

IN THE FEDERAL COURT OF AUSTRALIA

Lisa Talbot v Ethicon Sarl & Ors (NSD310/2021)

**Pelvic Mesh Class Action
OPT OUT AND
CLAIMANT REGISTRATION NOTICE**

**THIS IS AN IMPORTANT NOTICE ISSUED BY ORDER OF THE FEDERAL
COURT OF AUSTRALIA**

This notice contains important information concerning: (a) your right to opt out of this class action, including a deadline for you to exercise this right should you wish to do so; and (b) for those group members who do not wish to opt out of this class action, the process for registering your claim for compensation (you are not obliged to register, however, it is requested that you register to assist with mediation of the class action). This notice sets out three options for you to take in relation to the class action:

- 1. Register your claim for compensation. In order to assist the Applicant to participate in a mediation of the class action effectively, registration is requested by 29 October 2021.**
- 2. Complete an ‘opt out’ notice on or before 29 October 2021. By doing this you will lose any right to any compensation available in this class action, but you will not be prevented from starting your own proceeding to try and get compensation yourself (subject to applicable time limits).**
- 3. Do nothing. You will not lose any rights by choosing this option, however, declining to register at this time may adversely impact the Applicant’s ability to negotiate a settlement of this proceeding on behalf of the class at a mediation to commence later this year. If you do not register now and the class action is successful (by way of judgment or settlement), you will need to complete this registration process at a later date in order to claim compensation.**

A. WHY IS THIS NOTICE IMPORTANT?

- 1. A class action (*Lisa Talbot v Ethicon Sarl & Ors (NSD310/2021)*) (the **Second Ethicon Class Action**) has been commenced in the Federal Court of Australia by Lisa Talbot on behalf of group members who have been implanted with an Ethicon pelvic mesh implant against Ethicon Sàrl, Ethicon, Inc. and Johnson & Johnson Medical Pty Limited. This class action arises out of allegations that certain pelvic mesh implants had a risk of causing complications in women who were implanted with those devices and that there were not adequate warnings of the risks associated with the use of those devices.**
- 2. The class action is being defended.**

3. The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the actions are brought and may be affected by the action.
4. You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

B. WHAT IS A CLASS ACTION?

5. A class action is a legal action that is brought by one or more persons (the **Applicant(s)**) on their own behalf and also on behalf of a class of people (**group members**), against one or more other persons or entities (the **Respondents**) where the Applicant(s) and the group members have similar claims against the Respondents. Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant(s) are responsible for the costs.
6. The Applicant(s) 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 a “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.
7. A binding result can happen in two ways, being from a *judgment* following a trial, or a *settlement* at any time that is approved by the Court. If there is a judgment or a settlement of a class action, 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.
8. Group members should note that:
 - (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant(s) and group members. Unless those decisions are successfully appealed they bind the Applicant(s), group members and the Respondents. Importantly, if there are other proceedings between a group member and the Respondents, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - (b) in a *settlement* of a class action, where the settlement provides for compensation to group members it is likely to extinguish *all* rights to compensation which a group member might have against the Respondents which arise in any way out of the events which are the subject-matter of the class action.

9. If you consider that you have claims against one or more of the Respondents which are based on your individual circumstances or otherwise additional to the claims described in this class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

C. WHAT IS THE SECOND ETHICON CLASS ACTION ABOUT?

10. The class action has been commenced in the Federal Court of Australia against entities alleged to have designed, manufactured, supplied or marketed certain pelvic mesh implants intended to treat women experiencing prolapse or stress urinary incontinence (Pelvic Mesh Implants).
11. The Applicant claims that the Pelvic Mesh Implants were defective and not of a merchantable or acceptable quality under the *Trade Practices Act 1974* (Cth) and the *Competition and Consumer Act 2010* (Cth). The Applicant also alleges that the Respondents were negligent in their design, manufacture and supply of the Pelvic Mesh Implants, including by failing to give warnings about the risks associated with the Pelvic Mesh Implants and inadequately evaluating the safety of the Pelvic Mesh Implants.
12. The class action has been commenced by the Applicant, who was implanted with a Pelvic Mesh Implant that is alleged to have been designed, manufactured, supplied or distributed by one or more of the Respondents.
13. Ethicon Sàrl, Ethicon, Inc. and Johnson & Johnson Medical Pty Limited are the Respondents to the Second Ethicon Class Action.

