

FEDERAL COURT OF AUSTRALIA

Kathryn Gill & Ors v Ethicon Sàrl, Ethicon, Inc. and Johnson & Johnson Medical Pty
Ltd NSD 1590 of 2012

CLAIMANT REGISTRATION NOTICE

Pelvic Mesh and Tape Class Action

1. This notice is important

This notice explains the class action which is being conducted in the Federal Court of Australia.

If you or someone you know suffered a complication as a result of a Mesh or Tape Implant then you should read this notice carefully.

Any person who is in the class affected by the action (a **group member**) and who wishes to claim compensation for injury, loss or damage from any settlement of this proceeding, must register their claim according to the procedure described below.

If there is anything in it that you do not understand, seek legal advice. **Any questions you have concerning this notice should not be directed to the Court.**

2. What is a class action?

A class action is a court case in which one or more people (the **Applicants**) sue on behalf of all people who fit the definition of a “group member” set out in the Court papers filed in the proceeding against one or more other persons (the **Respondents**).

The Applicants do not need to name each group member, or obtain their consent to bring the action on their behalf. A person who fits the definition of “group member” will be bound by the result of the class action, as if they had started the proceeding themselves, unless they have opted out of the proceeding.

A binding result can happen in two ways, being either a judgment following a trial, or a settlement at any time that is approved by the Court. If the class action proceeds to judgment and the judgment is favourable to group members, they will be entitled to share in the judgment subject to an assessment of their loss and damage and whether an extension of time is required.

If the class action proceeds to judgment and the judgment is unfavourable to group members, group members will not be entitled to any damages.

If the class action settles, group members will only be entitled to share in the settlement if they have registered their claim in accordance with this notice.

Regardless of the outcome of the class action and whether it proceeds to judgment or settles, group members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondents in other legal proceedings, unless they have opted out.

3. What is the Pelvic Mesh and Tape Class Action about?

A class action has been commenced in the Federal Court of Australia by three Applicants Kathryn Gill, Diane Dawson and Ann Sanders against Ethicon Sàrl (the **First Respondent**), Ethicon, Inc. (the **Second Respondent**) and Johnson & Johnson Medical Pty Limited (**JJM Australia**) (the **Third Respondent**).

The class action arises out of the use of pelvic Mesh and Tape Implants (**Implants**) manufactured by Ethicon Sàrl or Ethicon, Inc. and distributed in Australia by JJM Australia.

The Applicants' allegations are set out in the current Statement of Claim in Federal Court Proceeding NSD 1590 of 2012. The allegations in this class action relate to the following implants:

1. the Gynecare Prolift Total, Anterior and Posterior Pelvic Floor Repair System;
2. the Gynecare Prosima Anterior, Posterior and Combined Pelvic Floor Repair System;
3. the Gynecare Prolift +M Total, Anterior and Posterior Pelvic Floor Repair System;
4. the the Gynecare Gynemesh PS implants available in sheets of 10 x 15 cm and 25 x 25 cm;
5. the TVT Tension-Free Vaginal Tape System;
6. the TVT Abbrevio Continence System;
7. the TVT Obturator System; and
8. the TVT Secur System.
9. the TVT Exact System.

The Applicants claim that the Implants were and are defective, not fit for a particular or disclosed purpose, not of merchantable quality, not of acceptable quality and were attended by misleading and deceptive conduct in contravention of the *Trade Practices Act 1974* (Cth) and the *Competition and Consumer Act 2010* (Cth).

The Applicants also allege that the Respondents were negligent in their design, manufacture, marketing and supply of the Implants, in failing to give certain warnings in connection with the Implants, in their testing of the Implants and in their post market surveillance of the Implants.

4. Are you a “group member”?

You are a group member if:

- (a) you had surgery performed on you in Australia to implant one or more of the Mesh or Tape Implants listed above before 4 July 2017;
- (b) you were supplied with one or more of the Mesh or Tape Implants listed above for the purpose of treating pelvic organ prolapse and/or stress urinary incontinence;
- (c) you suffered complications before 4 July 2017; and
- (d) you have not previously opted out of the proceeding.

If you are unsure whether you are a group member you should contact Shine Lawyers on **1800 884 139**, or email prolapsemesh@shine.com.au or seek your own legal advice immediately.

