

D. N. UWY-CV14-6025333-S : SUPERIOR COURT/CLD
ROBIN SHERWOOD, ET AL : J.D. OF WATERBURY
V. : AT WATERBURY
STAMFORD HOSPITAL : OCTOBER 31, 2016

**OBJECTION TO STAMFORD HOSPITAL’S
MOTION FOR SUMMARY JUDGMENT**

The Plaintiffs hereby object to the Defendant Stamford Hospital’s Motion for Summary Judgment dated September 30, 2016.

I. FACTS:

Defendant is asking the Court to find that Ms. Sherwood knew that there was a defect in the design or manufacture of the Prolift and that she knew that that defect caused her injuries when both Dr. Hines and Stamford Hospital deny, to this day, that any defect exists. Def. Stamf. Hosp. Answer to Complaint, No. 118.00, June 1, 2015, ¶ 46 Ex. A; Dr. Hines Dep. March 25, 2014, p. 30:22-31:9, Ex. B. Plaintiff was unaware until summer of 2014 that Defendant’s conduct caused any of her injuries. Affidavit, Robin Sherwood, Oct. 31, 2016, ¶ 13, Ex.C. “A poor medical result is not, in itself, evidence of any wrongdoing by the health care provider.” Connecticut Civil Jury Instructions, 3.8-3, <http://www.jud.ct.gov/ji/civil/Civil.pdf> . “The fact of a product accident does not necessarily establish either the existence of a defect or that the manufacturer is responsible, both of which must be proven in product liability cases.” Metro. Prop. & Cas. Ins. Co. v. Deere & Co., 302 Conn. 123, 136, 25 A.3d 571, 581 (2011). Defendant conflates injury and adverse results with knowledge of a defect.

Ms. Sherwood’s awareness of medical problems associated with the implant of the Prolift product does not equate to knowledge of a defect as causing those injuries and cannot possibly equate to knowing that Stamford Hospital’s conduct such injuries. Even if Ms. Sherwood

became aware of Stamford Hospital's causative link to her injuries at the time she filed her lawsuit against J&J in the MDL on April 2, 2013, she still filed her case against Stamford Hospital within the three years statutory period.

In contradiction to Defendant's arguments here, defendants typically argue the exact opposite when defending claims saying that an injury, complication or bad results does not mean that any healthcare provider was negligent in their care and treatment. Further, defendants frequently ask jurors if they have any preconceived notions amounting to bias by reminding them that an injury or bad result does not equate to any wrongdoing. Defendant cannot have it both ways.

At all times relevant herein, Defendant Stamford Hospital was engaged in the business of placing such medical devices into the stream of commerce for resale, use and/or consumption by distributing manufacturing, marketing, packaging, repackaging, labeling, selling and/or reselling, installing or otherwise preparing the product for implantation and use, including the pelvic mesh products that were implanted into the Plaintiff.

Stamford Hospital furthered the marketing of the Johnson & Johnson Defendants' pelvic mesh products that were implanted into Plaintiff from their original place of manufacture to its agent Dr. Brian J. Hines who made the final delivery of the product to the end user, Plaintiff. Defendant Stamford Hospital is a distributor, final distributor and/or manufacturer of these products according to expressly applicable regulation of the Food and Drug Administration ("FDA"). 21 C.F.R. 803.3. These regulations expressly make Stamford Hospital a mandatory reporter of the serious complications and adverse events suffered by patients such as Ms. Sherwood, including mesh erosion, contraction and explantation.

The Medical Device Reporting Regulations, 21 C.F.R. Part 803, also require hospitals, which are user facilities, “to develop, maintain, and implement written MDR procedures” for “internal systems that provide for (1) Timely and effective identification, communication, and evaluation of events that may be subject to MDR requirements; (2) A standardized review process or procedure for determining when an event meets the criteria for reporting under this part; and (3) Timely transmission of complete medical device reports to manufacturers or to us, or to both if required.” 21 C.F.R. 803.17. Stamford Hospital is also required to “develop, maintain, and implement written MDR procedures for . . . [d]ocumentation and recordkeeping requirements for: (1) Information that was evaluated to determine if an event was reportable.” Id.

Dr. Hines, who at all material times was the Stamford Hospital’s agent as its Director of Urogynecology and Pelvic Reconstructive Surgery, up to the time of his sworn trial testimony on January 6, 2016, still did not know how to report a safety concern regarding a product at the hospital despite the fact that he was alerted to such a reporting policy in his deposition in that case.

In April 2006 Dr. Hines published results of a study he and others conducted at Stamford Hospital wherein he uncovered a 27% rate of dyspareunia in his patients following implantation by him of polypropylene grafts like the one implanted into Ms. Sherwood. Ex.D. The high rate of dyspareunia and other complications was known to him and Stamford Hospital, yet not conveyed to Ms. Sherwood at any time. None of these adverse events were reported to the FDA despite Stamford Hospital’s mandatory legal duty to do so. Dr. Hines and Stamford Hospital then conducted a follow up study wherein Stamford Hospital concluded that there was a lack of sufficient risk-benefit information such that proper informed consent could be obtained for prolapse repair surgery in women using the Prolift. Stamford Hospital did not inform Ms.

Sherwood of the results of this study that appears to have included Ms. Sherwood in its results according to the dates and records cited.

The hospital's egregious failure to report known adverse events regarding these products demonstrates direct tortious behavior on their part that is expressly pled and has not been challenged in their motion. Notably, the FDA first took action on these mesh products in October of 2008 due to report of 1000 such events *nationwide*. Thereafter in 2011 when the FDA determined that these events were not as rare as first suspected they took more aggressive steps, ultimately culminating in the move to reclassify this mesh as a high risk product.

Had Stamford Hospital fulfilled its legal and moral obligation to report these complications, it likely would have led to quicker action by regulators as well as the conveyance of critical information to Robin Sherwood who likely never would have proceeded with such an experimental product. Several hospitals have recently been cited for deviations from the Medical Device Reporting Regulations. Ex. E. In fact, knowing what we now know, Dr. Hines has expressly testified that he would not have implanted the Prolift into Mary Beth Farrell, and it is a reasonable conclusion that Dr. Hines would testify in a consistent manner regarding Ms. Sherwood. Ex B. Likewise, the relevant national organizations he is a member of have recommended against it. Had this product been subject to proper testing and investigation prior to its release to an unsuspecting public, it never would have been implanted into Robin Sherwood.