D. ARE YOU A GROUP MEMBER IN THE SECOND ETHICON CLASS ACTION?

14. You may be a group member in the Second Ethicon Class Action if you:
- a. had surgery in Australia to implant one of the following Pelvic Mesh Implants:
 - i. Gynecare Prolift Total, Anterior and Posterior Pelvic Floor Repair Systems;
 - ii. Gynecare Prosima Anterior, Posterior and Combined Pelvic Floor Repair Systems;
 - iii. Gynecare + M Total Anterior and Posterior Pelvic floor Repair Systems;
 - iv. Gynecare Gynemesh PS implants available in sheets of 10 x 15 cm and 25 x 25 cm;
 - v. TVT Tension-free Vaginal Tape System;
 - vi. TVT Abbrevo Continence System;
 - vii. TVT Obturator System;

- viii. TVT Secur System;
- ix. TVT Exact System; and

b. did not suffer one or more of the Implant Complications and/or Implant Removal Complications referred to in paragraphs 10 and 11 of the Amended Statement of Claim until after 4 July 2017. A copy of the Amended Statement of Claim is accessible via Shine Lawyers' website (<https://www.shine.com.au/service/class-actions/johnson-johnson-ethicon-class-action>).

15. If you are unsure whether you are a group member in the Second Ethicon Class Action then you should visit Shine Lawyers' website (<https://www.shine.com.au/service/class-actions/prolapse-mesh-class-action>) or telephone **1800 884 139** for further information.

E. WHAT DOES IT MEAN TO 'OPT OUT'?

16. The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action.

17. Opting out of the Second Ethicon Class Action will have certain consequences which include that:

(a) you will preserve any rights that you may have to bring your own separate legal proceedings against the Respondent for the same or similar claims in relation to one or more of the Pelvic Mesh Implants that are the subject of the Second Ethicon Class Action;

(b) you will not be permitted to share in any proposed settlement of or judgment in the Second Ethicon Class Action; and

(c) you will lose the rights that you have as a group member. If you do not understand your rights as a group member, you should seek legal advice.

18. An explanation of how group members are able to opt out is found below in the section headed "*How can you opt out of the class action?*".

F. WILL YOU BE LIABLE FOR LEGAL COSTS IF YOU REMAIN A GROUP MEMBER?

19. You will **not become liable for any legal costs** simply by remaining a group member for the determination of the common questions. However:

(a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Shine Lawyers in the Second Ethicon Class Action or other lawyers, to do that work for you. A copy of the

terms on which Shine Lawyers are acting in the Second Ethicon Class Action may be obtained from them on the number shown below;

- (b) if any monetary compensation becomes payable to you as a result of any order, judgment or settlement in the Second Ethicon Class Action, the Court may make an order that some of that compensation be used to pay a share of the costs which have been incurred by the Applicant in running the class action which are not able to be recovered from the Respondents; and
 - (c) class actions are often settled out of court. If this occurs in the Second Ethicon Class Action, and you are a group member, you may be able to claim from the settlement amount without retaining a lawyer.
20. If the Second Ethicon Class Action is unsuccessful, group members will have no liability to pay any legal costs.

G. WHAT WILL HAPPEN IF YOU CHOOSE TO REMAIN A GROUP MEMBER?

- 21. Unless you opt out, you will be bound by any settlement or judgment in the Second Ethicon Class Action.
- 22. If the Second Ethicon Class Action is successful and you are a group member in that proceeding, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and group members, although you may have to satisfy certain conditions before your entitlement arises.
- 23. If the Second Ethicon Class Action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the Respondents to the Second Ethicon Class Action.

H. WHAT GROUP MEMBERS NEED TO DO

You should read this notice carefully. If there is anything in it that you do not understand, you should seek legal advice.

