

DOCKET # X06-UWY-CV-14-6025333-S : SUPERIOR COURT  
:  
ROBIN SHERWOOD, ET AL : J.D. OF WATERBURY  
:  
v. : COMPLEX LITIGATION DOCKET  
:  
STAMFORD HEALTH SYSTEM, ET AL : OCTOBER 15, 2015

**THIRD PARTY DEFENDANT JOHNSON & JOHNSON’S**  
**ANSWER AND SPECIAL DEFENSES**

Third Party Defendant Johnson & Johnson (“J&J”) hereby answers the Third Party Complaint of Stamford Health System, Inc. d/b/a Stamford Hospital, dated August 13, 2015 (“Third Party Complaint”) as follows. Any allegation not specifically admitted is deemed denied.

1. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Third Party Complaint and, therefore, denies the allegations.

2. J&J states that the plaintiffs’ complaint speaks for itself. J&J denies the remaining allegations in paragraph 2 of the Third Party Complaint.

3. J&J admits that it is a business corporation organized under the laws of the State of New Jersey with its principal place of business at One Johnson & Johnson Plaza in New Brunswick, New Jersey and refers to J&J’s website for its contents. J&J further admits

that Ethicon, Inc. designed, manufactured and sold certain pelvic mesh products for uses consistent with their packaging and labeling. J&J denies the remaining allegations in paragraph 3 of the Third Party Complaint.

4. J&J admits that Ethicon, Inc. is a business corporation organized under the laws of the State of New Jersey with its principal place of business at Route 22 West, Somerville, New Jersey 08876 and is a wholly owned subsidiary of J&J. J&J denies the remaining allegations in paragraph 4 of the Third Party Complaint.

5. J&J admits that Ethicon LLC is a limited liability company organized under the laws of the State of Delaware and that it has manufactured certain mesh products for uses consistent with their packaging and labeling. J&J denies the remaining allegations contained in paragraph 5 of the Third Party Complaint.

6. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Third Party Complaint and, therefore, denies those allegations.

7. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Third Party Complaint and, therefore, denies those allegations.

8. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Third Party Complaint and, therefore, denies those allegations.

9. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Third Party Complaint and, therefore, denies those allegations.

**Count One: Product Liability**

10. Paragraph 10 contains no allegations to which a response is required. To the extent paragraph 10 is deemed to contain allegations against J&J, J&J denies the allegations.

11. The allegations of Paragraph 11 are not directed to J&J and therefore do not require a response. To the extent a response is required, J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 and, therefore, denies the allegations.

12. J&J admits only that Ethicon, Inc. and Ethicon LLC manufactured certain pelvic mesh products for uses consistent with their packaging and labeling. The remaining allegations of Paragraph 12 are not directed to J&J and therefore do not require a response. To the extent a response is required, J&J lacks knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 12 and, therefore, denies the allegations.

13. J&J states that plaintiffs' complaint speaks for itself. To the extent a response is required, J&J denies the allegations contained in Paragraph 13 of the Third Party Complaint.

14. J&J states that plaintiffs' complaint speaks for itself. To the extent a response is required, J&J denies the allegations contained in Paragraph 14 of the Third Party Complaint.

15. J&J states that plaintiffs' complaint speaks for itself. J&J admits that Ethicon, Inc. has designed, manufactured and sold certain pelvic mesh products for uses consistent with their packaging and labeling and denies the remaining allegations in paragraph 15 of the Third Party Complaint. J&J further states that J&J is a holding company and does not develop, patent, market, or sell any product.

16. J&J states that plaintiffs' complaint speaks for itself. J&J admits that Ethicon LLC manufactured and Ethicon, Inc. designed, manufactured and sold certain pelvic mesh products for uses consistent with their packaging and labeling, and denies the remaining allegations in paragraph 16 of the Third Party Complaint. J&J further states that J&J is a

holding company and does not market, distribute, manufacture, package, repackage, sell, resell, install, design, or prepare for use any product.

17. J&J states that plaintiffs' complaint speaks for itself. To the extent a response is required, J&J admits that Ethicon Inc. and Ethicon LLC have manufactured certain pelvic mesh products for uses consistent with their packaging and labeling. J&J further states that J&J is a holding company and does not market, distribute, manufacture, package, repackage, sell, resell, install, design, or prepare for use any product. J&J denies the remaining allegations in paragraph 17 of the Third Party Complaint.

