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IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ELLA EBAUGH, et al., : JULY TERM, 2013
Plaintiffs :
vs. :
ETHICON, INC., et al., :
Defendants : NO. 0866

August 4, 2017
(Morning Session - Plaintiffs' Opening)

Courtroom 633, City Hall
Philadelphia, PA

BEFORE: HONORABLE MICHAEL ERDOS, JUDGE,
And a Jury

<div>1</div> <div>2 A P P E A R A N C E S:</div> <div>3 KLINE & SPECTER</div> <div>4 BY: KILA B. BALDWIN, ESQUIRE</div> <div>5 ELIA A. ROBERTSON, ESQUIRE</div> <div>6 TRACIE PALMER, ESQUIRE</div> <div>7 MICHAEL A. CAVALIERE, ESQUIRE</div> <div>8 1525 Locust Street</div> <div>9 Philadelphia, PA 19102</div> <div>10 (215) 772-1000</div> <div>11 Counsel for Plaintiffs</div> <div>12</div> <div>13 BECK REDDEN, LLP</div> <div>14 BY: KAT GALLAGHER, ESQUIRE</div> <div>15 CURT WEBB, ESQUIRE</div> <div>16 1221 McKinney Street</div> <div>17 Suite 4500</div> <div>18 Houston, TX 77010</div> <div>19 (713) 951-6208</div> <div>20 and</div> <div>21 THOMAS COMBS & SPANN, PLLC</div> <div>22 BY: PHILIP J. COMBS, ESQUIRE</div> <div>23 DANIEL R. HIGGINBOTHAM, ESQUIRE</div> <div>24 300 Summers Street</div> <div>25 Suite 1380</div> <div>Charleston, WV 25301</div> <div>(304) 414-1800</div> <div>and</div> <div>BUTLER SNOW, LLP</div> <div>BY: JORDAN WALKER, ESQUIRE</div> <div>1020 Highland County Parkway</div> <div>Suite 1400</div> <div>Oxford, MS 38655</div> <div>662-513-8000</div> <div>Counsel for Defendants</div> <div>11:24AM</div>	<div>4</div> <div>1</div> <div>11:41AM 2 MS. BALDWIN: Dr. Rosenzweig is</div> <div>11:41AM 3 cross-examined about it and it comes up in</div> <div>11:41AM 4 his cross-examination.</div> <div>11:41AM 5 THE COURT: What's your position on</div> <div>11:41AM 6 that?</div> <div>11:41AM 7 MR. HIGGINBOTHAM: Your Honor, you</div> <div>11:41AM 8 will recall that in Pennsylvania it's</div> <div>11:41AM 9 proper on cross-examination to display the</div> <div>11:41AM 10 texts of learned treatises and every court</div> <div>11:41AM 11 to date so far where this issue has arisen</div> <div>11:41AM 12 the courts has considered the position</div> <div>11:42AM 13 statement by various physician</div> <div>11:42AM 14 organizations to be a learned treatise, so</div> <div>11:42AM 15 it would be our position that it simply</div> <div>11:42AM 16 complies with Pennsylvania's rule allowing</div> <div>11:42AM 17 the display of a learned treatise on</div> <div>11:42AM 18 cross-examination.</div> <div>11:42AM 19 MS. BALDWIN: On cross-examination,</div> <div>11:42AM 20 correct, but I don't agree that the showing</div> <div>11:42AM 21 of it is appropriate for opening. I don't</div> <div>11:42AM 22 object to anything he wants to talk about</div> <div>11:42AM 23 with it, but I think showing it during</div> <div>11:42AM 24 cross-examination clearly violates Aldridge</div> <div>11:42AM 25 v. Edmunds.</div>
<div>3</div> <div>1</div> <div>11:40AM 2 THE COURT: Your all right. What do</div> <div>11:40AM 3 we need to discuss before openings?</div> <div>11:40AM 4 MS. BALDWIN: Your Honor, we just</div> <div>11:40AM 5 exchanged our Power Point slides for the</div> <div>11:41AM 6 openings and we each have an exhibit to --</div> <div>11:41AM 7 the other's opening. If you would like me</div> <div>11:41AM 8 to go first, I can.</div> <div>11:41AM 9 THE COURT: You said you have an</div> <div>11:41AM 10 objection?</div> <div>11:41AM 11 MS. BALDWIN: An objection, yes.</div> <div>11:41AM 12 THE COURT: Okay.</div> <div>11:41AM 13 MS. BALDWIN: I have an objection to</div> <div>11:41AM 14 defendant's slide and I can pass it up to</div> <div>11:41AM 15 Your Honor. It's an AUG's position</div> <div>11:41AM 16 statement about the use of transvaginal</div> <div>11:41AM 17 mesh, which will come in on cross with some</div> <div>11:41AM 18 of the experts, but I believe putting the</div> <div>11:41AM 19 statement up itself would violate Aldridge</div> <div>11:41AM 20 v. Edmunds. I think it's not appropriate</div> <div>11:41AM 21 opening statement.</div> <div>11:41AM 22 THE COURT: If it's hearsay it won't</div> <div>11:41AM 23 matter because the guy is going to testify</div> <div>11:41AM 24 to it; right? Is someone going to testify</div> <div>11:41AM 25 to it?</div>	<div>5</div> <div>1</div> <div>11:42AM 2 THE COURT: What does Aldridge v.