

DOCKET NO.: CV-14-6025333-S : **COMPLEX DOCKET**
ROBIN SHERWOOD and
GREG HOELSCHER : **J.D. OF WATERBURY**
V. : **AT WATERBURY**
STAMFORD HEALTH SYSTEM, INC.
D/B/A STAMFORD HOSPITAL : **NOVEMBER 22, 2016**

SUPPLEMENTAL REPLY IN SUPPORT OF
STAMFORD HOSPITAL’S MOTION FOR SUMMARY JUDGMENT

Stamford Health Systems Inc. (“Stamford Hospital”) respectfully submits this Supplemental Reply in response to Plaintiff’s unauthorized sur-reply brief.

Plaintiff’s Second Supplemental Objection is the latest in her line of changing (and legally incorrect) theories that ignore the standard regarding actionable harm under the CPLA. Plaintiff first asserted that this case is not barred by the statute of limitations because actionable harm does not accrue until a lawyer tells a plaintiff that she has a cause of action. Then Plaintiff asserted that the statute of limitations was tolled by the “fraudulent continuing course of conduct doctrine” using baseless allegations that Dr. Hines and Stamford Hospital should have told Ms. Sherwood about positive resident chart reviews or about the 2008 FDA Public Health Notification concerning “rare” problems with unspecified pelvic mesh products that were not released until years after her surgery and that did not concern post-surgical care.

Now she asserts a new theory and argues that actionable harm accrues when Drs. Bercik (Plaintiff’s expert) and Hines (implanting physician) determined that the device could cause chronic pain in rare cases because they each had a patient (Ms. Wicker and Mary Beth Farrell, respectively) that experienced serious chronic pain. Plaintiff’s initial theories and her subsequent legal theories all misapply the standard for actionable harm. Stare decisis is the foundation of

our legal system. If Plaintiff wants to change the law, she needs to file an appeal and ask for the Appellate Court to reverse existing precedent.

As a matter of law, actionable harm accrues when a plaintiff is aware or reasonably should have been aware of a possible causal nexus between at least some of her injuries and the offending product. See Peerless Ins. Co. v. Tucciarone, 48 Conn. App. 160, 167 (1998).

Whether Plaintiff had a Farrell level injury, or something less than that, the statute of limitations started running when Ms. Sherwood knew or reasonably should have known that she had a problem (an injury) arising from her Prolift surgery. As her testimony shows, that was as early as 2006 but certainly by 2007 and 2008, when she met with a series of physicians (including Plaintiff's expert) who told her that she should have the Prolift removed, or when she actually had the Prolift excised. As previously discussed, all of those events are well outside the statute of limitations for all of the claims.

The initial brief contained extensive quotations from Ms. Sherwood's deposition and a detailed discussion applying that testimony to precedent. Dr. Bercik and several other doctors all told Plaintiff in 2007 and 2008 that her injuries were caused by the Ethicon Prolift and that she needed to have it removed. Actionable harm is determined by what the Plaintiff was aware of or reasonably should have been aware of. Is Plaintiff's counsel suggesting that Plaintiff's physicians advised Ms. Sherwood to remove the Prolift and performed a series of surgeries that excised the Prolift not because it was medically necessary but instead because there was no problem with the device? That would be irrational and Plaintiff's argument lacks a reasoned basis in law or fact. There is no genuine issue of material fact that in 2008, Plaintiff knew that she had suffered harm and that it had been caused by the Ethicon Prolift. This is the definition of actionable harm under the CPLA.

DEFENDANT,

**STAMFORD HEALTH SYSTEM
D/B/A STAMFORD HOSPITAL**

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