. Mains, Esq.
Hon. Jessica R. Mayer, J.A.D.
Renita McKinney, Civil Division Manager
Mary McManus-Smith, Esq.
Barry J. Muller, Esq.
Hon. Amy O'Connor, J.A.D.
John R. Parker, Esq.
Elizabeth A. Pascal, Esq.
Hon. Robert L. Polifroni, P.J.Cv.
Hon. Joseph P. Quinn, P.J.Cv.
Arthur J. Raimon, Esq.
Hon. Rosemary E. Ramsay, P.J.Cv.
Dean Andrew J. Rothman
Hon. Laura Sanders, Acting Chief A.L.J.
Hon. Barry P. Sarkisian, P.J.Ch.
Thomas Shobell, III, Esq.
Willard C. Shih, Esq.
Michelle M. Smith, Superior Court Clerk
Hon. Edwin H. Stern (Ret.)
Kevin D. Walsh, Esq.
Kevin M. Wolfe, Esq., Staff
Taironda E. Phoenix, Esq., Staff

Dated: February 2018
LMJG

In part, because some members of the first group felt that the elderly plaintiff was so badly injured that no amount of money could compensate her. The members of that group perceived the plaintiff's son (who they deemed unlikable) as the only person who would ultimately benefit financially from any recovery. The second group, while recognizing the severity of plaintiff's injuries, again assumed facts not in evidence and apportioned damages for future medical expenses (including such items as transport and massages), as well as pain, suffering, and loss of quality of life. The third group, comprised primarily of middle-aged women, awarded what amounted to a punitive verdict. While the majority of the jurors used a time-unit calculation using different equations, future medical care entered the equation, as well. Clearly, the driving force of that "verdict" resulted from aggravating liability circumstances (including prior notice of the condition and the ease with which the property owner could have corrected the defective condition) that "spilled-over" into the analysis of damages.

B. Conclusion

At the November 3, 2016 meeting, I will offer a DVD for your review that shows focus-group deliberations in a case involving a bicycle versus car collision. A bus struck a young, athletic woman in the rear. The young plaintiff suffered knee and back injuries in the crash. I moderated the focus group for another plaintiff's attorney, who presented the case to the focus group.

The plaintiff and her husband testified, and plaintiff's counsel read the treating doctor's medical records. I gave a brief summation that suggested ways that the panel could arrive at an award of non-economic damages, and the jury deliberated, with an unexpectedly large damages award.

Based on my experiences with numerous focus groups, I suggest that counsel should be given greater latitude in *voir dire*, opening statements, and closing arguments to argue a sum certain. Jurors are plainly and simply looking for guidance to make a reasoned decision that is supported by the evidence. A sum-certain argument is precisely that – argument of counsel.

As long as the dollar amount that counsel advances is based on reasonable inferences drawn from the evidence (testimony from plaintiff, medical experts, and the life expectancy table), the argument should be permissible, subject to a limiting instruction. In my view, such a Rule amendment will help to reduce aberrational verdicts, will redirect jurors' attention away from irrelevant and non-existent economic damages to support their appraisal of non-economic damages, and will require counsel to make a thoughtful and reasonable dollar-sum suggestion, or risk losing credibility with the jurors. As such, I propose a sub-committee be formed to review this issue.

APPENDIX 4B

Response to Botta Subcommittee memo

My concern with the proposal is that, although there are many states that allow attorneys to suggest a dollar amount for pain and suffering to a jury, there is another issue which we have not discussed; and which we must discuss before we change this portion of our trial practice. That is, how do those other jurisdictions handle it when an attorney suggests an unreasonably high dollar amount and the jury awards that amount. As Mr. Shebell points out in his memo, juries may be inclined to rely on the guidance and perceived expertise of the attorneys when it comes to deciding what a case is worth.

The concern I have with the proposal is that we have not compared the standards for setting aside an unreasonably high verdict in the states that allow attorney comment on pain and suffering value. Before we decide to overrule Botta we should study how trial courts in the states that allow attorneys to ask for specific dollar amounts review unreasonably high verdicts. I have not taken the time to review the law in all of the states that allow attorneys to suggest a specific dollar amount to juries. However, I have done some research on NY law, as that is one of the states referenced in the Botta Subcommittee memo. NY law is very different than NJ law with regard to the standard for granting a motion to set aside a verdict.