</div> <div>11:42AM 3 Edmunds say?</div> <div>11:42AM 4 MS. BALDWIN: I have to get out my</div> <div>11:42AM 5 copy. Hang on a moment.</div> <div>11:42AM 6 Aldridge v. Edmunds says that, "It's</div> <div>11:42AM 7 entirely proper in cross-examination for</div> <div>11:42AM 8 counsel to call the witness' attention to</div> <div>11:42AM 9 published works on the matter which is the</div> <div>11:42AM 10 subject of the witness' testimony," but</div> <div>11:42AM 11 they predicate that, "the works must be</div> <div>11:42AM 12 testified to as authoritative and relied</div> <div>11:42AM 13 upon by experts in the field."</div> <div>11:42AM 14 And we wouldn't be having any of that</div> <div>11:43AM 15 testimony at first. They'd just be seeing</div> <div>11:43AM 16 the literature without any testimony about</div> <div>11:43AM 17 what it is or where it comes from.</div> <div>11:43AM 18 THE COURT: Is he going to be saying</div> <div>11:43AM 19 later this is authoritative?</div> <div>11:43AM 20 MR. WEBB: Yes, Rosenzweig.</div> <div>11:43AM 21 MR. HIGGINBOTHAM: Rosenzweig?</div> <div>11:43AM 22 THE COURT: Yes.</div> <div>11:43AM 23 MR. HIGGINBOTHAM: Yes.</div> <div>11:43AM 24 THE COURT: Overrule the objection.</div> <div>11:43AM 25 What's your objection?</div>

<p style="text-align: right;">6</p> <p>1</p> <p>11:43AM 2 MR. WEBB: We withdraw our objection,</p> <p>11:43AM 3 Your Honor.</p> <p>11:43AM 4 THE COURT: Okay. An hour each max.</p> <p>11:43AM 5 MS. BALDWIN: Got it.</p> <p>11:43AM 6 THE COURT: Any objections you make,</p> <p>11:43AM 7 unless it's something really outrageous</p> <p>11:43AM 8 that the other side has said, I'm going to</p> <p>11:43AM 9 hold those in abeyance until we're done the</p> <p>11:43AM 10 openings and we'll discuss them.</p> <p>11:46AM 11 MR. WEBB: Judge, if you want to take</p> <p>11:46AM 12 time to do it now, we can get you set up</p> <p>11:46AM 13 for realtime.</p> <p>11:46AM 14 THE COURT: You can even do it</p> <p>11:46AM 15 tomorrow.</p> <p>11:51AM 16 THE LAW CLERK: Please stand as the</p> <p>11:51AM 17 jury enters the courtroom.</p> <p>11:51AM 18 (Jury enters courtroom)</p> <p>11:52AM 19 THE COURT: All right. Members of the</p> <p>11:52AM 20 jury, the first order of business is for</p> <p>11:52AM 21 you to be officially sworn in as a juror.</p> <p>11:52AM 22 Ms. Wicclair.</p> <p>11:52AM 23 THE LAW CLERK: Thank you.</p> <p>11:52AM 24 Please raise your right hand. Do you</p> <p>11:52AM 25 and each of you swear, and those of you who</p>	<p style="text-align: right;">8</p> <p>1 Judge's Opening Remarks</p> <p>11:53AM 2 I'm first going to describe in a</p> <p>11:53AM 3 general way what will take place during the</p> <p>11:53AM 4 trial. First the plaintiffs' attorney will</p> <p>11:53AM 5 make an opening statement in which she will</p> <p>11:53AM 6 outline the plaintiffs' case against the</p> <p>11:53AM 7 defendant and the defendant's attorney will</p> <p>11:53AM 8 make an opening statement as well.</p> <p>11:53AM 9 The plaintiffs' lawyer goes first</p> <p>11:53AM 10 because they have the burden of proof,</p> <p>11:53AM 11 which I will explain in greater detail</p> <p>11:53AM 12 later on during the trial.</p> <p>11:53AM 13 After the opening arguments, then we</p> <p>11:53AM 14 have the presentation of evidence. The</p> <p>11:53AM 15 plaintiffs' lawyer will first present</p> <p>11:53AM 16 evidence. She will call witnesses to</p> <p>11:53AM 17 testify and may offer exhibits such as</p> <p>11:54AM 18 documents, graphs, charts, or physical</p> <p>11:54AM 19 objects.</p> <p>11:54AM 20 The defense counsel has a right to</p> <p>11:54AM 21 cross-examine witnesses called by the</p> <p>11:54AM 22 plaintiff in order to test the truthfulness</p> <p>11:54AM 23 and accuracy of their testimony.</p> <p>11:54AM 24 After the plaintiffs' lawyer has</p> <p>11:54AM 25 presented the plaintiffs' case, defense</p>