18. J&J states that plaintiffs' complaint speaks for itself. To the extent a response is required, J&J admits that Ethicon, Inc. designed and sold certain pelvic mesh products for uses consistent with their packaging and labeling and denies the remaining allegations in paragraph 18 of the Third Party Complaint.

19. J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Third Party Complaint and, therefore, denies those allegations.

20 J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Third Party Complaint and, therefore, denies those allegations.

21. J&J states that plaintiffs' complaint speaks for itself. To the extent a response is required, J&J denies the allegations contained in the Paragraph 21 of the Third Party Complaint.

22. J&J denies the allegations in paragraph 22 of the Third Party Complaint, including all sub-parts thereof.

23. J&J denies the allegations in paragraph 23 of the Third Party Complaint.

#### **RESPONSE TO PRAYER FOR RELIEF**

In response to the paragraph beginning "WHEREFORE," in Third Party Plaintiff's Prayer for Relief, J&J denies that Plaintiffs and Third Party Plaintiff are entitled to any recovery, including subparts (1) through (3), or any form of relief whatsoever, demands judgment in its favor and against Third Party Plaintiff on all causes of action, demands a trial by jury, and such other and further relief as this Court deems appropriate.

## **SPECIAL DEFENSES**

### **FIRST DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims against J&J are barred because J&J does not design, develop, manufacture, market, promote or sell any product(s) allegedly at issue in this action.

### **SECOND DEFENSE**

J&J has never had possession and control over the products at issue in this action, and therefore the Third Party Complaint and the underlying complaint, as to each cause of action fail to state a claim against J&J.

### **THIRD DEFENSE**

The Third Party Complaint and the underlying complaint fail to state a cause of action upon which relief can be granted.

### **FOURTH DEFENSE**

The Third Party Complaint and the underlying complaint fail to state a cause of action upon which relief can be granted due to lack of adequate product identification.

**FIFTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred for lack of subject matter jurisdiction.

**SIXTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred for lack of personal jurisdiction.

**SEVENTH DEFENSE**

The Third Party Complaint must be dismissed because Third Party Plaintiff provided insufficient process.

**EIGHTH DEFENSE**

The Third Party Complaint must be dismissed because Third Party Plaintiff provided insufficient service of process.

**NINTH DEFENSE**

Third Party Plaintiff may be barred from bringing some or all of the claims alleged in the Third Party Complaint because Third Party Plaintiff may lack standing and/or capacity to bring such claims.

**TENTH DEFENSE**

Third Party Plaintiff may have failed to join indispensable parties or real parties in interest necessary for the just adjudication of this matter.

**ELEVENTH DEFENSE**

Certain of Third Party Plaintiff's and Plaintiffs' claims and remedies and the defenses thereto are governed by the laws of a foreign jurisdiction or the laws of the United States.

**TWELFTH DEFENSE**

Third Party Plaintiff's alleged causes of action have been improperly joined under the applicable Rules of Civil Procedure and the laws of the applicable state.

**THIRTEENTH DEFENSE**

The improper joinder of Third Party Plaintiff's alleged causes of action violate the procedural and substantive due process rights of J&J under the Constitutions of the United States of America and the applicable state.

**FOURTEENTH DEFENSE**

J&J is entitled to, and claims the benefit of, all defenses and presumptions set forth in or arising from any rule of law or statute in this State and any other state whose law is deemed to apply in this case.

### **FIFTEENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred by the doctrine of federal preemption, as established by statute, including the preemption provision of the Medical Device Amendments, 21 U.S.C. § 360k(a), to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq., and by state and federal case law, and are barred by the Supremacy Clause of the United States Constitution, because the products at issue are regulated by the U.S. Food and Drug Administration ("FDA") under the Medical Device Amendments, 21 U.S.C. § 360k, et seq., to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq., and other federal statutes and regulation.

### **SIXTEENTH DEFENSE**

At all relevant times, J&J was in full compliance with all applicable federal statutes and regulations, including but not limited to the Medical Device Amendments, 21 U.S.C. § 360k, et seq., to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq., and other federal statutes and regulations, and Third Party Plaintiff's and Plaintiffs' claims are accordingly barred.

### **SEVENTEENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims against J&J are expressly and/or impliedly preempted by federal law, including but not limited to, the regulations promulgated by the FDA and contained in Chapter 21 of the Code of Federal Regulations. See 21 U.S.C. § 301 et seq.; see also Fed. Reg. 3922 (Jan. 24, 2006).

