HERNIA MESH

MASTERS OF MASS TORT: HERNIA MESH SPEED SESSION

A BRIEF SUMMARY:

Currently, we are litigating against hernia mesh manufacturers for injuries caused by defectively designed hernia mesh devices. While hernia meshes have generally been around for almost 50 years, the devices currently in litigation each have unique features that make them defective and dangerous. The devices at issue are primarily manufactured by C.R. Bard, Ethicon, and Atrium.

THE BIG PICTURE:

- C.R. Bard controls about 60% of the hernia mesh market in the United States and across the world;
- Bard's meshes are defective through their use of heavy weight small pored polypropylene; the use of polypropylenes that were not medical grade and not suitable for human implantation; the addition of a ePTFE layer that contracts at a different rate from the polypropylene causing buckling and balling of the device; the use of a Sepra coating that prevents healthy ingrowth and fosters adhesions.
- Likewise, Ethicon's Physiomesh was removed from the market in 2016 due to its defective design utilizing multiple layers of PDS which result in failure to allow proper incorporation into the body, adhere to important organ structures causing injury, and otherwise fail to perform as intended. Importantly, even when the Physiomesh device properly incorporates into the body, the design of the polypropylene mesh has insufficient burst strength causing fracturing of the mesh and recurrence of hernias.
- Atrium's C-Qur Mesh devices are defective due to their heavy weight small pore meshes being coated with fish oil. The presence of the fish oil prevents integration into the body causing adhesions and damage to important structures and alters the body chemistry of the patient allowing for increased infections.

THE NUMBERS:

- Approximately 5% of the population will be diagnosed with a hernia during their lifetime.
- Each year approximately 1 million hernia mesh procedures are performed annually and more than 15 million over the last 18 years.

- Bard's annual hernia mesh sales exceed $700 Million annually.
- Currently there are close to 1,200 cases filed against Bard, Ethicon, and Atrium.
- It is anticipated that there will ultimately be thousands to tens of thousands of cases filed. However, it is essential that only cases with surgical intervention or other significant medical treatment be filed.
- The medical costs associated with treating a hernia mesh injury vary significantly based upon injury. Typical medical expenses can fall in the 15,000-500,000 range. Cases at the higher medical cost range typically involve long term treatment for fistula and multiple surgical interventions.

CURRENT LITIGATION STATUS:

- Physiomesh MDL 2782 is in the Northern District of Georgia before Judge Richard Story. There are more than 400 cases filed in the MDL with many being filed on a regular basis. Don Migliori and Henry Garrard have been appointed as lead counsel. A confidentiality order, ESI protocol, and PPF have been agreed to. Defendants have begun their ESI production and Plaintiffs anticipate beginning depositions within the next few months.

- C-Qur MDL 2753 is in the District of New Hampshire before Judge Landya McCafferty. There are more than 300 cases filed in the MDL with many being filed on a regular basis Jonathan Orent was ap pointed as lead counsel. A confidentiality order, ESI protocol, PPF, DPF, PFS, DFS and Pathology Preservation Protocol have been agreed to. Defendants have begun their ESI production and Plaintiffs have noticed the first 6 corporate depositions. Additionally, 60 cases are currently consolidated before Judge Charles Temple in New Hampshire State Court. The State Court has selected its first cases for bell wether trial and corporate liability discovery will be completed in tandem with the MDL.

- Bard Hernia mesh litigation is being coordinated in the state court special consolidated docket in Rhode Island before Judge Alice Gibney. There are more than 300 cases filed in this proceeding with many being filed on a regular basis Don Migliori/ Jonathan Orent and Henry Garrard/ Jim Matthews were appointed as lead counsel. This litigation is building off the foundational documents created in the state court Kugel Mesh litigation that was before the same judge, Judge Gibney. It is anticipated that discovery will begin soon and will supplement the significant discovery completed during the Kugel mesh litigation lead by Don Migliori.

RULINGS OF NOTE:

- Ethicon: The Court significantly limited Defendant's ability to retain Plaintiffs' treating physicians as experts in other Physiomesh cases. The court allowed Ethicon to contact only 25 treating physicians and prior to the initial contact, the Court set forth a notification requirement to the individual plaintiffs as well as a disclosure to the doctors. Finally, the Court rejected the Defendants' attempts to limit ex parte communications between Plaintiff's and their treating physicians.
- C-Qur: The Court denied Defendants motions to dismiss based upon lack of personal jurisdiction of Defendant Getinge and allowed jurisdictional discovery. The Court also denied the motion to dismiss the Plaintiffs' fraud count in the master complaint. Perhaps more importantly, the Court explicitly ruled that Plaintiffs could share documents marked as confidential by Defendants with treating physicians in private meetings.
- Bard: During the Kugel Mesh litigation the Court placed severe restrictions on the Defendants ability to contact Plaintiffs' treating Physicians- even preventing initial contact for scheduling purposes

only without several layers of protection for Plaintiffs. Additionally, the Court has ruled that RI law applies to all cases regardless of the jurisdiction where the Plaintiff was implanted. Under this same analysis, the Court ruled that RI's 3 year statute of limitations and discovery rule applied to all cases against Bard. Importantly the trigger of the discovery rule in Rhode Island is the date the Plaintiff knew or should have known of defendant's tortious conduct.

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