<p style="text-align: right;">7</p> <p>1</p> <p>11:52AM 2 affirm, do declare and affirm that you will</p> <p>11:52AM 3 truly try the issues joined between the</p> <p>11:52AM 4 plaintiff and the defendant and render a</p> <p>11:52AM 5 true verdict according to the law and the</p> <p>11:52AM 6 evidence? If so, please respond I do.</p> <p>11:52AM 7 THE JURY: I do.</p> <p>11:52AM 8 THE LAW CLERK: Thank you.</p> <p>11:52AM 9 THE COURT: You may be seated.</p> <p>11:52AM 10 All right. Welcome back. As you now</p> <p>11:52AM 11 know, each of you has been selected as a</p> <p>11:53AM 12 juror in this case, and what that means is</p> <p>11:53AM 13 that the plaintiff, the defendants, the</p> <p>11:53AM 14 Court have each concluded each one of you</p> <p>11:53AM 15 will be a fair and impartial juror, and</p> <p>11:53AM 16 that really is a tribute to each one of</p> <p>11:53AM 17 you. There were a lot of people that we</p> <p>11:53AM 18 interviewed.</p> <p>11:53AM 19 The services you render as jurors in</p> <p>11:53AM 20 this case are as important to the</p> <p>11:53AM 21 administration of justice as those rendered</p> <p>11:53AM 22 by me as the judge and by the attorneys.</p> <p>11:53AM 23 So please pay close attention to everything</p> <p>11:53AM 24 that is said and done in this courtroom so</p> <p>11:53AM 25 that you may perform your duties well.</p>	<p style="text-align: right;">9</p> <p>1 Judge's Opening Remarks</p> <p>11:54AM 2 counsel may present evidence for the</p> <p>11:54AM 3 defendant, however, there is no obligation</p> <p>11:54AM 4 for the defendant to offer evidence or to</p> <p>11:54AM 5 testify. The plaintiffs' lawyer may of</p> <p>11:54AM 6 course cross-examine any witnesses that are</p> <p>11:54AM 7 called by the defense.</p> <p>11:54AM 8 After all the evidence has been</p> <p>11:54AM 9 presented, the attorneys for each side will</p> <p>11:54AM 10 have the opportunity to make their closing</p> <p>11:54AM 11 arguments to you. I will then give you my</p> <p>11:54AM 12 final instructions on the rules of law that</p> <p>11:54AM 13 apply to this case and whatever additional</p> <p>11:54AM 14 guidance I think you may need for your</p> <p>11:54AM 15 deliberations. You will then retire to the</p> <p>11:54AM 16 jury room to deliberate and decide what</p> <p>11:54AM 17 your verdict will be.</p> <p>11:54AM 18 At the end of the trial you must make</p> <p>11:54AM 19 your decision based on what you recall of</p> <p>11:54AM 20 the evidence. You will not have a written</p> <p>11:54AM 21 transcript to consult and it is difficult</p> <p>11:54AM 22 and time-consuming for our court reporter</p> <p>11:54AM 23 to read or play back lengthy testimony. I</p> <p>11:54AM 24 urge you, therefore, to pay chose attention</p> <p>11:55AM 25 to the testimony as it is given. If at any</p>

<p style="text-align: right;">10</p> <p>1 Judge's Opening Remarks</p> <p>11:55AM 2 point in the trial you cannot hear or</p> <p>11:55AM 3 understand a witness, a lawyer, or myself</p> <p>11:55AM 4 or see an exhibit, please let us know in</p> <p>11:55AM 5 order that we may resolve it for you</p> <p>11:55AM 6 immediately.</p> <p>11:55AM 7 It will get a little noisy because of</p> <p>11:55AM 8 the air conditioning, but it gets extremely</p> <p>11:55AM 9 hot during the summer when the air</p> <p>11:55AM 10 conditioning isn't on. At times we may</p> <p>11:55AM 11 turn it off briefly, but if at any point</p> <p>11:55AM 12 you can't hear us, let us know.</p> <p>11:55AM 13 Unfortunately, although you may wish to</p> <p>11:55AM 14 question some of the witnesses yourself,</p> <p>11:55AM 15 you are not permitted to do so.</p> <p>11:55AM 16 It is my responsibility as the judge</p> <p>11:55AM 17 to decide all questions of law during the</p> <p>11:55AM 18 trial. You must follow my rulings and</p> <p>11:55AM 19 instructions whether or not you agree with</p> <p>11:55AM 20 them. I am not, however, the judge of the</p> <p>11:55AM 21 facts. You, the jurors are the only judges</p> <p>11:55AM 22 of the facts. It will be your</p> <p>11:55AM 23 responsibility at the end of the trial when</p> <p>11:55AM 24 you deliberate to evaluate the evidence and</p> <p>11:55AM 25 from that evidence determine the facts.</p>	<p style="text-align: right;">12</p> <p>1 Judge's Opening Remarks</p> <p>11:56AM 2 consideration of the evidence.</p> <p>11:56AM 3 Each of you must keep an open mind</p> <p>11:56AM 4 throughout the trial. You should avoid</p> <p>11:56AM 5 forming opinions about any disputed</p> <p>11:56AM 6 questions until the trial is over and you</p> <p>11:56AM 7 begin your deliberations. Do not talk with</p> <p>11:56AM 8 each other about the evidence or any other</p> <p>11:56AM 9 matter relating to your verdict until I</p> <p>11:56AM 10 send you to the jury room to deliberate</p> <p>11:56AM 11 upon your verdict. Only then will you know</p> <p>11:57AM 12 enough about the case to discuss it</p> <p>11:57AM 13 intelligently and fairly.