

**FILED**

**JAN 13 2022**

**RACHELLE L. HARZ  
J.S.C.**

Kelly S. Crawford - NJ Attorney ID #029141993  
RIKER DANZIG SCHERER HYLAND & PERRETTI LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
(973) 538-0800

Attorneys for Defendants  
Ethicon, Inc.

SANDRA CLARK AND LARRY CLARK,

Plaintiffs,

v.

C.R. BARD, et al.,  
AND JOHN DOES 1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. BER-L-2463-17

MASTER CASE NO. BER-L-17717-14

CIVIL ACTION  
Bard Litigation, Case No. 292

**ORDER DISMISSING PLAINTIFFS'  
AMENDED COMPLAINT WITHOUT  
PREJUDICE**

THIS MOTION having been brought before the Court by Defendant Ethicon, Inc. ("Defendant"), through its counsel Riker Danzig Scherer Hyland & Perretti, LLP, seeking an Order Dismissing Plaintiffs Sandra and Larry Clark's Amended Complaint pursuant to Rules 4:4, 4:6-2, and 4:37-2 for Plaintiff's failure to properly serve on Defendant a copy of the Amended Complaint, and the Court having considered the Motion, any opposition filed with respect to the Motion and any arguments of counsel; and for good cause shown,

IT IS on this 13<sup>th</sup> day of January, 2021,

ORDERED that this matter is now DISMISSED WITHOUT PREJUDICE pursuant to Rules 4:4, 4:6-2, and 4:37-2 for Plaintiffs' failure

to properly serve on Defendant Ethicon, Inc. a copy of the Amended Complaint; and

IT IS FURTHER ORDERED that a copy of this Order shall be served on all counsel within seven (7) days of its receipt by counsel.

  
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Hon. Rachelle L. Harz, J.S.C.

Opposed

Unopposed

*All Evidor attached*

The Court's findings of fact and conclusions of law were placed ~~on the record~~ on the 13<sup>th</sup> day of January, 2021, and were

Written

Oral

**RIDER**  
**CLARK V. ETHICON BER – L-2463-17**

Before this court is a motion filed by Ethicon Inc., (“Ethicon”) to dismiss Plaintiffs’ Amended Complaint without prejudice pursuant to Rule 4:37-2 due to Plaintiffs’ violations of Rule 4:4, in addition to failing to serve a Plaintiff Fact Sheet (“PFS”) pursuant to Case Management Order #5. The procedural history of this case reveals Plaintiffs filed its initial Complaint on April 6, 2017, naming C.R. Bard only as a named defendant. Plaintiffs filed an Amended Complaint on September 21, 2020, once again only naming C.R. Bard as a named defendant. Neither Plaintiffs’ Complaint or its Amended Complaint names Ethicon as a defendant. Plaintiffs have never issued a summons against Ethicon and accordingly have never served Ethicon.

The e-courts system has never been utilized for the filing of any papers in the Pelvic Mesh MCL litigation. Only as a result of COVID, was electronic filing allowed in March 2020 through the JEDs electronic filing system. Paragraph 10 of Case Management Order # 51 dated January 31, 2019, specifically provides “COUNSEL IS PROHIBITED FROM FILING ANY PLEADING ELECTRONICALLY.” It is impliedly understood that all counsel representing litigants in the Pelvic Mesh MCL, as in any MCL, are required to abide by all Case Management Orders and keep themselves apprised as to all provisions in Case Management Orders when representing clients in a particular MCL litigation.

Plaintiffs’ counsel argue that the time period for issuance of a summons is not jurisdictional and violation should not defeat an action when a defendant is not prejudiced. The matter before this court does not simply involve the failure to issue a summons. Plaintiffs’ counsel also argue that Ethicon is in receipt of the operative complaint and therefore failure to serve the summons should be overlooked as it is attorney error. That position does not accurately reflect what occurred.

When the Initial Complaint was filed on April 6, 2017, the case was filed In re: Pelvic Mesh/Bard Litigation, Case No. 292, pertaining to implantation of a Bard Mesh product on December 6, 2005.

On September 21, 2020, Plaintiffs' filed its Amended Complaint also in In re: Pelvic Mesh/Bard Litigation, Case No. 292, alleging injuries pertaining to implantation of an Ethicon product on December 22, 2011. This Amended Complaint does not specifically name Ethicon.

Plaintiffs' never issued any summonses against Ethicon and have never served Ethicon with a summons or copy of the Amended Complaint.

This court could not understand how the court e-filing system delineated Ethicon, Inc. as an active defendant under docket number BER-L-2463-17. As a result, this court undertook inquiry and has learned the following: Plaintiffs' counsel inappropriately utilized the e-courts filing system in connection with this MCL. No e-courts filing is permitted in Pelvic Mesh litigation. With regard to the Amended Complaint, Plaintiffs' counsel uploaded this document to e-courts, docket number BER-L-2463-17, instead of appropriately submitting the document through JEDs. Once any document is received in JEDs, the Civil Division team processes the document, and only after their review is any information to the e-courts system added. Prior to adding any new defendant, the Civil Division team reviews the pleading to ensure that a newly added defendant is properly named and/or delineated in the pleading. In the situation before this court, Plaintiffs' counsel directly added the information to the e-courts system. Adding Ethicon as a Defendant to the e-courts system in connection with this Amended Complaint would never have occurred if the Amended Complaint was correctly filed through JEDs and had undergone the processing system of the Civil Division.

It is important to note while there is e-courts information pertaining to some Pelvic Mesh cases, this information is there because the record retention team has backloaded this information

into the jacket. However, the Civil Division team does not accept Pelvic Mesh filings via e-courts. It must be through JEDs.

Moreover, Plaintiffs have not served a Plaintiff Fact Sheet ("PFS") on Ethicon despite the requirement that a completed PFS is supposed to be served no later than 45 days after the filing of a complaint pursuant to Case Management Order #5. With the PFS, the Plaintiff is also required to serve executed authorizations to allow Ethicon to collect and preserve medical records. As noted in the reply papers of Ethicon, had Ethicon been made aware of this case, it would have submitted a motion to dismiss Plaintiffs' Complaint for failure to serve a PFS.

The only reason why the existence of this case was discovered was due to docket reconciliation of active cases. Somehow this case was found in the Bard MCL despite MCL protocols (which were once again violated by Plaintiffs' counsel) that required any case involving both a Bard and Ethicon product to be filed in the Ethicon MCL. To date, even with the existence of this motion, Plaintiffs have still failed to properly file their Amended Complaint, serve same upon Ethicon, and provide a PFS to Ethicon together with authorizations as required by Case Management Order #5.

Accordingly, Plaintiffs' Amended Complaint that was improperly filed on e-courts and never served on Ethicon is DISMISSED WITHOUT PREJUDICE.