### **EIGHTEENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred because J&J complied with all applicable state and federal statutes regarding the products at issue including the requirements and regulations promulgated by the FDA and contained in Chapter 21 of the Code of Federal Regulations. In the event that Third Party Plaintiff's claims are not barred, J&J is entitled to a presumption that the products at issue are free from any defect or defective condition as the plans or design for the products at issue or the methods and techniques of manufacturing, inspecting, and testing the products at issue were in conformity with government standards established for the industry that were in existence at the time the plans or designs for the products at issue or the methods and techniques of manufacturing, inspecting, and testing the products at issue were adopted.

### **NINETEENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred, in whole or in part, by the deference that federal and state constitutional law and federal and state common law give to discretionary actions by the FDA under the Federal Food, Drug & Cosmetic Act, 21 U.S.C. § 301 et seq., and regulations promulgated thereunder.

### **TWENTIETH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are governed and barred, in whole or in part, by Sections 2, 4, and 6 of The Restatement (Third) of Torts (including the comments thereto) because J&J complied with all applicable statutes and with the requirements and regulations of the FDA.

### **TWENTY-FIRST DEFENSE**

Any claims by Third Party Plaintiff or Plaintiffs relating to alleged communications with regulatory agencies in the United States government are barred in whole or in part by operation of applicable law, including the First Amendment rights of J&J to petition the government.

**TWENTY-SECOND DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims regarding warnings and labeling are barred in whole or in part by the doctrine of primary jurisdiction, in that the FDA is charged under the law with determining the content of warnings and labeling for medical devices.

**TWENTY-THIRD DEFENSE**

Third Party Plaintiff and Plaintiffs cannot state a claim with regard to warnings and labeling for medical devices because the remedy sought by Third Party Plaintiff is subject to the exclusive regulation of FDA.

**TWENTY-FOURTH DEFENSE**

All claims for punitive damages are barred because the products at issue were manufactured and labeled in accordance with the terms of FDA's clearance of the products at issue.

**TWENTY-FIFTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part by Third Party Plaintiff's and Plaintiffs' failure to assert a safer design for any of the products at issue.

#### **TWENTY-SIXTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part because the products at issue provided a benefit to users of such products and greatly outweighed any risk created by using such products, any risk could not have been avoided through the use of the highest standards of scientific and technical knowledge available at the time, the benefit provided to users could not be achieved in another manner with less risk, and adequate warnings concerning the risk were provided.

#### **TWENTY-SEVENTH DEFENSE**

J&J made no express or implied representations or warranties of any kind to Plaintiff or Third Party Plaintiff, nor did Plaintiff or Third Party Plaintiff rely on any representations or warranties made by J&J to others. To the extent Plaintiff or Third Party Plaintiff relied upon any representations or warranties, such reliance was unjustified.

#### **TWENTY-EIGHTH DEFENSE**

Any express or implied warranties alleged to have been made by J&J were disclaimed.

### **TWENTY-NINTH DEFENSE**

J&J did not make nor did it breach any express or implied warranties and/or breach any warranties created by law. To the extent that Third Party Plaintiff or Plaintiffs rely on any theory of breach of warranty, such claims are barred by applicable law, by the lack of privity between Third Party Plaintiff and Plaintiffs and J&J, and/or by Third Party Plaintiff's and Plaintiffs' failure to give J&J timely notice of the alleged breach of warranty and an opportunity to cure. J&J further specifically pleads as to any breach of warranty claim all affirmative defenses available to J&J under the Uniform Commercial Code, as enacted in the State of Connecticut or any other state whose law is deemed to apply in this case, and under the common law principles of any state whose law is deemed to apply in this case.

### **THIRTIETH DEFENSE**

J&J specifically pleads as to any claim alleging a violation of consumer protection laws, all affirmative defenses available to J&J under the rules and statutes of any state whose law is deemed to apply in this case, and under the common law principles of any state whose law is deemed to apply in this case.

### **THIRTY-FIRST DEFENSE**

The injuries and damages allegedly suffered in this action, which are denied, were not foreseeable to J&J given the state of scientific knowledge and state of the art at the time of the alleged injuries. At all times relevant, the products at issue conformed to state-of-the-art specifications and state-of-scientific knowledge for such products at that time, as well as all applicable statutes and regulations, including those of FDA.

### **THIRTY-SECOND DEFENSE**

Third Party Plaintiff and Plaintiffs knowingly and voluntarily assumed any and all risks associated with the use of the products at issue in this case and thus the “last clear chance” and assumption of the risk doctrines bar in whole or in part the damages that Third Party Plaintiff seek to recover herein.