</p> <p>11:57AM 14 You should also not talk with anyone</p> <p>11:57AM 15 else about the case until the case is</p> <p>11:57AM 16 completely over, including your family</p> <p>11:57AM 17 members, people at home, your friends, or</p> <p>11:57AM 18 with anyone on social media or Internet</p> <p>11:57AM 19 sites.</p> <p>11:57AM 20 Do not try to get information relevant</p> <p>11:57AM 21 to the case on your own. Do not make any</p> <p>11:57AM 22 investigation, do any research, visit any</p> <p>11:57AM 23 scene or conduct any experiment. If there</p> <p>11:57AM 24 is any media coverage of the case, you are</p> <p>11:57AM 25 not to read, listen to, or watch anything</p>
<p style="text-align: right;">11</p> <p>1 Judge's Opening Remarks</p> <p>11:55AM 2 You will apply the rules of law that I</p> <p>11:55AM 3 give you to the facts as you find them to</p> <p>11:55AM 4 decide whether the plaintiff has met her</p> <p>11:55AM 5 burden of proving the elements of the claim</p> <p>11:56AM 6 that will entitle her to relief.</p> <p>11:56AM 7 In order to decide the facts of this</p> <p>11:56AM 8 case you're going to have to judge the</p> <p>11:56AM 9 credibility and weight of the testimony and</p> <p>11:56AM 10 other evidence. By credibility I mean the</p> <p>11:56AM 11 truthfulness or accuracy of what is being</p> <p>11:56AM 12 said or shown to you. By weight I mean the</p> <p>11:56AM 13 value or importance that you give to the</p> <p>11:56AM 14 testimony or evidence.</p> <p>11:56AM 15 When you judge the credibility and</p> <p>11:56AM 16 weight of a witness' testimony or of</p> <p>11:56AM 17 evidence being presented, use your</p> <p>11:56AM 18 understanding of human nature and your</p> <p>11:56AM 19 common sense. Observe each witness as he</p> <p>11:56AM 20 or she testifies. Be alert for anything in</p> <p>11:56AM 21 the witness' testimony or behavior or for</p> <p>11:56AM 22 anything in the other evidence that might</p> <p>11:56AM 23 help you judge the truthfulness, accuracy</p> <p>11:56AM 24 and weight of the testimony. Neither</p> <p>11:56AM 25 sympathy or prejudice is to influence your</p>	<p style="text-align: right;">13</p> <p>1 Judge's Opening Remarks</p> <p>11:57AM 2 about the case in newspapers, magazines,</p> <p>11:57AM 3 radio, television, or Internet.</p> <p>11:57AM 4 There are some people with whom you</p> <p>11:57AM 5 must avoid even casual conversations having</p> <p>11:57AM 6 nothing to do with the case again until the</p> <p>11:57AM 7 case is completely over. These people are</p> <p>11:57AM 8 the parties, the lawyers, and the</p> <p>11:57AM 9 witnesses.</p> <p>11:57AM 10 Please do not feel hurt or insulted if</p> <p>11:57AM 11 during a recess or at any other time one of</p> <p>11:57AM 12 them sees you in the hallway or an elevator</p> <p>11:57AM 13 or anyone else and does not return your</p> <p>11:58AM 14 greeting. They simply are not permitted to</p> <p>11:58AM 15 do so. I will continue to greet you</p> <p>11:58AM 16 whether I see you inside or outside the</p> <p>11:58AM 17 courthouse, but we are not permitted to</p> <p>11:58AM 18 discuss any aspect of the case.</p> <p>11:58AM 19 If you are approached by anyone or if</p> <p>11:58AM 20 you see or hear something you think that</p> <p>11:58AM 21 you should not have seen or heard, do not</p> <p>11:58AM 22 speak to the other jurors about it, but</p> <p>11:58AM 23 rather notify courtroom personnel about it</p> <p>11:58AM 24 and they will bring it to my attention.</p> <p>11:58AM 25 Statements made by the attorneys are</p>