(a) *How can you remain a group member?*

- 24. **If you wish to remain** a group member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceedings on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the group members.
- 25. *However*, you are invited to **register your interest as a group member by completing the Claimant Registration Form by 29 October 2021**. This will enable future notices about the class action to be sent to your preferred address and information can be collected which

may assist the Court and the parties to understand the claims of group members, including the amount of compensation, if any, that group members may be entitled to receive in a Pelvic Mesh Class Action.

26. There is no requirement that you register in order to remain a group member. If you wish to register, the Claimant Registration Form is annexed to this notice.

(b) How can you opt out of the class action?

27. **If you do not wish to remain** a group member in the Second Ethicon Class Action you must opt out of the proceeding. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in that proceeding, but you will be at liberty to bring your own claim against the Respondent(s), provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent(s), you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

28. **If you wish to opt out** of the Second Ethicon Class Action you **must** do so by completing an "**opt out notice**" in the form annexed to this notice. You must return the complete opt out notice to the Registrar of the Federal Court of Australia at the postal address on the form, or electronically via email to pelvicmesh@fedcourt.gov.au (please include in the subject line of the email the words: "*Opt Out Notice NSD310/2021*"). You can complete the form electronically by visiting Shine Lawyers' website (<https://www.shine.com.au/service/class-actions/prolapse-mesh-class-action>).

IMPORTANT: the opt out notice must reach the Registrar by no later than 4.00pm on 29 October 2021, otherwise it will not be effective.

29. You should submit the opt out notice if you qualify as a group member and you wish to opt out of the Second Ethicon Class Action.
30. If you do not meet the criteria set out in the section headed "**ARE YOU A GROUP MEMBER IN THE SECOND ETHICON CLASS ACTION?**" above, you are not a group member and you do not need to take any step to opt out of the Second Ethicon Class Action.
31. Each group member seeking to opt out should fill out a separate form.

I. WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS?

32. Copies of relevant documents, including the amended originating application and the amended statement of claim may be obtained by downloading them from the website of Shine Lawyers (www.shine.com.au/service/class-actions/prolapse-mesh-class-action).

33. Alternatively, you may contact:

Shine Lawyers

Level 13, 160 Ann Street

Brisbane QLD 4000

prolapsemesh@shine.com.au

1800 884 139

Opt out notice

Federal Court of Australia
District Registry: New South Wales
Division: General

No. 310 of 2021

Lisa Talbot

Applicant

Ethicon Sarl and Ors

Respondents

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building, Queens Square
Sydney NSW 2000

OR BY EMAIL: pelvicmesh@fedcourt.gov.au

..... (print name), a group member in the Second
Ethicon Class Action (*Lisa Talbot v Ethicon Sarl & Ors* (NSD310/2021)), having been implanted with
..... on or about gives notice under section 33J of the *Federal Court
(implant) (date)*
of Australia Act 1976, that they are opting out of that representative proceeding.

Date:

.....
Signed by [Name]
[Insert capacity eg group member / Lawyer for the group member]

.....
Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____

IN THE FEDERAL COURT OF AUSTRALIA

Lisa Talbot v Ethicon Sarl & Ors (NSD310/2021)

PELVIC MESH CLASS ACTION**CLAIMANT REGISTRATION FORM**

IMPORTANT: This form deals with registering claims as part of the Second Ethicon Class Action.

There is a **DEADLINE** of **29 October 2021** to register a claim.

INTRODUCTION

You are being sent this form because you have been identified as a person who may be a group member in the Second Ethicon Class Action identified above.

You should read this Claimant Registration Form carefully.

If you wish to register your claim, please complete and return the Claimant Registration Form to Shine Lawyers at either the email or postal address above by **29 October 2021**. Alternatively, you can complete a Registration Form online at www.australianmeshclassaction.com.au. The solicitors for Ethicon will be entitled to view any Claimant Registration Form that you return. If you register now, you will not be required to register after any settlement of the proceeding in order to be entitled to receive any benefit under (or monetary compensation from) any settlement of the proceedings which is reached.

