



SAN JOSE ■ SAN FRANCISCO

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Contact: Rich Robinson, Attorney July 31, 2013
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Woman's Bowel Stapled Shut by Doctor Wielding Defective Staple Gun

SAN JOSE -- Retired San Jose Police Officer Florence Kuhlmann, 59, had her bowel stapled shut by a surgeon using a defective staple gun, according to a complaint filed by the Alexander Law Group.

The complaint alleges defendants Johnson & Johnson, the Pleasanton Surgery Center, LLC and Rakhee N. Shah, M.D. of Pleasanton as the parties responsible for the devastating injuries that occurred on January 27, 2012 during hemorrhoid surgery at the Pleasanton Surgery Center.

The complaint states the staple gun was manufactured by Ethicon Endo-Surgery, LLC, a subsidiary of Johnson & Johnson.

"In the hands of Dr. Shah this staple gun caused lifetime injuries to Florence Kuhlmann," said attorney Richard Alexander.

The staple gun, labelled a Proximate PPH Procedure Set PPH03 by Ethicon Endo, was recalled on August 3, 2012, six months after Florence Kuhlmann's surgery.

The complaint alleges the manufacturer knew the dangers of the product, including "misfiring, incomplete firing strokes, and incomplete staple formation and the resulting consequences for many patients included sphincter dysfunction, rectal wall damage, sepsis, and bleeding."

"Florence has suffered unbelievably, starting with 21 days of emergency hospitalization, massive infection and major abdominal surgeries that resulted in a full laparotomy -- surgical opening of her complete abdomen -- and a colostomy," Alexander said. "She is plagued by external and internal scarring, continues to struggle with a deformed bowel, has been forced to wear a colostomy bag and has had multiple medical procedures attempting to restore her damaged bowel."

"A search of the FDA Manufacturer and User Device Experience internet database lists more than 750 adverse events, two deaths and over 150 serious injuries referencing this product. Between March, 2007 and June, 2012 there were nearly 100 cases involving injuries related to the firing of Ehticon-Endo's staple gun during an operation," said Alexander. "We believe this is the tip of the iceberg," he added.

"This staple gun should have been recalled long before Florence's surgery," said Alexander. "Florence Kuhlmann's life has been changed forever."

BY FAX

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard Alexander/David L. Crowe (48432/88188) ALEXANDER LAW GROUP, LLP 111 W. St. John Street, Suite 700 San Jose, CA 95113</p> <p>TELEPHONE NO: (408) 289-1776 FAX NO. (Optional): (408) 287-1776</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name): Plaintiffs, Florence Kuhlmann & John Perkins</p>	<p>FOR COURT USE ONLY FILED ALAMEDA COUNTY</p> <p>APR 16 2013</p> <p>CLERK OF THE SUPERIOR COURT By <u><i>Christa Rando</i></u> Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</p> <p>STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland CA, 94612 BRANCH NAME:</p>	
<p>PLAINTIFF: Florence Kuhlmann & John Perkins, wife and husband</p> <p>DEFENDANT: Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., Rakhee N. Shah, M.D., Pleasanton Surgery Center, LLC, &</p> <p><input checked="" type="checkbox"/> DOES 1 TO <u>40</u></p>	
<p>COMPLAINT—Personal Injury, Property Damage, Wrongful Death</p> <p><input type="checkbox"/> AMENDED (Number):</p> <p>Type (check all that apply):</p> <p><input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Products Liability, Medical Malpractice</p> <p><input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death</p> <p><input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):</p>	
<p>Jurisdiction (check all that apply):</p> <p><input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000</p> <p><input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)</p> <p><input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint</p> <p><input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p>	

CASE NUMBER:
13 675 753

1. Plaintiff (name or names): **Florence Kuhlmann & John Perkins**
alleges causes of action against defendant (name or names): **Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., Rakhee N. Shah, M.D., Pleasanton Surgery Center, LLC, and DOES 1-40**
2. This pleading, including attachments and exhibits, consists of the following number of pages: **8**
3. Each plaintiff named above is a competent adult
 - a. except plaintiff (name):
 - (1) a corporation qualified to do business in California
 - (2) an unincorporated entity (describe):
 - (3) a public entity (describe):
 - (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
 - (5) other (specify):
 - b. except plaintiff (name):
 - (1) a corporation qualified to do business in California
 - (2) an unincorporated entity (describe):
 - (3) a public entity (describe):
 - (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
 - (5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: <p style="text-align: center; margin: 0;">Kuhlmann & Perkins v. Johnson & Johnson, et al.</p>	CASE NUMBER:
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4. Plaintiff (name):
 is doing business under the fictitious name (specify):

 and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. except defendant (name): Johnson & Johnson
- (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- c. except defendant (name): Ethicon Endo-Surgery, LLC
- (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
 Limited Liability Company
- b. except defendant (name): Ethicon Endo-Surgery, Inc.
- (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- d. except defendant (name): Ethicon, Inc.
- (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. Doe defendants (specify Doe numbers): 1-20 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. Doe defendants (specify Doe numbers): 21-40 are persons whose capacities are unknown to plaintiff.
7. Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. at least one defendant now resides in its jurisdictional area.
 b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
 c. injury to person or damage to personal property occurred in its jurisdictional area.
 d. other (specify):
9. Plaintiff is required to comply with a claims statute, and
- a. has complied with applicable claims statutes, or
 b. is excused from complying because (specify):