<div>14</div> <div> <div>1 Judge's Opening Remarks</div> <div>11:58AM 2 not evidence. The questions that they ask</div> <div>11:58AM 3 of the witnesses are not evidence. It is</div> <div>11:58AM 4 the answers to those questions by the</div> <div>11:58AM 5 witnesses that provide the evidence for you</div> <div>11:58AM 6 to consider. You should not speculate or</div> <div>11:58AM 7 guess that a fact may be true merely</div> <div>11:58AM 8 because one of the lawyers asks a question</div> <div>11:58AM 9 which assumes or suggests that a fact is</div> <div>11:58AM 10 true.</div> <div>11:58AM 11 Occasionally there will be objections</div> <div>11:58AM 12 to the questions that are asked by the</div> <div>11:58AM 13 attorneys. If I overrule the objection to</div> <div>11:58AM 14 the question, you may consider the answer.</div> <div>11:58AM 15 However, if I sustain the objection, that</div> <div>11:58AM 16 means I will not allow an answer to be</div> <div>11:58AM 17 given; and if an answer has already been</div> <div>11:59AM 18 given, I will most likely direct you to</div> <div>11:59AM 19 disregard the answer, and you must do so.</div> <div>11:59AM 20 It is possible I might question some</div> <div>11:59AM 21 of the witnesses myself. It won't happen</div> <div>11:59AM 22 often, if at all. These questions are not</div> <div>11:59AM 23 intended to reflect any opinion on my part</div> <div>11:59AM 24 about the evidence or about the case. The</div> <div>11:59AM 25 only purpose of doing so would be to</div> </div>	<div>16</div> <div> <div>1 Judge's Opening Remarks</div> <div>12:00PM 2 first witness testifies. You are not</div> <div>12:00PM 3 allowed to take notes during any of the</div> <div>12:00PM 4 opening statements or closing arguments.</div> <div>12:00PM 5 You are under no obligation to take notes</div> <div>12:00PM 6 and it is entirely up to you whether you</div> <div>12:00PM 7 wish to take notes to help you remember</div> <div>12:00PM 8 what witnesses said and to use them during</div> <div>12:00PM 9 your deliberations.</div> <div>12:00PM 10 If you do take notes, remember that</div> <div>12:00PM 11 one of your responsibilities as a juror is</div> <div>12:00PM 12 to observe the demeanor of witnesses to</div> <div>12:00PM 13 assess their credibility. Do not become so</div> <div>12:00PM 14 involved with note taking that it</div> <div>12:00PM 15 interferes with your ability to observe a</div> <div>12:00PM 16 witness or distracts you from hearing the</div> <div>12:00PM 17 questions being asked the witness and the</div> <div>12:00PM 18 answers being given by the witness.</div> <div>12:00PM 19 Your notes may help you refresh your</div> <div>12:00PM 20 recollection of the testimony and it should</div> <div>12:00PM 21 be treated as a supplement to your memory,</div> <div>12:00PM 22 rather than a substitute for your memory.</div> <div>12:00PM 23 Your notes are only to be used by you as</div> <div>12:00PM 24 memory aids and should not take precedence</div> <div>12:00PM 25 over your independent recollection of the</div> </div>
<div>15</div> <div> <div>1 Judge's Opening Remarks</div> <div>11:59AM 2 inquire about matters that I think should</div> <div>11:59AM 3 be more fully explored or clarified for you</div> <div>11:59AM 4 out of fairness to both sides.</div> <div>11:59AM 5 At different points during the trial</div> <div>11:59AM 6 the attorneys and I may need to deal with</div> <div>11:59AM 7 certain matters outside of your hearing.</div> <div>11:59AM 8 We generally call this sidebar. We will</div> <div>11:59AM 9 try to do it as infrequently as possible,</div> <div>11:59AM 10 but it's bound to happen several times</div> <div>11:59AM 11 during the trial.</div> <div>11:59AM 12 Any time you need a convenience break</div> <div>11:59AM 13 of any type, just let us know. We'll be</div> <div>11:59AM 14 asking at regular intervals whether you'd</div> <div>11:59AM 15 like a convenience break. In particular,</div> <div>11:59AM 16 if you need water, just let Ms. Gyimesi or</div> <div>11:59AM 17 Ms. Wicclair know. You can do that, just</div> <div>11:59AM 18 raise your hand and get their attention.</div> <div>11:59AM 19 If you haven't already been told, I</div> <div>11:59AM 20 think you have, you can bring in any</div> <div>11:59AM 21 nonalcoholic beverage of your choice while</div> <div>12:00PM 22 you're listening to the evidence.</div> <div>12:00PM 23 We have notepads and pens for each of</div> <div>12:00PM 24 you in the event that you wish to take</div> <div>12:00PM 25 notes. We'll be passing them out when the</div> </div>	<div>17</div> <div> <div>1 Judge's Opening Remarks</div> <div>12:00PM 2 facts.