### **THIRTY-THIRD DEFENSE**

Third Party Plaintiff’s and Plaintiffs’ claims are barred, in whole or in part, because J&J acted in good faith at all relevant times and gave adequate warnings of all known or reasonably knowable risks associated with the use of its products.

**THIRTY-FOURTH DEFENSE**

At all relevant times herein, the products in question were manufactured and distributed with proper warnings, information, cautions, and instructions in conformity with generally recognized and prevailing standards in existence at the time.

**THIRTY-FIFTH DEFENSE**

All inadequate warning claims are barred because the alleged risk of which Third Party Plaintiff and Plaintiffs complain is open, obvious, and/or a matter of common knowledge.

**THIRTY-SIXTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part because the products at issue were consistent with and/or exceeded consumer expectations.

**THIRTY-SEVENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part because the products at issue were at all times properly prepared, packaged, and distributed, and were not defective or unreasonably dangerous.

**THIRTY-EIGHTH DEFENSE**

Adequate and complete warnings and instructions were provided with the products at issue. The products at issue were neither defective nor unreasonably dangerous when used according to their Instructions for Use.

**THIRTY-NINTH DEFENSE**

At all relevant times, the warnings and instructions accompanying the products at issue were governed by and conformed to applicable federal statutes, rules and regulations; therefore, warnings and instructions relating to the products were presumptively adequate.

**FORTIETH DEFENSE**

Third Party Plaintiff's and Plaintiffs' causes of action are barred by the learned intermediary doctrine.

**FORTY-FIRST DEFENSE**

J&J is not liable to Third Party Plaintiff or to Plaintiffs' because the end users of the products at issue, Plaintiff's physician(s), were sophisticated users of the products.

**FORTY-SECOND DEFENSE**

J&J states that the sole proximate cause of the injuries and/or damages alleged by Third Party Plaintiff and Plaintiffs was the actions, omissions, or negligence of a person or

persons, other than J&J, for whose actions, omissions, or negligence J&J is in no way liable. Third Party Plaintiff is not, therefore, entitled to recover from J&J in this action. As to Third Party Plaintiff or to any other entity or person whose conduct or intervening negligence resulted in the alleged injuries and/or damages of Third Party Plaintiff, if any, J&J expressly pleads the doctrines of assumption of risk, contributory negligence, comparative fault and/or comparative negligence, as well as the provisions of any applicable comparative fault and/or comparative negligence and/or contributory negligence statute, law or policy of the applicable states.

#### **FORTY-THIRD DEFENSE**

The injuries and damages allegedly suffered in this action, which are denied, may have been caused, in whole or in part, by Third Party Plaintiff's and Plaintiffs' own fault, which bars or proportionately reduces J&J's liability, if any, for Plaintiff's alleged damages.

#### **FORTY-FOURTH DEFENSE**

Third Party Plaintiff and Plaintiffs' voluntarily and unreasonably chose to encounter known dangers.

**FORTY-FIFTH DEFENSE**

The liability of J&J, if any, for Third Party Plaintiff's and Plaintiffs' non-economic loss must be apportioned in accordance with the provisions of the law of the applicable states.

**FORTY-SIXTH DEFENSE**

In the event J&J is held liable to Third Party Plaintiff, which liability is expressly denied, and any other co-defendants are also held liable, J&J is entitled to a percentage contribution of the total liability from said co-defendants or responsible parties in accordance with principles of equitable indemnity and comparative contribution and pursuant to any applicable contribution or apportionment statute, law or policy of the applicable states.

**FORTY-SEVENTH DEFENSE**

There is no causal relationship between J&J's conduct and the injuries and damages alleged by Third Party Plaintiff and Plaintiffs.

**FORTY-EIGHTH DEFENSE**

At all times mentioned herein, Third Party Plaintiff and Plaintiffs were negligent, careless and at fault and conducted themselves so as to contribute substantially to her alleged injuries, losses, and damages. Said negligence, carelessness and fault of Third Party Plaintiff

and Plaintiffs bars in whole or in part the damages which Third Party Plaintiff seeks to recover herein.

**FORTY-NINTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' alleged injuries, losses, or damages attributable to the use of the products at issue in this case, if any, were solely caused by and attributable to the abnormal, unforeseeable, unintended, unreasonable, and improper use or misuse which was made of said products.