As a group member, you will be bound by any judgment of the class action. If the Applicants are successful, you may be able to make a claim for damages. If the Applicants are unsuccessful, you will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondents in other legal proceedings.

If you wish to share in any settlement of the class action, you will need to register your claim in accordance with the procedure explained below. If you do not register your claim, you will not be able to share in any settlement if the Court approves a settlement of the class action.

5. Group members must register to make certain claims

If you are a group member and you wish to claim compensation from any settlement of the class action for any injury, loss or damage that you have suffered as a result of a Mesh or Tape Implant, you must:

- (a) have already retained Shine Lawyers to act on your behalf; or
- (b) register your claim in accordance with this notice.

If you hold a power of attorney for a person who is a group member, or if you are registering on behalf of a deceased persons' estate, you must identify the person who underwent surgery to insert a Mesh or Tape Implant on the Claimant Registration Form.

Clients of Shine Lawyers (for this class action) will automatically be registered. You are a client only if you have signed and returned a Costs Agreement. Shine Lawyers only have four (4) clients who have signed costs agreements. If you have not returned a Costs Agreement, then you are not a client, even if you have received regular correspondence from Shine Lawyers regarding the class action. Please contact Shine Lawyers if you are not sure whether you are a client, or you are a client but wish to check which types of claims you have instructed Shine Lawyers to make for you.

If you have registered as a group member with Shine Lawyers but you are not a client of Shine Lawyers, you must register your claim in accordance with this notice. You do not become a client of Shine Lawyers simply by registering your claim(s). Registration is different from becoming a client.

If you are a group member and you wish to register your claim, you must do so by completing the attached Claimant Registration Form and returning it to Shine Lawyers **BEFORE 4:00pm on 9 April 2020**.

You may also complete the form online at:

www.shine.com.au/tape-mesh-class-action ; or

www.meshclassaction.com.au

You will not be permitted to complete the form online after **4:00pm on 9 April 2020**.

Failure to register a claim, either by completing the form online or in hardcopy and returning it to Shine Lawyers, by this deadline will have serious consequences. You will remain a group member if the class action proceeds to a judgment and be entitled to claim a share in the judgment if it is favourable to the Applicants. You will not, however, be able to share in any settlement of the class action that is approved by the Court.

You will not become liable for legal costs just by registering your claim. If the class action is successful and you recover compensation, the Federal Court will be asked to order that some of that compensation be used to reimburse the Applicants for the costs incurred in obtaining the successful outcome for the benefit of group members.

You may seek advice or engage a solicitor to assist you to decide whether to register your claim.

6. What happens if a claim is not registered?

If you have a claim for injury (whether physical or psychiatric), loss or damage (including economic loss such as lost wages from time off work or medical expenses) contributed to by a Mesh or Tape Implant that is the subject of the class action and you do not register your claim by the deadline, your claim will be excluded from any settlement of the class action.

If you have registered your claim and a settlement is proposed, notices like this one will be mailed out and published in on the internet and via social media. You will have an opportunity to oppose the settlement. If the settlement is ultimately approved by the Court, you will be bound by the settlement.

7. Where can you obtain more information?

If you want more information about the claims being made in the Pelvic Mesh and Tape Class Action, copies of the Applicants' current "Statement of Claim" and the Respondents' "Defence" can be obtained by:

- (a) downloading them from www.shine.com.au/tape-mesh-class-action or www.meshclassaction.com.au;
- (b) contacting Shine Lawyers on **1800 884 139** or emailing prolapsemesh@shine.com.au;
- (c) by contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) where arrangements have been made with the Court, inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions/documents#nsd1590of2012>

Please consider the contents of this notice carefully. If you have questions, you should contact Shine Lawyers on **1800 884 139** or email prolapsemesh@shine.com.au or seek your own legal advice immediately.

8. Where should you return the completed Claimant Registration Forms?

Completed Claimant Registration Forms must be completed online by **4:00pm** on **9 April 2020** or returned to Shine Lawyers by **4.00pm** on **9 April 2020** either via email to prolapsemesh@shine.com.au or via post to:

Shine Lawyers, PO Box 12011, George Street QLD 4003

Please consider the above matters carefully and be sure that you meet the deadline to register any personal injury claims you wish to make.