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10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. Motor Vehicle
- b. General Negligence
- c. Intentional Tort
- d. Products Liability
- e. Premises Liability
- f. Other (specify):

Medical Malpractice and Exemplary Damages

11. Plaintiff has suffered

- a. wage loss
- b. loss of use of property
- c. hospital and medical expenses
- d. general damage
- e. property damage
- f. loss of earning capacity
- g. other damage (specify):

Plaintiff John Perkins, husband of Plaintiff Florence Kuhlmann, has suffered the loss of his wife's care, comfort, support, services, attention and society.

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Attachment 12.
- b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) compensatory damages
 - (2) punitive damages Punitive damages against all Defendants except Rakhee Shah M.D. & Pleasanton Surgery Center, LLC
- The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):
- (1) according to proof
 - (2) in the amount of: \$

15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

At all times, Defendants, and each of them, including both named and Doe Defendants: 1) were the agents, servants, employees and joint venturers of all other Defendants in the course and scope of such agency, employment and/or joint venture; and 2) were and are responsible for legally causing damage to Plaintiffs.

Date: April 15, 2013

Richard Alexander/David L. Crowe

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

Kuhlmann & Perkins v. Johnson & Johnson, et al.

CASE NUMBER:

1 ATTACHMENT 5

2

3 e. except defendant (name): Pleasanton Surgery Center, LLC

4 (5) other (specify): Limited Liability Company

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26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

27

This page may be used with any Judicial Council form or any other paper filed with the court.

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FIRST
CAUSE OF ACTION—Products Liability
Page 5

(number)

ATTACHMENT TO Complaint Cross - Complaint
 (Use a separate cause of action form for each cause of action.)

Plaintiff (name): Florence Kuhlmann & John Perkins, wife and husband

Prod. L-1. On or about (date): January 27, 2012 plaintiff was injured by the following product:
 Plaintiff Florence Kuhlmann suffered serious injuries during hemorrhoid surgery caused by a surgical instrument known as the "Proximate PPH Procedure Set #PPH03." On or about August 3, 2012, this dangerous and defective product was removed from the market by a Class I recall.

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being
 used in the manner intended by the defendants.
 used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a
 purchaser of the product. user of the product.
 bystander to the use of the product. other (specify): Medical patient on whom the product was used

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. **Count One—Strict liability** of the following defendants who

a. manufactured or assembled the product (names): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., and
 Does 1 to 40

b. designed and manufactured component parts supplied to the manufacturer (names): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc. &
 Does 1 to 40

c. sold the product to the public (names): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., and
 Does 1 to 40

Prod. L-5. **Count Two—Negligence** of the following defendants who owed a duty to plaintiff (names): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc. &
 Does 1 to 40

Prod. L-6. **Count Three—Breach of warranty** by the following defendants (names): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., and
 Does 1 to 40

a. who breached an implied warranty
 b. who breached an express warranty which was
 written oral

Prod. L-7. The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
 listed in Attachment-Prod. L-7 as follows:

Kuhlmann & Perkins v. Johnson & Johnson, et al.

SECOND CAUSE OF ACTION
Medical Malpractice Attachment to Judicial Council Complaint

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3 Plaintiffs Florence Kuhlmann and, her husband, John Perkins, complain of Defendants
4 Rakhee K. Shah, M.D., Pleasanton Surgery Center LLC and Does 1-40, and each of them, and
5 allege as an attachment to this Judicial Council Complaint as follows:

6 1. Plaintiffs incorporate by reference as though fully set forth paragraphs 1 through
7 and including 15 of the Complaint.

8 2. On or about January 25, 2013, pursuant to California Code of Civil Procedure
9 §364, Plaintiffs served notice of their intention to commence an action against Defendants
10 Rakhee N. Shah, M.D. and Pleasanton Surgery Center, LLC.

11 3. At all relevant times Defendant Rakhee N. Shah, M.D., was a physician and
12 surgeon, duly licensed to practice medicine and perform surgery in the State of California, with
13 offices in the County of Alameda and held herself out to possess that degree of skill, knowledge
14 and ability common to medical practitioners in this community.

15 4. At all relevant times Defendant Pleasanton Surgery Center, LLC, was a medical
16 facility, duly licensed to provide medical care and surgical services in the State of California,
17 with facilities in the County of Alameda, and represented that it possessed that degree of skill,
18 knowledge and ability common to such medical facilities in this community and that it was
19 "Dedicated to Providing the Highest Quality of Patient Care."