Stamford Hospital's corporate representative testified that they have a "VAT" committee which investigates and approves devices such as the mesh implanted into Ms. Sherwood for use at the hospital. Ex F. VAT stands for Value Analysis Team, a common committee in hospitals for reviewing medical devices for safety and quality. The individual surgeon does not simply

dictate what he wants, it must be approved by the hospital that then buys it for resale from the manufacturer. The hospital gets the product from the manufacturer then removes it from the packaging and container and prepares and propagates it for the doctor and ultimate end user. For this they charge money.

Dr. Hines is marketed to the public as Stamford Hospital's Director of Urogynecology and Pelvic Surgery. He has held this position since 2002, and has been promoted as such on Stamford Hospital's Website since that time. Plaintiff relied upon the integrity of Stamford Hospital, and Dr. Hines affiliation with them, in proceeding to go forward with the surgery. Affidavit, Ms. Sherwood, Oct. 31, 2016.

Plaintiff did not know at the time she agreed to have the surgery at Stamford Hospital that Stamford Hospital through its resident physician program had conducted a study involving a paravaginal procedure and polypropylene mesh similar to Ms. Sherwood's procedure wherein major complications at a high percentage rate had been found. Stamford Hospital had determined that the safety and efficacy of these products was under serious question and the medical community shortly thereafter warned physicians such as Dr. Hines that the pelvic organ prolapse mesh products should be considered experimental given the "limited data and frequent changes in the marketed products." Ex G. ACOG Practice Bulletin. J&J successfully campaigned to eliminate the experimental language, but the fact remains that there was a lack of evidence and significant controversy in the medical community regarding these products. Stamford Hospital continued to market and promote the Prolift line of products up until July 2012 when Ethicon pulled them from the market.

Shortly after the controversy in the medical community about the experimental nature of the pelvic mesh products the FDA had issued an alert regarding the products. At that time, in 2008, doctors affiliated with Stamford Hospital were conducting studies on the Prolift as well as being

compensated to promote it. Ms. Sherwood was not properly informed regarding these matters resulting in delayed treatment and continued harm.

Subsequent to the implantation of this defective mesh product which has since been pulled from the market, studies were done by Stamford Hospital specifically on the issue of the safety and efficacy of the Prolift Mesh, and an abstract published in a peer reviewed Journal promoting the Prolift. E. Kulwa, B. Hines Two Year Anatomical Outcome after Pelvic Organ Prolapse Repair with Prolift Transvaginal Mesh Journal of Pelvic Medicine & Surgery • Volume 14.12.001 July/August 2008, p.274 Ex H. This study, a retrospective chart review of Dr. Hines' Prolift implants that included Plaintiff, was recognized and approved by Stamford Hospital and was co-authored by Dr. Hines, Stamford Hospital's Director of Urogynecology. Dr. Kulwa, presumably with her co-author again, sought to expand this study to a three year study on the safety and efficacy of Prolift. Ex. I.

The absence of sufficient longer term studies as to the safety and efficacy of the Prolift at the time it was marketed as well as the failure to inform patients of this important fact is itself a specific claim in this case. The study approved by Stamford Hospital was conclusive evidence that there was clearly a need for such further studies. Despite this, no attempt was made to inform the Plaintiff.

J&J/Ethicon's corporate representative Michelle Irvin testified that the expectation of Ethicon was "that doctors are reporting incidents such as exposure, pain and dyspareunia," and that "it is understood that if there is a complication that a physician would report it." Deposition of October 21, 2015 p.72, Ex. J. She further confirmed that it was very important for Ethicon in its feedback loop to get that information from doctors. Id. at pp.72-73. Despite all of this, even up to the time of Dr. Hines' testimony in the Farrell trial on January 6, 2016, he still did not

know how to report a safety concern regarding a product at the hospital despite the fact that he was alerted to such a reporting policy in his deposition in that case. Ms. Irvin also confirmed that the Prolift was required to be sold through a hospital – it could not be sold directly to a doctor with a private office. Id. at p.43. She further confirmed that the hospital was “part of the process.” Id.

Another witness who testified for Stamford Hospital as a corporate representative was Ruth Cardiello, the Executive Vice President for Enterprise Risk Management and Compliance. Ms. Cardiello specifically admitted that directors at Stamford Hospital were specifically charged with educating others about the obligation to report adverse events regarding medical devices as required by law and hospital policy, including new employee training and annual training. Deposition of June 29, 2015 pp. 41-43 Ex. K. She further admitted that no adverse events had been reported with regards to pelvic mesh products at this hospital from 2006 to the present. Id., pp. 48-49. She further admitted that pursuant to hospital policy notifications such as the 2008 FDA alert regarding pelvic mesh would have resulted in a consultation with the Director of Urogynecology. Id. at pp.97-98.

Dr. Hines as an agent and employee of Stamford Hospital engaged in serious misconduct in failing to disclose material information he inarguably had regarding adverse events with the Prolift. Robin Sherwood and numerous other victims required multiple surgeries to rectify the damage done by this product which has since been pulled off of the market. Dr. Hines, a paid consultant and promoter of the Prolift product by J&J, engaged in a serious conflict of interest in failing to disclose this information, in violation of his legal obligation and Stamford Hospital’s code of conduct. Ex. L. Likewise, the abstract published in a peer reviewed journal from a study supported by Stamford Hospital failed to disclose Dr. Hines relationship with J&J.

Dr. Hines at all relevant times was the Director of Urogynecology and Pelvic Surgery at Stamford Hospital and promoted as such by the hospital. They are plainly responsible for his misconduct occurring at the hospital relating to urogynecology and pelvic surgery – the very subject area he had oversight of at Stamford Hospital.

In the “confidential” documents submission related to this motion is an email exchange related to a “cooperative marketing” program between J&J/Ethicon and the hospital’s Director of Urogynecology Dr. Hines in January and February of 2008. This exchange discusses the importance of hospital involvement and notes “In this case the hospital is going to support the co-op campaign which won’t always be the case.” ETH.MESH.19301282. The “Co-op Advertising Program” form specifically lists Stamford Hospital and its account number with J&J. ETH.MESH.19301285. These documents also note the thousands of dollars J&J/Ethicon was spending on cooperative marketing for Dr. Hines, which the hospital was clearly a beneficiary of.