**FIFTIETH DEFENSE**

Third Party Plaintiff's and Plaintiffs' alleged injuries, losses, or damages attributable to the use of the products at issue in this case, if any, were not legally caused by the products at issue, but instead were legally caused by intervening and superseding causes or circumstances.

**FIFTY-FIRST DEFENSE**

Third Party Plaintiff's and Plaintiffs' alleged injuries, losses, or damages attributable to the products at issue in this case, if any, were caused by the acts or omissions of third parties for which J&J has no legal responsibility.

#### **FIFTY-SECOND DEFENSE**

J&J expressly denies any third party engaging in the acts alleged by Third Party Plaintiff and Plaintiffs was acting as J&J's agent or servant, at the instruction of J&J, or within its control. Therefore, Third Party Plaintiff's and Plaintiffs' claims, to the extent they seek to recover for the acts or omissions of such third parties, are barred in whole or in part as a matter of law.

#### **FIFTY-THIRD DEFENSE**

Third Party Plaintiff's and Plaintiffs' causes of action are barred because the injuries and damages allegedly suffered in this action, which are denied, were due to an allergic, idiosyncratic or idiopathic reaction to the products at issue in this case, or by an unforeseeable illness, unavoidable accident, or preexisting condition, and/or another unrelated medical, genetic or environmental condition, disease or illness, without any negligence or culpable conduct by J&J.

#### **FIFTY-FOURTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are or may be barred by its failure to comply with conditions precedent to their right to recover.

**FIFTY-FIFTH DEFENSE**

Third Party Plaintiff's c and Plaintiffs' claims are barred, in whole or in part, by the doctrine of avoidable consequences.

**FIFTY-SIXTH DEFENSE**

The claims of Third Party Plaintiff and Plaintiffs may be barred, in whole or in part, from recovery, due to spoliation of evidence and the failure to preserve evidence necessary to the determination of the claim.

**FIFTY-SEVENTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims against J&J are barred by the doctrines of equitable estoppel, laches, consent, waiver, informed consent, release, unclean hands, res judicata, and collateral estoppel. Additionally, if Third Party Plaintiff had or has filed bankruptcy during the relevant time period of the events alleged in the Third Party Complaint or files for bankruptcy at some point in the future, the claims of Third Party Plaintiff may be "property of the bankruptcy estate" which should be prosecuted by the bankruptcy trustee rather than Third Party Plaintiff, or, if not disclosed by Third Party Plaintiff on the schedules and/or statement of financial affairs, may be barred by the doctrine of judicial estoppel.

**FIFTY-EIGHTH DEFENSE**

Some or all of Third Party Plaintiff's and Plaintiffs' claims may be barred by the statutes of limitations, prescription, and/or statutes of repose of the applicable states.

**FIFTY-NINTH DEFENSE**

To the extent Third Party Plaintiff's and Plaintiffs' claims are based on alleged misrepresentations or omissions made to the FDA, such claims are barred by Buckman Co. v. Plaintiff's Legal Committee, 531 U.S. 341 (2001).

**SIXTIETH DEFENSE**

Third Party Plaintiff's and Plaintiffs' alleged damages, if any, are barred in whole or in part by failure to mitigate such damages.

**SIXTY-FIRST DEFENSE**

The sale, labeling and marketing of the products at issue in this litigation is not, and was not, likely to mislead or deceive the public.

**SIXTY-SECOND DEFENSE**

Any strict liability cause of action for relief is subject to the limitations set forth in Restatement (Second) of Torts, Section 402A, comment k.

**SIXTY-THIRD DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part under Section 402A, comments j and k of the Restatement (Second) of Torts.

**SIXTY-FOURTH DEFENSE**

Third Party Plaintiff's c and Plaintiffs' laims are barred, in whole or in part, to the extent Third Party Plaintiff or Plaintiffs' has released, settled, entered into an accord and satisfaction or otherwise compromised her claims by any means.

**SIXTY-FIFTH DEFENSE**

Any recovery by Third Party Plaintiff or Plaintiffs' must be reduced or offset by all amounts paid, payable by, or available from collateral sources.

**SIXTY-SIXTH DEFENSE**

Third Party Plaintiff's Complaint and Plaintiffs' underlying complaint fail to state a claim upon which relief can be granted as to costs, attorney's fees, expert fees, expenses, pre-judgment interest, post-judgment interest, refund, rescission, unjust enrichment, disgorgement or restitution.

**SIXTY-SEVENTH DEFENSE**

The Third Party Complaint fails to state facts sufficient to entitle Third Party Plaintiff to an award of punitive damages.