Specifically, under NY law, a court may set aside a verdict if it is not "reasonable." And, the determination of reasonableness is based on a comparison of the verdict under review to other verdicts in cases involving similar injuries. NJ law does not allow trial judges to do this. Thus, it is much easier in NY for a court to set aside a jury verdict that is unreasonably high. This gives trial Judges in NY broad latitude to fix a high jury verdict, and probably also has the effect of reining in the amount plaintiff counsel asks the jury to award.

In NJ, however, trial courts have much less power to set aside an unreasonably high verdict. Comparison of the verdict under review by the Court to other verdicts in similar cases (an exercise routinely followed in NY) has been expressly disallowed by the NJ Supreme Court. Rather, each case is supposed to be viewed by the court as sui generis and the verdict disturbed only if the "judicial conscience" is "shocked."

Thus, under NJ law, the power of the Court to set aside verdicts is much more restrictive than under NY law. NY law allows a trial judge to set aside an "unreasonable verdict" and to reach the decision of its unreasonableness by comparing it to other verdicts for similar injuries. In NJ, a verdict that is "unreasonable", but not shocking to the conscience of the court, cannot be disturbed, and in reaching even the high bar of "shocking to the judicial conscience" courts may not compare the case under review to the verdicts in other similar cases.

New York Law:

" 'While the amount of damages to be awarded for personal injuries is a question for the jury, and the jury's determination is entitled to great deference, it may be set aside if the award *deviates materially from what would be reasonable compensation*' " (Kuzulas v. Saco, 124 A.D.3d 772, 774, 21 N.Y.S.3d 325, quoting Valnet v. DiSalvo, 107 A.D.3d 697, 698, 967 N.Y.S.2d 107; see CPLR 5501[c]). "*Prior damages awards in cases involving similar injuries are not binding upon the courts but serve to 'guide and enlighten' them in determining whether a verdict constitutes reasonable compensation*" (italics added) (Kuzulas v. Saco, 124 A.D.3d at 774, 21 N.Y.S.3d 325, quoting Taveras v. Vega, 119 A.D.3d 853, 854, 989 N.Y.S.2d 367). Sawh v. Bally Contracting Corp., Supreme Court, Appellate Division, Second Department, New York, March 8, 2017, 148 A.D.3d 852, 853.

New Jersey Law:

"A Judge's personal knowledge of verdicts from experiences as a private practitioner or Judge is information outside the record and is not subject to the typical scrutiny evidence receives in the adversarial process. The cohort of cases within a Judge's personal knowledge may not be statistically relevant and the reliability of the Judge's knowledge cannot be easily tested. A Judge therefore should not rely on personal knowledge of other verdicts. The standard is not whether a damages award shocks the Judge's personal conscience, but whether it shocks the judicial conscience.

We also disapprove of the comparative-verdict methodology that allows parties to present supposedly comparable verdicts based on case summaries. The singular facts and particular plaintiffs in different cases that lead to varying awards of damages are not easily susceptible to comparison. That is especially so because the information about other seemingly similar verdicts is very limited. A true comparative analysis would require a statistically satisfactory cohort of cases and detailed information about each case and each plaintiff. That information is unlikely to be available, and therefore any meaningful comparative approach would be impracticable to implement," Cuevas v. Wentworth Group, 226 N.J. 480, 486-7 (2016)

THE BOTTOM LINE: NY Courts, which permit an attorney to ask for a specific dollar award, also permit a jury verdict to be set aside by the use of a "reasonableness" standard, which compares the verdict under review to other verdicts in similar cases. NJ law, on the other hand, does not permit trial courts to disturb jury verdicts based on a comparison to verdicts in other cases with similar injuries. And, verdicts in NJ can only be set aside if they "shock the judicial conscience" – a standard which permits very few verdicts to be disturbed.