Collectively the combined actions of the Defendant, J&J/Ethicon and Dr. Hines reflect a conspiracy of silence whereby a plethora of known serious adverse events relating to this defective product went unreported and undisclosed to the public, the FDA, and patients who fell victim to this scheme. Ironically Stamford Hospital has now moved for summary judgment claiming Ms. Sherwood knew or should have known of the defective nature of the Prolift while denying any defect exists.

II. LAW PERTAINING TO SUMMARY JUDGMENT

When deciding a motion for summary judgment, the court is obligated to construe the evidence and pleadings in the light most favorable to the nonmoving party. Scrapchansky v.

Plainfield, 226 Conn. 446, 450 (1993). Catz v. Rubenstein, 201 Conn. 39, 49 (1986). Thus, the moving party has the burden of proof with regard to the motion for summary judgment.

Mintachos v. CBS, Inc., 196 Conn. 91, 111(1985). The movant has the burden of demonstrating the absence of any genuine issue as to all the material facts in the case. Id.; D.H.R. Construction Co. v. Donnelly, 180 Conn. 430, 434(1980).

If the movant's papers are insufficient to discharge its burden of proof, the opposing party need not even produce contravening material. Walker v. Lombardo, 2 Conn. App. 266, 269(1984). Summary judgment should be denied where the moving party's papers do not affirmatively show there is no genuine issue of material fact as to all of the relevant issues of the case. Id. The failure of the moving party to address all of the factual issues contested in the pleadings requires the Court to deny a motion for summary judgment. Fogarty v. Rashaw, 193 Conn. 442, 445(1984).

If the movant's affidavits and other evidence fails to deal with any of the factual issues contested in the pleadings, those factual issues remain unresolved and thereby prevent the Court from granting the summary judgment motion. Id.; Plouffe v. New York, N.H. & H.R. Co., 160 Conn. 482, 488(1971). The failure to address each and every genuine issue of material fact contested in the pleadings is fatal to the motion for summary judgment. Mingachos, *supra*, 196 Conn. At 111; Fogarty, *supra* 193 Conn. at 445. Litigants have a constitutional right to have issues of fact decided by a jury. Ardoline v. Keegan, 140 Conn. 552, 555(1954). "[A]s we have noted before, a party has the same right to submit a weak case as he has to submit a strong one." Hunter v. Healey Car & Truck Leasing, Inc., 41 Conn. App. 347, 350 (1996). The failure to permit even a very weak case to go to the jury constitutes 'plain error'. Id.

In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving

party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which under applicable principles of substantive law entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact ... As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent.

Precision Mechanical Services, Inc. v. T.J. Pfund Associates, Inc., 109 Conn. App. 560, 563-64 (2008).

III. ARGUMENT:

A. The Statute of Limitations did not begin to run until the summer of 2014 which was when actionable harm was discovered or in the alternative the statute is tolled because of fraudulent continuing course an ccon doctring

“Actionable harm occurs when the plaintiff discovers or should discover, through the exercise of reasonable care, that he or she has been injured *and that the defendant's conduct caused such injury*. Id.; see *Lambert v. Stovell*, 205 Conn. 1, 6, 529 A.2d 710 (1987).”

(Emphasis added). Champagne v. Raybestos-Manhattan, Inc., 212 Conn. 509, 521, 562 A.2d 1100, 1107 (1989). It did not accrue until the summer of 2014 when Plaintiff had knowledge of actual harm.

In the alternative this case the Statue of Limitations has been tolled due to fraudulent concealment and the continuing course of conduct doctrine. “Again, it is well established in Connecticut that the three-year limit of § 52-584, which usually would begin to run when the wrongful act occurred, will be tolled when “there is something tantamount to a fraudulent concealment of a cause of action.” *Kennedy v. Johns-Manville Sales Corp.*, 135 Conn. 176, 178, 62 A.2d 771, 772 (1948).” Hamilton v. Smith, 773 F.2d 461, 467–68 (2d Cir. 1985).

As we recently reiterated in *Sherwood v. Danbury Hospital*, 252 Conn. 193, 202-203, 746 A.2d 730 (2000), a statute of limitations or repose “may be tolled under the ... continuing course of conduct doctrine, thereby allowing a plaintiff to commence his or her lawsuit at a later date.... [T]o support a finding of a continuing course of

conduct that may toll the statute of limitations there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. That duty must not have terminated prior to commencement of the period allowed for bringing an action for such a wrong.... Where we have upheld a finding that a duty continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act.” (Citations omitted; internal quotation marks omitted.)

Witt v. St. Vincent's Med. Ctr., 252 Conn. 363, 369–70, 746 A.2d 753, 756–57 (2000).

The plaintiff acknowledges that, in the absence of a continuing special relationship, there must be a subsequent wrongful act that is related to the prior negligence. In determining whether the continuing course of conduct doctrine applies to toll the repose section of the statute of limitations contained in § 52-584, we have thrice held, in the medical treatment context, that continuing “wrongful conduct may include acts of omission as well as affirmative acts of misconduct....” *Id.*, at 264, 640 A.2d 74; see *Sherwood v. Danbury Hospital*, *supra*, 252 Conn. at 205, 746 A.2d 730, and the cases cited therein.⁶

Id. at 371.

Footnote 6

See *Sherwood v. Danbury Hospital*, *supra*, 252 Conn. at 208-209, 746 A.2d 730 (hospital's failure to notify patient of untested nature of blood she had received during transfusion while at hospital was continuing course of conduct tolling statute of limitations); *Blanchette v. Barrett*, *supra*, 229 Conn. at 264, 640 A.2d 74 (doctor's failure to monitor patient subsequent to initial diagnosis was continuing course of conduct that tolled statute of limitations); *Cross v. Huttenlocher*, 185 Conn. 390, 400, 440 A.2d 952 (1981) (“[b]ecause the negligent failure to warn is a continuing course of conduct, the statute of limitations does not begin to run until the course of conduct is completed”); cf. *Handler v. Remington Arms Co.*, 144 Conn. 316, 321, 130 A.2d 793 (1957) (failure of manufacturer to perform its continuing duty to warn of defective gun cartridge sold to public tolls statute of limitations).

Id. at 376.