</div> <div>12:00PM 3 Those of you who do not take notes</div> <div>12:00PM 4 should not be overly influenced by the</div> <div>12:00PM 5 notes of other jurors. Sometimes it is</div> <div>12:01PM 6 just as easy to write something down</div> <div>12:01PM 7 incorrectly as it is to remember it</div> <div>12:01PM 8 incorrectly, and your fellow jurors' notes</div> <div>12:01PM 9 are entitled to no greater weight than each</div> <div>12:01PM 10 juror's independent memory.</div> <div>12:01PM 11 Although you may refer to your notes</div> <div>12:01PM 12 during deliberations, give no more or no</div> <div>12:01PM 13 less weight to the view of a fellow juror</div> <div>12:01PM 14 just because that juror did or did not take</div> <div>12:01PM 15 notes. Although you are permitted to use</div> <div>12:01PM 16 your notes during deliberations, the only</div> <div>12:01PM 17 notes you may use are the notes you write</div> <div>12:01PM 18 in the courtroom during the proceedings on</div> <div>12:01PM 19 the materials that will be distributed by</div> <div>12:01PM 20 the court staff.</div> <div>12:01PM 21 Each time that we adjourn, your notes</div> <div>12:01PM 22 will be collected and secured by the court</div> <div>12:01PM 23 staff. Your notes are completely</div> <div>12:01PM 24 confidential and neither I nor any member</div> <div>12:01PM 25 of the court staff will read your notes now</div> </div>

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	1	Judge's Opening Remarks		1	Judge's Opening Remarks
12:01PM	2	or at any time in the future. After you've	12:03PM	2	You are not to conclude that the
12:01PM	3	reached a verdict in this case, your notes	12:03PM	3	attorneys will necessarily be able to prove
12:01PM	4	will be destroyed immediately by court	12:03PM	4	what they say they expect to prove, nor
12:01PM	5	personnel.	12:03PM	5	that the Court will permit such evidence to
12:01PM	6	Our schedule will vary day to day.	12:03PM	6	be introduced.
12:01PM	7	We'll normally have you arrive by 9:00 in	12:03PM	7	Counsel, you may address the jury.
12:01PM	8	the morning so we can start at 9:30. We'll	12:03PM	8	MS. BALDWIN: Thank you, Your Honor.
12:01PM	9	normally take a one-hour lunch break	12:03PM	9	THE COURT: If you need the lights
12:02PM	10	starting somewhere between 12:30 and 1:30	12:03PM	10	dimmed at any point, just let us know.
12:02PM	11	and we'll normally work somewhere between	12:03PM	11	MS. BALDWIN: I think we'll be okay,
12:02PM	12	4:30 and 5:00.	12:03PM	12	but if the jury has trouble, if they could
12:02PM	13	Obviously, if the jury has a sort of	12:03PM	13	just raise their hands, we'll dim the
12:02PM	14	consensus that they want to start even	12:03PM	14	lights when we put the slides up.
12:02PM	15	earlier and work even later to shorten the	12:04PM	15	I guess it's appropriate to say good
12:02PM	16	duration of the trial, we'll be amenable to	12:04PM	16	afternoon. So good afternoon everyone.
12:02PM	17	that as well.	12:04PM	17	THE JURY: Good afternoon.
12:02PM	18	Today we're going to hear one of the	12:04PM	18	MS. BALDWIN: Thank you for bearing
12:02PM	19	two opening statements, then take our lunch	12:04PM	19	with us for an entire week of jury
12:02PM	20	break, and then have the other opening	12:04PM	20	selection. It's a first for me, so
12:02PM	21	statement and begin with our evidence. We	12:04PM	21	hopefully things get better for you than a
12:02PM	22	will conclude some time between 4:00 and	12:04PM	22	couple days of sitting around.
12:02PM	23	5:00 this afternoon.	12:04PM	23	The defendants in this case are
12:02PM	24	You've already been given instructions	12:04PM	24	Ethicon and Johnson & Johnson. They put
12:02PM	25	I believe by court staff as to which	12:04PM	25	two defective products on the market, the
		19			21
	1	Judge's Opening Remarks		1	Plaintiffs' Opening Statement
12:02PM	2	restrooms are appropriate to use in this	12:04PM	2	TVT-Retropubic, which we're going to call
12:02PM	3	case. It's important that you pay close	12:04PM	3	just the TVT throughout the trial, and the
12:02PM	4	attention to those instructions.	12:04PM	4	TVT-Secur, which you will hear us call the
12:02PM	5	Please remember to wear your juror	12:04PM	5	TVT-S throughout the trial.
12:02PM	6	badges in a conspicuous place at all times	12:04PM	6	Ella Ebaugh, my client -- please
12:02PM	7	during the course of the trial and while	12:04PM	7	stand, Ella.