Without changing NJ law to permit our courts to set aside verdicts based on the standard used by the NY courts, we should not adopt the NY practice of permitting lawyers to suggest the amount of pain and suffering awards to the jury. If Botta v. Brunner is overruled, then (for starters) Cuevas v. Wentworth Group should also be overruled. NJ judges should also be permitted to apply a "reasonableness standard" for setting aside verdicts; and they should also be allowed to compare the verdict under review to verdicts in other cases involving similar injuries as the benchmark for whether the verdict under review is "unreasonable".

APPENDIX 5

FINAL REPORT OF
BUSINESS ENTITY VENUE RULE SUBCOMMITTEE

The subcommittee twice considered the need to amend Rule 4:3-2 in light of the Law Division opinion in *Crepp v. Reckitt-Benckiser*. After the full Committee, on its first review, agreed that no action was required because the opinion was unpublished and did not present a recurring problem in need of attention, at least given then present experience, the question was re-examined after *Crepp* was approved for publication in February 2017. *See Crepp v. Reckitt-Benckiser*, 448 N.J. Super. 419 (Law Div. 2016). On reconsideration, the Subcommittee and full Committee adhered to the same position.

In *Crepp* a foreign employee filed a discriminatory termination action in Essex County against a Delaware LLC registered in Mercer County with a principal place of business in Morris County. Venue was transferred to Morris County under *R.* 4:3-2, permitting venue where the Corporation [now any "business entity"] is "actually doing business," because business activities in Essex County were insufficient notwithstanding that defendant's representatives made sales calls and performed marketing activities there. The court held that, for venue purposes, the contacts had to be more extensive than "minimum contacts" required for jurisdiction. The Appellate Division granted leave to appeal, but the case settled and the appeal was dismissed. The opinion stated "actually doing business" does not equate with minimum contacts for jurisdiction purposes, but does not state what is sufficient for venue or provide a test.

The present Rule was amended, effective September 1, 2016, to change the title from "corporate parties" and the body from reference to "corporations" to "business entity," which will now apply to more defendants. The present Rule provides that, for purposes of the venue rule, "a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business." It is believed that the term "actually doing business" in today's world may be vague and include places which were not contemplated by the Rule when first drafted or adopted, and may no longer be appropriate given the various places an entity could be considered as "doing business." As a result, the selected venue may be selected essentially to secure a favorable jury. .

Rule 4:3-3 expressly provides for change of venue "(1) if venue is not laid in accordance with R. 4:3-2; or (2) if there is a substantial doubt that a fair and impartial trial can be had in the county where venue is laid; or (3) for convenience of parties and witnesses in the interest of justice; or ..."

The Committee has decided to let the issue "play out" by case law, and perhaps a decision at the appellate level. Stated differently, the *Crepp* opinion and New Jersey Law Journal article about it has called attention to the issue, the expansion of the Rule to include "business entities" also has focused more attention to the problems or concerns with the Rule, and case law may develop more guidance on the issue. Furthermore, Rule 4:3-3 provides flexibility and case law may help to develop factors and standards under that Rule. Therefore, it may simply be too soon to make an appropriate recommendation given the present limited experience with the "business entity" rule.

However, there is a respectable view that fairness requires guidance and an appropriate recommendation now because of the caseload and cases pending which could be affected by the issue, and that waiting to take action will not improve upon what should be recommended. As a result, the Subcommittee has presented a draft substitute for Rule 4:3-2(b) in case the Supreme Court believes an amendment is necessary. The full Committee endorsed that approach. It was drafted by Professors Edward Hartnett and is attached hereto.

Edwin H. Stern, Chair for the Subcommittee
Hon. Karen M. Cassidy, A.J.S.C.
Hon. Clarkson S. Fisher, Jr., P.J.A.D.
Edward A. Hartnett, Esq.
Craig S. Hilliard, Esq.
Herbert Kruitschnitt, III, Esq.
Robert L. Politoni, P.J.Cv.
Arthur J. Ratinon, Esq.
Assad Siddiqi, Esq.