Finally, we consider whether there was a genuine issue of material fact with regard to whether there was a continuing breach of that duty, that is, whether there was subsequent wrongful conduct. Here that conduct was the defendant's alleged continuing failure to indicate his concern for cancer throughout the period of time following the initial findings. A fact finder could find evidence that the defendant had a concern about cancer in 1983 from the note written by the defendant in 1994, which accompanied the medical slide he sent in response to a request from the plaintiff's then treating physician. The duty to make the report commenced when the information became available, which a jury could find was in 1983, and that the duty continued until disclosure resulting in a complete diagnosis was made, that is, until such time as the findings were reported in their entirety. In this case, the plaintiff alleged that the defendant failed to report his actual medical findings to him and

that this concern of cancer was not expressed until October, 1994. This continuous failure to notify is similar to the continuous failure to warn that we found actionable in *Sherwood v. Danbury Hospital*, supra, 252 Conn. at 209, 746 A.2d 730; to the continuous failure to monitor we found actionable in *Blanchette v. Barrett*, supra, 229 Conn. at 280, 640 A.2d 74; and to the continuous failure to warn we found actionable in *Cross v. Huttenlocher*, supra, 185 Conn. at 400-401, 440 A.2d 952. Therefore, we conclude that the allegations of the defendant's continuous failure to report, combined with the note evidencing knowledge of the defendant's concern for the possibility of cancer, were sufficient to create a genuine issue of material fact with regard to whether the defendant was in continual breach of his ongoing duty to the plaintiff.

Id. at 373–74.

Connecticut law is clear that there is a duty to warn that continues after the sale of the medical device. That duty is the post-sale duty to warn that was not discharged by Defendant. The continuing course of conduct doctrine tolls the statute of limitations when the breach of that duty continues as it did in this case. Stamford Hospital had numerous sources of information on the defective nature of the mesh that it did not pass on to Plaintiff. At the same time Dr. Hines was also doing revisions of mesh implants at Stamford Hospital. In addition there are out of state cases that support the duty to warn current and former patients of safety issues with medical devices.

As to the public policy factor, there are compelling reasons to require that health care providers who insert or implant medical devices in their patients stay abreast of safety issues pertaining to those medical devices and promptly pass along important information regarding the safety or risks associated with those devices to their patients. This is particularly true when, as in cases such as this one, the manufacturer or the FDA issues safety alerts or when the FDA recalls the device. The physician or oral surgeon who inserted or implanted the device needs to stay informed about such pronouncements to perform effectively and responsibly as a professional. The physician or oral surgeon who inserted the medical device is also in a good position to maintain records of patients who have such devices so that they may be notified if significant new information pertaining to the safety of the medical devices becomes available. Any countervailing interest in guarding against imposing potentially burdensome requirements for finding patients who may have relocated can be addressed by qualifying the duty so that the physician or oral surgeon need only take reasonable steps to update patient information and to locate patients whose address of record changes.

Our conclusion that there is a duty to warn a patient of safety issues raised by the manufacturer and/or the FDA finds support in decisions of other jurisdictions that either expressly or implicitly have recognized a duty to warn in similar circumstances. See *Allen v. Belinfante*, [217 Ga.App. 754](#), [458 S.E.2d 867](#), 869-70 (1995) (dental implants); *Welch v. McCarthy*, [677 A.2d 1066](#), 1069 (Me.1996) (dental implants); *Tanuz v. Carlberg*, [122 N.M. 113](#), [921 P.2d 309](#), 313 (1996) (dental implants); *Reyes v. Anka Research, Ltd.*, [111 Misc.2d 152](#), [443 N.Y.S.2d 595](#), 597 (Sup.Ct.1981) (intrauterine device); *Bruske v. Hille*, [567 N.W.2d 872](#), 876 (S.D.1997) (dental implants).

Having concluded that a physician or oral surgeon who implants medical devices in a patient has a duty to warn the patient of safety issues raised by the manufacturer and/or the FDA, we also conclude that ***this duty extends to both current and former patients***. The analysis of the three factors is essentially the same for both classes of patients. It makes no sense to differentiate between the two classes of patients in this context given the strong public policy reasons for imposing a duty as outlined above, and given that, as the facts in this case demonstrate, there is no bright line test for distinguishing between a current patient who perhaps has not seen the provider for quite some time and a former patient who has intentionally severed all ties with the provider. This conclusion finds support in cases from other jurisdictions. See, e.g., *Tanuz*, 921 P.2d at 310-11, 313 (citing *Kern By and Through Kern v. St. Joseph Hospital*, [102 N.M. 452](#), [697 P.2d 135](#), 139 (1985)). While we need not decide today the precise limits of the duty to warn, ***at the very least, a safety alert issued by the manufacturer or the FDA triggers the need to make reasonable efforts to contact all current and former patients with the implants***. (Emphasis added).

Harris v. Raymond, 715 N.E.2d 388 (Ind. 1999).

In *Tresemmer v. Barke*, 86 Cal.App.3d 656, 150 Cal.Rptr. 384, 392-94 (1978), the court found that the plaintiff stated a cause of action against the physician, who had inserted an intrauterine device, on the theory that the physician had failed to warn her of dangerous effects of the device, when subsequent to the insertion the physician obtained factual knowledge of its hazards. Such failure constituted a negligent breach of the duty to warn arising by virtue of the confidential relationship between the physician and the plaintiff. *Id.* 150 Cal.Rptr. at 394; cf. *Odom v. G.D. Searle & Co.*, 979 F.2d 1001, 1003 (4th Cir.1992) (manufacturer's duty to warn extends only to physician, who then has the duty to warn patients of risks associated with prescription drugs or medical devices).

Welch v. McCarthy, 677 A.2d 1066 (Me. 1996).

i. CPLA claims

“Actionable harm occurs when the plaintiff discovers or should discover, through the exercise of reasonable care, that he or she has been injured *and that the defendant's conduct caused such injury*. *Id.*; see *Lambert v. Stovell*, 205 Conn. 1, 6, 529 A.2d 710 (1987).” (Emphasis added). *Champagne v. Raybestos-Manhattan, Inc.*, 212 Conn. 509, 521, 562 A.2d 1100, 1107 (1989). Actionable harm by Stamford Hospital was not reasonably known to plaintiff until the summer of 2014 shortly before he filed the instant lawsuit.