12:02PM	8	you're either in the courtroom or in the	12:04PM	8	(Ella Ebaugh complies with request)
12:02PM	9	courthouse.	12:04PM	9	MS. BALDWIN: And her husband Marvin.
12:02PM	10	It's now time for the attorneys to	12:04PM	10	Marvin, go ahead and stand.
12:02PM	11	give opening statements telling you what	12:04PM	11	(Marvin Ebaugh complies with request)
12:02PM	12	they expect to prove or not be proven	12:04PM	12	MS. BALDWIN: Thank you.
12:02PM	13	during the trial. The opening statements,	12:04PM	13	Ella Ebaugh had each of these devices
12:02PM	14	as with any statements by the attorneys, do	12:05PM	14	implanted in her in 2007. Ethicon and
12:02PM	15	not constitute evidence and you are not to	12:05PM	15	Johnson & Johnson had information about
12:02PM	16	consider these opening statements as	12:05PM	16	both of these products before it ever put
12:02PM	17	established facts.	12:05PM	17	them on the market that they were dangerous
12:02PM	18	The only purpose of the opening	12:05PM	18	and they presented an unreasonable risk of
12:02PM	19	statement is to give you a general outline	12:05PM	19	danger to women who had them implanted in
12:02PM	20	of what the case is about so that you will	12:05PM	20	them. After the products were put out on
12:03PM	21	have a better understanding of how each	12:05PM	21	the market, Ethicon and Johnson & Johnson,
12:03PM	22	piece of evidence fits in, subject of	12:05PM	22	who I'm just going to start calling Ethicon
12:03PM	23	course to your evaluation of the evidence	12:05PM	23	so I don't have to say that long name, got
12:03PM	24	as to its credibility, its accuracy, and	12:05PM	24	even more information about how dangerous
12:03PM	25	the weight to be given to the evidence.	12:05PM	25	these products were, but they kept them on

<p style="text-align: right;">22</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:05PM 2 the market.</p> <p>12:05PM 3 In the case of this one, the</p> <p>12:05PM 4 TVT-Secur, they kept it on the market from</p> <p>12:05PM 5 2006 until 2012. They still sell the TVT.</p> <p>12:05PM 6 These defective products have literally</p> <p>12:05PM 7 mangled Ella Ebaugh's urethra. She has</p> <p>12:06PM 8 almost no control of her bladder because of</p> <p>12:06PM 9 them, is completely incontinent, and lives</p> <p>12:06PM 10 in constant pain because they're permanent</p> <p>12:06PM 11 implants and you can never get them</p> <p>12:06PM 12 completely out of your body. She's going</p> <p>12:06PM 13 to suffer with this for the rest of her</p> <p>12:06PM 14 life.</p> <p>12:06PM 15 Johnson & Johnson is worth seventy</p> <p>12:06PM 16 billion, four-hundred-eighteen million</p> <p>12:06PM 17 dollars. Ethicon is worth two billion</p> <p>12:06PM 18 seven-hundred-sixty-two million dollars.</p> <p>12:06PM 19 I'm mentioning this right at the outset</p> <p>12:06PM 20 right now because these defendants</p> <p>12:06PM 21 collectively worth more than seventy-two</p> <p>12:06PM 22 billion dollars made every decision about</p> <p>12:06PM 23 these products with money in mind, how much</p> <p>12:06PM 24 money they could make.</p> <p>12:06PM 25 I didn't make this slide. I didn't</p>	<p style="text-align: right;">24</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:08PM 2 products and what they were created for.</p> <p>12:08PM 3 This is a normal pelvic anatomy. You</p> <p>12:08PM 4 have three primary organs, which would be</p> <p>12:08PM 5 the bladder here, the uterus, which is</p> <p>12:08PM 6 connected to the vagina for sex and</p> <p>12:08PM 7 childbirth, and the rectum for feces.</p> <p>12:08PM 8 At the bottom of the bladder is a</p> <p>12:08PM 9 four-centimeter tube called the urethra.</p> <p>12:08PM 10 The urethra is the tube that takes urine</p> <p>12:08PM 11 from the bladder outside of the body. The</p> <p>12:08PM 12 urethra needs to remain closed, kind of</p> <p>12:08PM 13 like my fist here, so that you don't drip</p> <p>12:08PM 14 urine. When you have to urinate, you use</p> <p>12:08PM 15 your pelvic muscles, you open it ever so</p> <p>12:08PM 16 slightly so the urine is expelled from the</p> <p>12:08PM 17 blood and then you use your muscles to</p> <p>12:08PM 18 close the urethra. That's the normal way</p> <p>12:08PM 19 things happen.</p> <p>12:08PM 20 Women get older, men get older. We</p> <p>12:09PM 21 all do, but in women when you age and the</p> <p>12:09PM 22 muscles of the pelvis weaken from having</p> <p>12:09PM 23 kids, other stressors, weight gain, these</p> <p>12:09PM 24 pelvic muscles can weaken, and what happens</p> <p>12:09PM 25 is the urethra, that four-centimeter tube,</p>