October 16, 2017

To: Business Entity Venue Subcommittee
From: Edward Hartnett
Re: Venue
Date: June 6, 2017

After the last meeting of the Civil Practice Committee, I discussed the proposal by the Business Entity Venue Subcommittee with Judge Stern. In accordance with that discussion, I worked on a revised proposal in an attempt to meet some of the concerns raised at the last meeting. This memo explains the revised proposal.

Here is a redlined version of the proposed venue Rule:

4:3-2. Venue in the Superior Court

(a) Where Laid. Venue shall be laid by the plaintiff in Superior Court actions as follows:

***

(3) except as otherwise provided *** the venue in all other actions in the Superior Court shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant; ***.

(b) Business Entity. For purposes of this rule, a business entity shall be deemed to reside in the county in which its principal office in New Jersey is located or, if it has no office in New Jersey, in the county with which it has the most significant contacts. It registered office is located or in any county in which it is actually doing business.

(c) Exceptions in Multicounty Vicinages. With the approval of the Chief Justice, the assignment judge of any multicounty vicinage may order that in lieu of laying venue in the county of the vicinage as provided by these rules, venue in any designated category of cases shall be laid in any single county within the vicinage.

(d) If there is no county in which venue would otherwise be proper under this Rule, venue is proper in any county.

Rule 4:3-2(a) makes venue available in the county in which the cause of action arose, as well as in the county in which any party resides. Residence of a natural person is relatively straightforward; residence of a business entity less so. Accordingly, Rule 4:3-2(b) defines residence of a business entity for venue purposes. This structure of 4:3-2—providing for venue based, in part, on residence, and then defining residence—mirrors the structure of the federal venue statute that students learn in civil procedure. See 28 U.S.C. § 1391.

To my mind, the venue rule should be as easy to apply as possible, direct cases to reasonably convenient courthouses, and provide some venue in every case in which the courts of New Jersey have personal jurisdiction.

The current definition of residence for a business entity is problematic. Its provision for venue where the entity is "actually doing business" is not so easy to apply, as the decision in *Crepy* reveals. *See Crepy v. Ruckitt Benckiser, LLC*, 448 N.J. Super. 419 (Law. Div. 2016).

Crepy's determination that "actually doing business" is a higher standard than the standard for personal jurisdiction makes application of that standard more complex. *See id.* at 439-40. Moreover, if *Crepy* is correct that the "actually doing business" standard is a higher standard than the one for personal jurisdiction, there is a substantial risk that there will be business entities subject to personal jurisdiction in New Jersey but not understood to reside in any county in New Jersey for venue purposes.

On the other hand, if *Crepy* is not correct in this regard, and the "actually doing business" standard is the same (or perhaps even lower than) the one for personal jurisdiction, there will be business entities who reside in many counties for venue purposes. Given that the Rule allows for venue where any party resides—not only where defendants reside—this possibility could allow significant forum shopping by business entities.

At the last meeting, there seemed to be some support for the idea that a business entity should be understood to reside in one county. One possibility considered was to define the residence of a business entity as the place where its principal office is located.

The problem with that definition is that many business entities will have their principal office located outside New Jersey.

This problem is highlighted by the decisions of the Supreme Court of United States regarding both federal diversity jurisdiction and general (all-purpose) personal jurisdiction. On the diversity front, the Court has interpreted the phrase "principal place of business" in the statutory definition of corporate citizenship, 28 U.S.C. § 1332(c), to typically be its corporate headquarters. *Hertz Corp. v. Friend*, 559 U.S. 77 (2010).

In the context of general personal jurisdiction, the Court has insisted on contacts so pervasive that the corporation is "at home" in the state, and explained that a corporation will usually be at home in (at most) two states: its state of incorporation and the state where it has its principal place of business. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). It is possible, in an exceptional case, for general jurisdiction to exist beyond state of incorporation and principal place of business, but doing business—even substantial business—is not enough to make a corporation "at home" in a state. *BNSF Ry. Co. v. Tyrrell*, No. 16-405, 2017 WL 2322814, at *9-10 (U.S. May 30, 2017) (holding that BNSF is not subject to general jurisdiction in Montana even though it "has over 2,000 miles of railroad track and more than 2,000 employees in Montana"). "General jurisdiction . . . calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." *Daimler*, 134 S. Ct. at 762, n.20.