When the plaintiff in the exercise of reasonable care should have discovered “actionable harm” is ordinarily a question of fact. *Taylor v. Winsted Memorial Hospital*, 262 Conn. 797, 810, 817 A.2d 619 (2003). The case of *Jackson v. Tohan*, 113 Conn.App. 782, 967 A.2d 634 (2009), provides a reasoned approach to the situation in which there is a question as to what “the plaintiff should have known and when he should have known it.” *Jackson*, 790, citing *Tarnowsky v. Socci*, 75 Conn.App. 560, 570, 810 A.2d 728 (2003), *aff'd.*, 271 Conn. 284, 856 A.2d 408 (2004). On appeal, the court determined that questions of this nature are factual and are not properly decided in a summary judgment.

Bayless v. Purdue Frederick Co., No. FSTCV095012157, 2011 WL 6117927, at *7 (Conn. Super. Ct. Nov. 14, 2011). “The *Jackson* court followed *Tarnowsky*, *supra*, 75 Conn.App. at 560, 816 A.2d 728, holding that “[t]he plaintiff is entitled to his day in court for a factual determination of what he should have known and when he should have known it.” *Jackson*, *supra.*, 113 Conn.App. at 790, 967 A.2d 634.” *Id.*

The main argument of Defendant’s motion is premised upon the timing of Plaintiff’s suspicion that she knew of a cause of action against Stamford Hospital prior to or at the same time she brought suit against J&J in April 2013. Plaintiff was unaware at that time that Stamford Hospital’s conduct caused her injuries and that she had suffered actionable harm. The Defendant has put forth no evidence, let alone evidence so conclusive and overwhelming that it would properly form the basis for summary judgment, regarding when the Plaintiff knew or should have known the essential elements of the cause of action against a hospital under the Connecticut Products Liability Act (“CPLA”).

In the present case, it is clear that Ms. Sherwood did not know that she suffered actionable harm by Stamford Hospital until after she was asked to serve as a witness in another pelvic mesh matter sometime during the summer of 2014. See Affidavit Ms. Sherwood. Ms. Sherwood filed her lawsuit against Stamford Hospital shortly thereafter.

Q Ms. Sherwood, when did you discover -- first discover that you had a cause of action against Stamford Hospital in this case?

A I guess sometime in late 2014.

Q Okay. What led you -- what led you to that conclusion?

...

A . . . I was asked to possibly be interviewed as a witness to talk about my experience with Dr. Hines and Prolift.

Q Was this for the [Farrell] litigation?

A Yes.

Q And the person who asked you was Mr. Wells; is that right?

A Yes.

Q What did Mr. Wells tell you about your potential claim against Stamford Hospital?

A At that time, nothing.

...

Q When you had that conversation you didn't learn you had a cause of action?

A No.

Deposition of Robin Sherwood at pp.191-192.

...

Q And did Mr. Leydon or Ms. Fusco interview you to be a witness in the [Farrell] litigation?

A Yes.

Q What did they tell you?

...

THE WITNESS: They just interviewed me to see what my experience had been.

Q Okay. And did they tell you in that conversation that you had a potential claim against Stamford Hospital?

A Not then.

Q Okay. When did you learn that you had a potential claim against Stamford Hospital?

A I don't know exactly, but it was at some point after the interview.

Deposition of Robin Sherwood at pp.193-194.

...

Q All right. Did he tell you that you had a potential claim against Stamford Hospital?

A I think I might have asked him because I was surprised when I was listening to the briefing about what this claim was to say, you know, did I make the right claim.

Q All right. So did you ask him if you had a potential claim against Stamford Hospital?

A That's my best recollection.

Q And what did he tell you?

A I think he made a call and got back to me later.

Q And what did he tell you when he got back to you?

A I think he told me that I did.

Q And that was sometime in the summer of 2014?

A To my best recollection.

Deposition of Robin Sherwood at pp.199-200.

The Connecticut Product Liability Act's statute of limitation provides as follows: "No product liability claim, as defined in section 52-572m, shall be brought but within three years from the date when the injury, death or property damage is first sustained or discovered or in the exercise of reasonable care should have been discovered." Conn. Gen.Stat. § 52-577a. Interpreting identical language in the statute of limitations governing negligence claims under Conn. Gen.Stat. § 52-584, the Connecticut Supreme Court has held that "the term 'injury' is synonymous with 'legal injury' or 'actionable harm.'" *See Lagassey v. State*, 268 Conn. 723, 748, 846 A.2d 831 (2004); *see also*

Tarnowsky v. Socci, 75 Conn.App. 560, 569, 816 A.2d 728 (2003) (“There is no relevant distinction, except for a difference in the stated limitation periods, between the discovery language contained in §§ 52–577a and 52–584. We conclude therefore that, under both sections, a claimant is not time barred until he knows, or should have known, the identity of the negligent person who caused his injury to occur.”), *aff’d*, 271 Conn. 284, 856 A.2d 408 (2004).

“ ‘Actionable harm’ occurs when the plaintiff discovers, or in the exercise of reasonable care, should have discovered the essential elements of a cause of action.” *Lagasey*, 268 Conn. at 748, 846 A.2d 831. Accordingly, a plaintiff’s claim accrues “when the plaintiff has knowledge of facts that would put a reasonable person on notice of the nature and extent of an injury, *and that the injury was caused by the negligent conduct of another.*” *Id.* (emphasis added); *see also Tarnowsky v. Socci*, 271 Conn. 284, 288, 856 A.2d 408 (2004) (“A breach of duty by the defendant and a causal connection between the defendant’s breach of duty and the resulting harm to the plaintiff are essential elements of a cause of action in negligence; they are therefore necessary ingredients for ‘ ‘actionable harm.’ ’ ”). (Emphasis in the original).

Moss v. Wyeth, Inc., 872 F. Supp. 2d 154, 158 n.3 (D. Conn. 2012). “***Finally, the determination of when a plaintiff in the exercise of reasonable care should have discovered ‘actionable harm’ is ordinarily a question reserved for the trier of fact.***” *Tarnowsky v. Socci*, 271 Conn. 284, 288, 856 A.2d 408 (2004)(emphasis added).

In light of this well settled law, Connecticut Courts have repeatedly denied similar motions on the grounds that when a plaintiff in the exercise of reasonable care should have discovered actionable harm is a material issue of fact for trial. These cases specifically include when the plaintiff had met with counsel or considered retaining counsel more than two years prior to the assertion of the claim.