20 5. At all times herein mentioned, said Defendants, and each of them, represented to
21 and informed Plaintiff Florence Kuhlmann that all treatment and care rendered to her was, and
22 would be, in accordance with the customary and usual community standards ordinarily employed
23 by reputable physicians and medical facilities practicing under the same or similar
24 circumstances.
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26 *(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line*
27 *numbers): ***Item numbers TE****

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Kuhlmann & Perkins v. Johnson & Johnson, et al.

1 6. Prior to January 27, 2012, and continuing thereafter, Plaintiff Florence Kuhlmann
2 consulted and employed said Defendants, and each of them, to provide surgery for hemorrhoids,
3 and to do all things necessary and proper in connection with such surgical care.

4 7. Defendants entered into such employment individually, and by and through their
5 employees and agents, and undertook and agreed to do all of the things necessary and proper in
6 connection with their employment.

7 8. In rendering medical and surgical services to Plaintiff Florence Kuhlmann,
8 Defendants, and each of them, were under a duty to apply the degree of skill, knowledge and
9 care ordinarily exercised by other members of the medical profession and community under
10 similar circumstances.

11 9. On or about January 31, 2012, Plaintiffs first discovered that on or about January
12 27, 2012, Defendants, and each of them, negligently and carelessly performed hemorrhoid
13 surgery for Plaintiff Florence Kuhlmann through the use of instrumentalities and procedures,
14 which were under the sole and exclusive control and custody of these Defendants, stapled shut
15 her bowel to the rectal wall, closed off her intestine, and thereafter negligently and carelessly
16 provided post-surgical care.

17 10. As a direct, legal, and substantial cause of the negligence of Defendants, and each
18 of them, Plaintiff Florence Kuhlmann has suffered severe personal injuries, pain, suffering and
19 mental and emotional distress as a result of multiple surgeries, hospitalizations and procedures,
20 including without limitation, exploratory surgeries, a laparotomy, a colostomy, severe peritonitis,
21 rectal dilation, surgical releases of scar tissue and rectal constriction, and other necessary
22 medical care and treatment with continuing pain and suffering, all to Plaintiff's damage in an
23 amount in excess of the jurisdictional minimum of the Superior Court.

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26 *(Required for verified pleading)* The items on this page stated on information and belief are *(specify item numbers, not line*
27 *numbers)*: ***[item numbers TE***

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Exemplary Damages Attachment

ATTACHMENT TO Complaint Cross - Complaint

EX-1. As additional damages against defendant (name): Johnson & Johnson, a corporation, Ethicon Endo-Surgery, Inc., Ethicon Endo-Surgery, LLC, Ethicon, Inc., Does 1-40

Plaintiff alleges defendant was guilty of

- malice
- fraud
- oppression

as defined in Civil Code section 3294, and plaintiff should recover, in addition to actual damages, damages to make an example of and to punish defendant.

EX-2. The facts supporting plaintiff's claim are as follows:

Before January 27, 2012, the above-named Defendants, and each of them, knew that the Proximate PPH Procedure Set #PPH03 ("product") was extremely dangerous and unsafe to be used in performing hemorrhoid surgery. The dangers of this product included, without limitation, misfiring, incomplete firing strokes, and incomplete staple formation, which result in sphincter dysfunction, rectal wall damage, sepsis, bleeding, and occlusion of the rectal canal.

Defendants, and each of them knew, the Proximate PPH Procedure Set #PPH03 was defective and causing severe and life-threatening injuries to patients. Defendants, and each of them, received notice of life-threatening injuries being caused by the product, in part, through their sales representative and U.S. Food and Drug Administration Adverse Event Reports for the product which detailed instances of misfiring, incomplete firing strokes, and incomplete staple formation occurring when the product was being used in hemorrhoid surgery.

The above-named Defendants, and each of them, refused to take appropriate action to cure the nature of these defects, to warn physicians of such dangerous characteristics, and concealed such material facts known to Defendants.

At all relevant times, before the recall of the product on August 3, 2012, the above-named Defendants, and each of them, engaged in despicable conduct with a wilful and conscious disregard of the rights and safety of others. The conduct of Defendants, and each of them, was especially reprehensible in light of the serious life-threatening injuries its product was causing to patients.

Defendants, and each of them, subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights. Defendants acted with such a recklessness as to be willful, malicious, and oppressive, thereby meriting an award of punitive or exemplary damages against the above-named Defendants, and each of them, to punish them and to discourage similar conduct in the future.

Plaintiffs are not presently aware of the true net worth of Defendants, and each of them, and therefore cannot ascertain an amount which would properly punish them by way of punitive damages and Plaintiffs will seek leave to amend this complaint to insert the same when Defendants' true net worth is ascertained.

EX-3. The amount of exemplary damages sought is

- a. not shown, pursuant to Code of Civil Procedure section 425.10.
- b. \$