To deal with business entities that have one or more offices in New Jersey, but have their principal office outside New Jersey, the proposed rule defines the residence of a business entity, for venue purposes, as the county in which its principal office in New Jersey is located. That is, for a business entity that has one or more New Jersey offices, its residence is defined as its principal *New Jersey* office, even if its principal office overall is in some other state or some other nation.

To deal with business entities that have no offices in New Jersey, the proposed rule defines the residence of a business entity, for venue purposes, as the county with which it has the most significant contacts.

This approach, I believe, comes close to guaranteeing that, in every case in which New Jersey has personal jurisdiction over a business entity, that business entity will be understood to reside, for venue purposes, in some county—and therefore venue in some county will be proper—regardless of the number of offices it has in New Jersey and regardless of whether its principal office is in New Jersey at all. It also hones in on a single county of residence: either the principal New Jersey office or the county with which it has the most significant contacts. Moreover, particularly in cases where there is no New Jersey office, litigants and courts will already be examining the business entity's contacts in New Jersey to determine personal jurisdiction, so they can look to those contacts for the venue analysis as well.

While I believe that this approach comes close to guaranteeing that, in every case in which New Jersey has personal jurisdiction over a business entity, that business entity will be understood to reside, for venue purposes, in some county, it does not quite guarantee it. While I hope this would be rare, I can imagine a case in which New Jersey has personal jurisdiction but the defendant has no contacts with any county in New Jersey: if there is a forum selection clause that selects New Jersey but not any particular county in New Jersey.

Accordingly, the proposal includes a new subsection (d)—modelled on 28 U.S.C. § 1391(b)(3)— as follows:

If there is no county in which venue would otherwise be proper under this Rule, venue is proper in any county.

Situation	Existing (Crepy)	Earlier proposal	Current proposal
Cause of action arose in NJ	Venue in county where cause of action arose	Venue in county where cause of action arose	Venue in county where cause of action arose
Business entity with principal office in NJ	Probably resides in county of principal office	Resides in county of principal office	Resides in county of principal office
Business entity with one office in NJ, but principal office in different state or nation	Probably resides in county of NJ office	Does not reside in any county based on existence of NJ office	Resides in county of NJ office
Business entity with multiple offices in NJ, but principal office in different state or nation	Perhaps resides in every county in which it has an office	Does not reside in any county based on existence of NJ offices	Resides in county of principal NJ office
Business entity with no offices in NJ	Perhaps does not reside in any county in NJ	Does not reside in any county in NJ (except based on where cause of action arose)	Resides in NJ county with which it has the most significant contacts
Business entity with no contacts with NJ (Personal jurisdiction based on consent)	Does not reside in any county in NJ	Does not reside in any county in NJ (except based on where cause of action arose)	If venue in NJ not otherwise available, venue in any NJ county.

Venue based on residence is most important for cases where the cause of action does not arise in New Jersey.

Personal jurisdiction in New Jersey in such cases might be based on general jurisdiction, if the defendant is incorporated in New Jersey or has its principal place of business in New Jersey.

Personal jurisdiction could also be based on specific jurisdiction, if the defendant has purposeful contacts with New Jersey that are sufficiently related to the claim, even though the cause of action did not arise in New Jersey. For example, a defendant might manufacture a car that is advertised and sold in New Jersey and that, years later, proves defective and causes harm when involved in an accident in Pennsylvania. *Cf. World Wide Volkswagen Corp. v. Woodson*, 440 U.S. 907 (1979).

APPENDIX 6

Draft Report of the Subcommittee on the Offer of Judgment Rule

Background

Broadly speaking, Rule 4:58, the Offer of Judgment Rule, is designed to promote settlement by shifting litigation expenses that are incurred because a party unreasonably fails to accept an offer to settle the case. Initially modeled on Federal Rule of Civil Procedure 68, it now departs in major ways from the Federal Rule. For example, only defending parties can make offers of judgment under Federal Rule of Civil Procedure 68, while plaintiffs can make offers of judgment under Rule 4:58. Similarly, under Federal Rule of Civil Procedure 68, attorneys' fees can be recovered only if there is a statute that defines such fees to be part of the costs, while attorneys' fees are recoverable under Rule 4:58 without any such limitation.