In *Muszynski v. Terranova*, 2009 WL 1578194 (Sheldon, J. May 13, 2009), the Court expressly denied a motion for summary judgment where the plaintiff had retained counsel for the purpose of pursuing a medical negligence claim more than two years prior to the assertion of the informed consent claim.

In sum, the Court concludes that while the original plaintiff discovered her initial negligence claim when she learned of her diagnosis and was referred for the services of a lawyer, there is nothing about that discovery, or about the circumstances in which it was made, that apprised her that she had suffered a different form of actionable harm due to the defendants' failure to warn her of the injury that she suffered or to obtain her informed consent to the extraction procedure on the basis of that warning. For these reasons, because there is a genuine issue of material fact as to precisely when the plaintiff first discovered the “actionable harm” associated with her lack-of-informed-consent claim, the defendants' Motion for Partial Summary Judgment must be DENIED.

Id. at *3.

Likewise in Caswell v. Bristol Hosp., 1999 WL 1241947 (Wollenberg, J., December 06, 1999), *9, the court denied a similar summary judgment motion even though the plaintiffs testified at deposition that they had contemplated hiring an attorney more than two years prior to commencing the action.

In Cole v. Angeluzzi, MD, 2002 WL 1816097 (Rogers, J., June 27, 2002), Judge (now Chief Justice) Rogers denied a motion for summary judgment of a newly asserted claim stemming from lack of informed consent and failure to disclose certain issues regarding a doctor's impairment due to substance abuse.

The plaintiff contends that all of the claims stem from information obtained in the course of discovery in the original action; specifically, the plaintiff claims that he discovered information relating to defendant Angeluzzi's psychiatric history and alleged controlled substance abuse, and the hiring and supervision practices of his professional corporation and the Norwalk Hospital Association. The plaintiff contends that the claims are not time barred because they were brought within two years of discovery of the information and not more than three years from the date of the underlying negligence.

The court agrees with the plaintiff. Id. at 2. See also Fuller v. Manchester Obstetrics & Gynecology Associates, 2011 WL 2611803 (Robaina, J., June 03, 2011)(“The defendant's argument that knowledge of actual harm occurred when the plaintiffs retained an attorney has no merit.”)(denying summary judgment due to factual question as to whether the plaintiff should have known of actionable harm commencing the running of the statute of limitations).

Likewise in [Jackson v. Tohan](#), 113 Conn.App. 782, 787, 967 A.2d 634, cert. denied, 292 Conn. 908, 973 A.2d 104 (2009), the Appellate Court reversed a grant of summary judgment on statute of limitations grounds, holding that “that the court improperly equated her knowledge that ‘something’ had gone wrong during her first surgery with knowledge of actionable harm.” Id. “This court concluded in [Tarnowsky](#), that “[t]he plaintiff is entitled to his day in court for a factual determination of what he should have known and when he should have known it.” [Tarnowsky v. Socci](#), 75 Conn.App. 560, 570, 816 A.2d 728 (2003), aff’d, [271 Conn. 284, 856 A.2d 408 \(2004\)](#). We reach the same conclusion. The plaintiff in this case is also entitled to her day in court.” Id. at 789.

There is a genuine issue of material fact as to whether Ms. Sherwood could have known Stamford Hospital’s causative role in her injuries and that she had suffered actionable harm before she was interviewed at some point after June of 2014 to be a witness in the [Farrell](#) case.

ii. Non-CPLA claims

Likewise, there is a genuine issue of material fact as to whether the statute of limitations has been tolled on the common law claims due to fraudulent concealment and the continuing course of conduct doctrine. “Again, it is well established in Connecticut that the three-year limit of § 52-584, which usually would begin to run when the wrongful act occurred, will be tolled when “there is something tantamount to a fraudulent concealment of a cause of action.” *Kennedy v. Johns-Manville Sales Corp.*, 135 Conn. 176, 178, 62 A.2d 771, 772 (1948).” [Hamilton v. Smith](#), 773 F.2d 461, 467–68 (2d Cir. 1985).

“Actionable harm occurs when the plaintiff discovers or should discover, through the exercise of reasonable care, that he or she has been injured *and that the defendant's conduct*

caused such injury. Id.; see *Lambert v. Stovell*, 205 Conn. 1, 6, 529 A.2d 710 (1987).” (Emphasis added). Champagne, 212 Conn. at 521.

“If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence.” Conn. Gen. Stat. Ann. § 52-595 (West). “[T]he Second Circuit has concluded that the post-sale duty to warn is a valid theory under Connecticut law. See *Densberger v. United Techs. Corp.*, 297 F.3d 66, 71 (2d Cir.2002).” Savage v. Scripto-Tokai Corp., 266 F. Supp. 2d 344, 351 (D. Conn. 2003).

Defendant has a post-sale duty to warn patients and former patients such as Plaintiff when it has knowledge of potential dangers associated with a medical device it sold to such a person. “It follows that the post-sale duty to warn exists in negligence, and is cognizable under the CPLA.” Densberger v. United Techs. Corp., 297 F.3d 66, 71 (2d Cir. 2002). Defendant not only breached this duty but consciously decided to withhold material information from Plaintiffs and conceal the fact that its agent, Dr. Brian Hines, an expert in urogynecology and implanting pelvic mesh products, had concluded that the very product implanted into Ms. Sherwood was unsafe.

Further, Defendant failed to notify Plaintiffs of the dangers of pelvic mesh products after the 2008 FDA Public Health Notification, its Update in July of 2011 and the removal of the products from the market in 2012.

[I]n 1979, the Connecticut Supreme Court restated the Connecticut rule that while duty to warn for strict product liability is attributed only at the time of sale, duty to avoid negligence in failure to warn persists in post-sale situations. See *Prokolkin v. Gen'l Motors Corp.*, 170 Conn. 289, 365 A.2d 1180, 1185–1186 (1976); see also *Handler v. Remington Arms Co.*, 144 Conn. 316, 130 A.2d 793, 795 (1957) (finding post-sale duty to warn in negligence). Under the circumstances, we certainly cannot

say that the CPLA's discussion of failure to warn "plainly and unambiguously" overturns what the Connecticut court had so recently reaffirmed to be Connecticut law on this issue."