If you do not register your claim by the deadline, there is no settlement and the class action proceeds to judgment in favour of group members, you may be able to make a claim for damages.

COMPLETING THE CLAIMANT REGISTRATION NOTICE

Please complete this registration form if you have been implanted with an Ethicon Pelvic Mesh Implant for the treatment of stress urinary incontinence and, or, pelvic organ prolapse and wish to provide details of your claim for the consideration of the Court and the parties.

If you have previously completed a registration form as part of a class action known as *Gill & Ors v Ethicon Sarl & Ors* (**Gill proceeding**), you may need to register your claim again if you are a group member in the Second Ethicon Class Action. If you think you have incorrectly registered your claim in the Gill proceeding, you are invited to contact Shine Lawyers to discuss your claim.

If you are in doubt about whether you have suffered a complication, injury or damage as a result of receiving a Pelvic Mesh Implant please talk to your doctor or contact Shine Lawyers on **1800 884 139**, or at prolapsemesh@shine.com.au.

REGISTRATION

The person identified below REGISTERS their claim, or the claim of another (for example, if you are claiming on behalf of a deceased estate) for compensation in relation to the Second Ethicon Class Action.

PART A: PERSONAL DETAILS

GROUP MEMBER DETAILS:

Salutation (Ms / Miss / Mrs / Dr / Other)

Name

Address

Date of Birth (dd/mm/yyyy)

Email

Phone Number

Medicare Number

If the group member is deceased and this form is registering a deceased estate, please tick this box

CONTACT IF NOT GROUP MEMBER:

Relation to Group Member

Salutation (Ms / Miss / Mrs / Dr / Mr / Other)

Name

Address

Email

Phone Number

Completed forms must be returned so that they are **received** by Shine Lawyers before 4.00pm on **29 October 2021**.

Completed forms can be returned by emailing them to prolapsemesh@shine.com.au or by posting the form to:

Shine Lawyers, PO Box 12011, George Street QLD 4003.

A copy of the form can also be completed online at www.australianmeshclassaction.com.au.

If you have any questions please telephone Shine Lawyers on **1800 884 139**, or email us at prolapsemesh@shine.com.au.

PART B: IMPLANT DETAILS

If you are unable to complete any part of this section of the form because you do not know the answers to the questions, you may seek advice from your treating doctor or specialist or ask for assistance from Shine Lawyers.

If you received more than one implant, please provide the details of each implant you received.

PROLAPSE IMPLANT/S

Did you receive a Pelvic Mesh Implant to treat prolapse (including prolapse of the bladder, vagina, rectum or uterus)?

Yes

No

If you answered yes, and you know the name of the Pelvic Mesh Implant you received, please indicate which of the implants you received from the list below.

Pelvic Mesh Implant for treatment of prolapse manufactured by Ethicon:

GYNECARE PROLIFT Implant

GYNECARE PROLIFT +M Implant

GYNECARE PROSIMA Implant

GYNECARE GYNEMESH PS Implant

Date of implant surgery

Surgeon

Hospital

GP at time of implant surgery

Name of GP:

Name of practice:

Were you treated as a public or private patient?

Public

Private

If you were treated as a private patient, who was your private health insurer?

What was your private health membership number?

STRESS URINARY INCONTINENCE (SUI) IMPLANT/S

Did you receive a Pelvic Mesh Implant to treat stress urinary incontinence (SUI)?

- Yes No

If you answered yes, and you know the name of the Pelvic Mesh Implant you received, please indicate which of the implants you received from the list below.

Pelvic Mesh Implant for the treatment of SUI manufactured by Ethicon:

- GYNECARE TVT
- GYNECARE TVT Obturator
- GYNECARE TVT Exact
- GYNECARE TVT Abbrevo
- GYNECARE TVT Secur
-

Date of implant surgery

Surgeon

Hospital

GP at time of implant surgery

Name of GP:

Name of practice:

Were you treated as a public or private patient? Public Private

If you were treated as a private patient, who was your private health insurer?

What was your private health membership number?

END OF REGISTRATION FORM