Prior to 1994, Rule 4:58 had scant impact, because it capped attorney's fees at $750. A further amendment in 2000 allowed for the recovery of "all reasonable litigation expenses,"

EXHIBIT F

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines promulgated by Directive # 08-12 in accordance with that Rule, it is ORDERED that all pending and future New Jersey state court actions alleging personal injuries resulting from treatment with **olmesartan medoxomil medications** is hereby designated as multicounty litigation ("MCL") for centralized case management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to Superior Court, Law Division, Atlantic County and assigned to Judge Nelson C. Johnson; and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par. 3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Atlantic County and assigned to Judge Johnson; and

It is FURTHER ORDERED that Judge Johnson shall oversee all management and trial issues for such cases and may, in his discretion, return such cases to the original county of venue for disposition; and

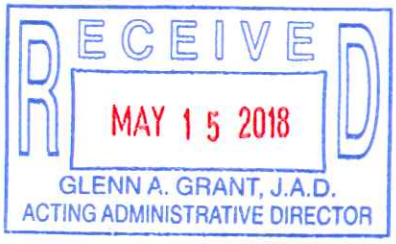
It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court,
/s/ Stuart Rabner
Chief Justice

Dated: July 14, 2015

CIVIL

McCARTER &ENGLISH
ATTORNEYS AT LAW



May 14, 2018

VIA FEDERAL EXPRESS

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08611

David R. Kott
Partner
T. 973-639-2056
F. 973-624-7070
dkott@mccarter.com

Re: Ethicon Hernia Mesh Litigation

Dear Judge Grant:

This Firm, along with Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represents Defendants Ethicon, Inc., and Johnson & Johnson (collectively "Defendants") in cases involving hernia mesh products that are the subject of a Rule 4:38A Multi-County Litigation ("MCL") application, dated February 28, 2018, pending before the Administrative Office of the Courts ("AOC"). On May 11, 2018 we submitted a letter in response to Plaintiffs' MCL application. In that letter, we indicated that Defendants do not oppose the creation of an MCL for cases involving only PHYSIOMESH™ Flexible Composite Mesh ("Physiomesh"). As set forth that letter, there is a multidistrict litigation ("MDL") pending in the United States District Court for the Northern District of Georgia before the Honorable Richard Story.

The MDL before Judge Story has been pending for almost a year and discovery has already begun. Many depositions will take place in the coming months. We believe that the parties (as well as any New Jersey judge to whom an MCL is assigned, if the Court decides to create an MCL) would benefit from early coordination of the Physiomesh MCL with the MDL pending before Judge Story. Defendants have attempted to coordinate the upcoming depositions with New Jersey plaintiffs' counsel to ensure that New Jersey counsel have an opportunity to participate in the depositions and to minimize the risk that the same witnesses will be required to give multiple depositions on the same topics. Because the New Jersey Physiomesh cases are not centralized, it has not been possible to develop a coordination plan that will accomplish these aims. Accordingly, if the Court is inclined to create an MCL for Physiomesh in New Jersey, we respectfully request an early assignment of the Physiomesh MCL to the appropriate New Jersey Judge.

Respectfully submitted,

David R. Kott

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
T. 973.622.4444
F. 973.624.7070
www.mccarter.com

cc: Joshua Kincannon, Esq. (via regular mail and email)
Kelsey Stokes, Esq. (via regular mail and email)
Adam Evans, Esq. (via regular mail and email)
Robert Price, Esq. (via regular mail and email)
Michael Daly, Esq. (via regular mail and email)
Tobias Millrood, Esq. (via regular mail and email)
James Barry, Esq. (via regular mail and email)
Robert Kinsman, Esq. (via regular mail and email)
Kelly S. Crawford, Esq. (via email)