Densberger v. United Techs. Corp., 297 F.3d 66, 71 (2d Cir. 2002). "Because the CPLA does not expressly prohibit post-sale liability for negligent failure to warn, the negligence-based common law duty survives and is cognizable under the statute." Densberger v. United Techs. Corp., 297 F.3d 66, 71 (2d Cir. 2002).

Stamford Hospital knew or should have known in 2005 when the Prolift was launched that there were no long term studies on safety of the Prolift products. Stamford Hospital knew in 2006 through its own study that the vaginal paravaginal repair with polypropylene mesh similar to or the same as the Prolift mesh at issue in this case caused dyspareunia in 27% of the women in whom it was implanted. Ex. D. Stamford Hospital knew in 2008, again through its own studies, that there was a lack of risk benefit information regarding the Prolift such that proper informed consent could be obtained. Ex. O. Stamford Hospital knew in the latter part of 2008 that the FDA warned of numerous complications associated with transvaginal placement of mesh like the Prolift through its Public Health Notification. Ex. P. At that time the FDA reminded hospitals of their obligations:

FDA requires hospitals and other user facilities to report deaths and serious injuries associated with the use of medical devices. If you suspect that a reportable adverse event was related to the use of surgical mesh, you should follow the reporting procedure established by your facility.

We also encourage you to report adverse events related to surgical mesh that do not meet the requirements for mandatory reporting. Id.

<http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/PublicHealthNotifications/ucm061976.htm>

Stamford Hospital knew by May of 2009 that Dr. Hines, their expert in urogynecology and implanting pelvic mesh products, considered the Prolift unsafe for implantation into women.

Ex. Q. Stamford Hospital knew in 2011 that the serious complications referenced in the 2008 FDA Public Health Notification were not rare and that “[m]esh used in transvaginal POP repair introduces risks not present in traditional non-mesh surgery for POP repair.” Ex. R. Finally, in 2012, Stamford Hospital knew that J&J pulled the dangerous products from the market. Stamford Hospital was advised on several occasions over several years of the dangers of the pelvic mesh products implanted into Plaintiff yet decided to withhold the information from Plaintiff to prevent legal recourse and further its own financial interests.

Given its position in the chain of distribution and its responsibilities under federal regulations Defendant had a duty to warn, at several different points in time, Plaintiff and all other women in whom the Prolift line of products was implanted after it was made aware of the unsafe nature of the product even though it should.

B. The Hospital is validly liable as a product seller.

This Court has already ruled on whether a hospital is liable as a product seller. Rather than repeat the same arguments here Plaintiffs refer the Court back to those decisions. July 1, 2014, No. 257.10 and Nov. 27, 2015, No. 668.10.

In addition, numerous federal court cases in Connecticut have recognized the plausibility of a products liability claim against a hospital, specifically including in the pelvic mesh case setting. Lemay v. Johnson & Johnson, et al, 3:13-cv-00926-WWE (D.Conn. 2013) (pelvic mesh), Labrecque v. Johnson & Johnson, et al, DN [3:15-cv-01141-RNC](#) (D.Conn. 2015) (pelvic mesh), Fajardo v. Boston Scientific Corp., DN 3:14-cv-01922-SRU (D.Conn. 2015) (pelvic mesh), Mihok v. Medtronic, et al, 2015 WL 4722847, Gallinari v. Kloth, 148 F. Supp. 3d 202, 213 (D. Conn. 2015).

For the same reasons, the other appellate decision to which Defendants cite, *Zbras*, does not support their broad categorical rule. In *Zbras*, during the course of a surgical

procedure, a doctor employed medical implants which were brought in by the manufacturer's representative for use at the doctor's discretion. *Zbras*, 880 A.2d at 1001. In holding that the hospital was not a seller of a product, the Appellate Court of Connecticut stated that a “defendant can bill for goods provided incidental to surgery without being in the business of selling goods.” *Id.* at 1002. Once again, this case is factually distinguishable from the strict liability theory posed here, as the “good” at issue, the System, was not “provided incidental to surgery.” *Id.* ***It was, in fact, the very reason for the surgery, and its sale constituted a separate and distinct transaction.*** By contrast, the *Zbras* court made clear that “[t]he transaction in this case, [was] a surgery.” *Id.* (Emphasis added).

Mihok v. Medtronic, Inc., 119 F. Supp. 3d 22, 37 (D. Conn. 2015).

No Connecticut appellate court has held as a matter of law that hospitals and health care providers are not “product sellers” under the CPLA. *See Labrecque v. Johnson & Johnson*, No. 3:15-cv-01141 (RNC), 2015 WL 5824724, at *3 (D.Conn. Oct. 2, 2015) (“Connecticut law does not make it impossible for hospitals and medical professionals to be ‘product sellers.’ ”); *Mihok v. Medtronic, Inc.*, No. 3:14-cv-01169 (VLB), 119 F.Supp.3d 22, 38, 2015 WL 4722847, at *13 (D.Conn. Aug. 10, 2015) (“Connecticut law does not clearly establish that a hospital cannot be the seller of a medical device implanted in a patient on its premises”); *Farrell v. Johnson & Johnson*, No. UWYCV116014102S, 2014 Conn. Super. LEXIS 4173, *1 (Conn.Super.Ct. July 1, 2014) (“There is no Supreme Court or Appellate Court authority prohibiting a plaintiff from maintaining a product liability claim against a hospital.”).

Gallinari v. Kloth, 148 F. Supp. 3d 202, 213 (D. Conn. 2015).

As between the hospital, which can easily insist on an indemnification agreement (or file an indemnification claim as it has done in this case) for products from the manufacturer and the wholly innocent victim of the defective product, there is simply no reason to read into the plain language of the product liability act and exemption for hospitals that is not contained therein.

Given the Hospital and its agents inarguably had substantial actual notice of adverse events relating to these products that, in violation of law and its own policy it failed to report the same to the manufacturer or disclose it to the patient, it makes no sense to declare they should be immune for such misconduct. Plaintiffs suggest it may well be that the belief they were immune explains how they could have acted in such an unconscionable manner.