**SIXTY-EIGHTH DEFENSE**

No act or omission of J&J was malicious, oppressive, willful, wanton, reckless, or grossly negligent, and therefore any award of punitive damages is barred.

**SIXTY-NINTH DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims for pain and suffering are barred because they violate J&J's rights to procedural and substantive due process and equal protection as guaranteed by the Constitutions of the United States and the applicable states.

**SEVENTIETH DEFENSE**

The imposition of punitive or exemplary damages would violate J&J's constitutional rights, including but not limited to those under the due process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, and the equivalent or correlative applicable provisions in the Constitutions, common law, public policy, applicable statutes and court rules of the applicable states to these amendments and the excessive fines clause in the Eighth Amendment to the Constitution of the United States and the double

jeopardy clause in the Fifth Amendment to the Constitution of the United States. To the extent that punitive damages awarded to any Plaintiff are (1) imposed by a jury that is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award; is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment; is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidious discriminatory characteristics, including the corporate status, wealth, or state of residence of defendant; or is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible; (2) are not subject to independent de novo review by the trial and appellate courts for reasonableness and the furtherance of legitimate purposes on the basis of objective legal standards and in conformity with the United States Constitution as amended or any applicable State constitution as amended; (3) imposed where state law is impermissibly vague, imprecise, or inconsistent; (4) subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount; or (5) imposed on the basis of anything other than J&J's conduct within the State where each Plaintiff resides,

or in any other way subject J&J to impermissible multiple punishment for the same alleged wrong.

**SEVENTY-FIRST DEFENSE**

J&J specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards as applied to the state and federal courts of the applicable states under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**SEVENTY-FIFTH DEFENSE**

With respect to all claims for punitive damages, J&J specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards that arise under *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408 (2003); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007), and their progeny, as applied by the federal courts of appeals, together with all such standards applicable under any other state's law.

**SEVENTY-SIXTH DEFENSE**

J&J asserts the provisions of all applicable statutory caps on damages of any sort, including punitive, non-economic or exemplary damages, under the laws of the applicable states.

**SEVENTY-SEVENTH DEFENSE**

J&J specifically pleads as to all claims for punitive damages, all affirmative defenses available to J&J under the rules and statutes of any state whose law is deemed to apply in this case, and under any common law principles of any state whose law is deemed to apply in this case.

**SEVENTY-EIGHTH DEFENSE**

J&J specifically pleads as to all strict liability claims, all affirmative defenses available to J&J under the rules and statutes of any state whose law is deemed to apply in this case, and under any common law principles of any state whose law is deemed to apply in this case.

**SEVENTY-NINTH DEFENSE**

J&J specifically pleads as to as to all negligence claims, including separate negligence claims under Connecticut law, all affirmative defenses available to J&J under the rules and

statutes of any state whose law is deemed to apply in this case, and under any common law principles of any state whose law is deemed to apply in this case.

**EIGHTIETH DEFENSE**

J&J hereby gives notice that it intends to rely upon and incorporate by reference any affirmative defenses that may be asserted by any co-defendant in this lawsuit.

**EIGHTY-FIRST DEFENSE**

J&J reserves the right to assert any additional defenses and matters in avoidance, which may be disclosed during the course of additional investigation and discovery.

**EIGHTY-SECOND DEFENSE**

Third Party Plaintiff's and Plaintiffs' claims are barred in whole or in part because the products were altered or modified within the meaning of General Statutes § 52-572p.

WHEREFORE, Ethicon denies that it is liable to Third Party Plaintiff or to Plaintiffs for damages or any other relief requested in the “Prayer for Relief” section of the Third Party Complaint, including the paragraph beginning “WHEREFORE” and subparagraphs (1)-(3) thereto; J&J prays that:

- (1) Third Party Plaintiff take nothing by reason of its Third Party Complaint;
- (2) the Third Party Complaint be dismissed in its entirety and that a Judgment against Third Party Plaintiff and in favor of J&J be entered;
- (3) J&J be awarded its costs and expenses; and
- (4) this Court award J&J such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THIRD PARTY DEFENDANT,  
JOHNSON & JOHNSON

By /s/Christopher R. Drury

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**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that on October 15, 2015, a copy of the foregoing THIRD PARTY DEFENDANT JOHNSON & JOHNSON'S ANSWER AND SPECIAL DEFENSES was sent via email to the following counsel of record:

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