Particularly for an implanted medical device such as the present one, the hospital is a key player in the regulatory scheme. They are deemed mandatory reporters of adverse events by the FDA whose feedback is critical in evaluating the safety and efficacy of devices such as the very one at issue. This is not simply some hypothetical academic theory but provably the case as to the very product at issue in this case. The Hospital's willful and egregious failure to report adverse events, including Ms. Sherwood's which they inarguably have direct knowledge of, likely contributed to the delay in FDA action leading to serious complications for thousands of women around the country. While the hospital's misguided belief that it is immune for any harm that may come to its patients from defective products it propagates may well explain the hospital's failure to comply with its reporting obligations, that hardly means this Court should reward such behavior.

Ultimately the question of whether the hospital is properly deemed a product seller under the circumstances of this case is a material question of fact. The Defendant's affidavit is merely a self-serving declaration with no underlying factual support. It simply proclaims a legal position.

Connecticut General Statutes 1-2z requires the application of the plain language of a statute as written. The hospital clearly falls under the plain language of the statute. Therefore the summary judgment motion should be denied.

C. Even if the hospital is not deemed to fall under the scope of the product liability act, they are still liable for various common law and statutory claims made against them

The Supreme Court expressly held in Zichichi that a common law negligence claim was still viable against a hospital even if they fell outside the scope of the products liability act.

Despite the plaintiff's assertion to the contrary in his invocation of the constitution of Connecticut, article first, § 10, our construction of [§ 19a-280](#) does not leave a person

injured as a result of defective blood completely without recourse to the courts. [Section 19a-280](#) does not protect defendants from liability for negligence. The delivery of a service, such as providing a [blood transfusion](#), requires the provider of that service to exercise reasonable care to avoid injury to the consumer of the service.

If a plaintiff can show that the defect in the blood could reasonably have been detected or removed, the plaintiff may well be entitled to recover for the supplier's negligent failure to detect or remove the defect.

Zichichi v. Middlesex Memorial Hosp., 204 Conn. 399, 409-10, 528 A.2d 805 (1987).

In the present case, the defective nature of the Prolift was not only something the hospital could have detected, it was something it had actual knowledge of yet they did nothing about it. Likewise, courts that have rejected a strict products liability theory against hospitals for implants have still recognized that common law liability remains. Brandt v. Boston Scientific Corp., 792 N.E.2d 296, 304 (Ill. 2003) (“She also could bring a cause of action against the hospital under a negligence theory.”). As held by our Supreme Court in Zichichi, supra, 204 Conn. at 409-10, such a common law claim must exist to satisfy the constitution of Connecticut, article first, §10.

The hospital’s breach of the federal regulations making it a mandatory reporter of adverse events for these devices make it liable for negligence per se. Lancaster v. Jackson, 2005 WL 2009018, 39 Conn. L. Rptr. 620 (Jones, J, July 11, 2005) *3-4.

Likewise, they are liable in tort coextensively with their agent and Director of Urogynecology and Pelvic Surgery Dr. Hines under the doctrine of respondeat superior. Mather v. Griffin Hosp., 207 Conn. 125, 136, 540 A.2d 666, 672 (1988).

A hospital allowing a doctor to engage in what amounts to experimental surgery on a patient could be found to have engaged in egregious misconduct warranting punitive damages. Corrigan v. Methodist Hosp., 869 F. Supp. 1202, 1207 (E.D. Pa. 1994).

Failing to report adverse events as required by the FDA regulations has expressly been found to be a basis for liability.

The MDR regulations are related to the manufacturer's duty to provide the FDA with information regarding a device's safety and effectiveness, and this information is disseminated to the public. A factfinder could infer that a manufacturer's failure to provide this information as required by FDA regulations is a parallel violation of the state duty to provide reasonable and adequate information about a device's risks.

Hughes v. Boston Scientific Corp., 631 F.3d 762, 770-71 (5th Cir. 2011). Thus, in Hughes, the Fifth Circuit held that a claim could be brought regarding a device specifically on the issue of failing to report adverse events they were obliged to report. In the present case, the evidence is clear that pursuant to both hospital policy, the AMA Code of Ethics, and federal law the hospital and its doctors were obliged to report these numerous adverse events to the FDA and the manufacturer, but this was never done. Likewise the Defendant's Agent, its Director of Urogynecology and Pelvic Surgery had provable direct and personal knowledge of numerous adverse events that should have been reported. The hospital itself also had direct knowledge of these issues given many of the remedial procedures, including many surgeries, needed to address these adverse events took place at the hospital.

Furthermore, in this setting the hospital clearly has a fiduciary duty towards its patient, as the Appellate Court has suggested in case involving Stamford Hospital.

Although our Supreme Court has not definitively addressed this issue, other states have recognized that a fiduciary relationship can exist between a hospital and a patient. See B. Furrow, "Patient Safety and the Fiduciary Hospital," 1 Drexel L.Rev. 439, 459-63 (2009); see also *Wohlgemuth v. Meyer*, 139 Cal.App.2d 326, 331, 293 P.2d 816 (1956) ("**The doctor-patient relationship is a fiduciary one and it is incumbent on the doctor to reveal all pertinent information to his patient. *The same is true of the hospital-patient relationship.***").

Di Teresi v. Stamford Health Sys., Inc., 142 Conn. App. 72, 95 n.19, 63 A.3d 1011, 1025 (2013)(emphasis added).

The underlying policy behind the argument that hospitals should be immune from product liability claims relating to medical devices is that it is somehow unfair to hold them liable since they don't have the ability to evaluate the safety and efficacy of the particular product. Whatever value that argument may have in other settings, when in the present case the hospital actually engaged in a study specifically evaluating the safety and efficacy of the Prolift mesh and published the abstract in a peer reviewed journal (while failing to disclose known conflicts in said publication), it seems to border on the frivolous to suggest they should be immune from liability here.

The Hospital has adopted the internally inconsistent position that the products liability act does not apply and that the products liability act is the Plaintiff's exclusive remedy. This is plainly incorrect. The products liability act is the exclusive remedy for product liability claims.

As to the CUTPA claim, the Connecticut Supreme Court in the case of [Gerrity v. R.J. Reynolds Tobacco, Co., 263 Conn. 120, 131-32 \(2003\)](#), has allowed the joinder of a separate CUTPA count within a products liability complaint under facts such as those alleged in this case.

Therefore, the Defendant's motion should be denied.

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CERTIFICATION

This is to certify that a copy of the foregoing was Emailed this date, to all counsel of record.

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