<p style="text-align: right;">23</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:06PM 2 type this. Look at the logo on the top</p> <p>12:07PM 3 left corner. "Ethicon's Women's Health and</p> <p>12:07PM 4 Urology. Show me the money." This is a</p> <p>12:07PM 5 presentation that was given in their</p> <p>12:07PM 6 marketing department in 2007. This is what</p> <p>12:07PM 7 Ethicon was concerned about when it</p> <p>12:07PM 8 marketed its TVT line of products, which</p> <p>12:07PM 9 includes the two that are at issue in this</p> <p>12:07PM 10 case.</p> <p>12:07PM 11 They didn't concern themselves with</p> <p>12:07PM 12 things like patient safety, whether they</p> <p>12:07PM 13 were permanently injuring women like my</p> <p>12:07PM 14 client Ella Ebaugh. They didn't concern</p> <p>12:07PM 15 themselves with things like testing the</p> <p>12:07PM 16 products.</p> <p>12:07PM 17 In the case of the TVT they relied on</p> <p>12:07PM 18 tests that were inherently biased. They</p> <p>12:07PM 19 paid for the results and then they never</p> <p>12:07PM 20 verified the data underlying them.</p> <p>12:07PM 21 In the case of the TVT-S they never</p> <p>12:07PM 22 tested it in humans in a robust study</p> <p>12:07PM 23 before they put it on the market.</p> <p>12:07PM 24 Ella Ebaugh is a casualty of their</p> <p>12:08PM 25 reckless conduct. So let's talk about the</p>	<p style="text-align: right;">25</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:09PM 2 doesn't stay in the same place all the</p> <p>12:09PM 3 time, it starts to move around. The pelvic</p> <p>12:09PM 4 muscles can't hold it in place as much and</p> <p>12:09PM 5 keep it as tight as it needs to be, so</p> <p>12:09PM 6 something happens called stress urinary</p> <p>12:09PM 7 incontinence.</p> <p>12:09PM 8 I think a lot of you said you didn't</p> <p>12:09PM 9 know what that was earlier. All that is as</p> <p>12:09PM 10 a woman ages and her pelvic muscles weaken,</p> <p>12:09PM 11 when she coughs or sneezes or maybe does a</p> <p>12:09PM 12 couple jumping-jax couple drops come out.</p> <p>12:09PM 13 Not the whole content of the urine, just a</p> <p>12:09PM 14 drop here or drop there. Some women wear</p> <p>12:09PM 15 panty liners or maxi pads because they</p> <p>12:09PM 16 don't like that feeling in their underwear.</p> <p>12:10PM 17 This is the TVT-Secur, the TVT-S. I'm</p> <p>12:10PM 18 going to open it up for you just so you get</p> <p>12:10PM 19 an idea of what it is. It's sold as a kit</p> <p>12:10PM 20 in the box. And in the kit comes</p> <p>12:10PM 21 Instructions For Use, an IFU pamphlet, and</p> <p>12:10PM 22 then the product itself.</p> <p>12:10PM 23 The product consists of a very short</p> <p>12:10PM 24 piece of mesh, only about eight centimeters</p> <p>12:10PM 25 long, and then it has this device, the</p>

<p style="text-align: right;">26</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:10PM 2 metal attached to it called the arrowhead</p> <p>12:10PM 3 introducer, which is the means of inserting</p> <p>12:10PM 4 it into the space between the urethra and</p> <p>12:10PM 5 the vagina. So let me show you what that</p> <p>12:10PM 6 is.</p> <p>12:10PM 7 This is called a single incision</p> <p>12:10PM 8 approach because what it involves is going</p> <p>12:10PM 9 in through the vagina inserting a speculum</p> <p>12:10PM 10 to open it or a clamp to open it like you</p> <p>12:11PM 11 would during a normal OB/GYN appointment</p> <p>12:11PM 12 and then making an incision into the</p> <p>12:11PM 13 vagina. This is an invasive procedure. It</p> <p>12:11PM 14 does involve cutting through the vagina and</p> <p>12:11PM 15 then placing the sling here just beneath</p> <p>12:11PM 16 the urethra to support it.</p> <p>12:11PM 17 So as a woman ages, in theory this</p> <p>12:11PM 18 mesh is left in there to support the</p> <p>12:11PM 19 urethra. These arrowhead introducers are</p> <p>12:11PM 20 removed so all that's left is the mesh.</p> <p>12:11PM 21 Now, I described it relatively simply,</p> <p>12:11PM 22 but you need to know just how invasive it</p> <p>12:11PM 23 is. It doesn't just involve the one cut</p> <p>12:11PM 24 into the vagina. You cut open the vagina</p> <p>12:11PM 25 and you use scissors to tunnel into the</p>	<p style="text-align: right;">28</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:13PM 2 them through the vagina and then literally</p> <p>12:13PM 3 create a tunnel from the space behind the</p> <p>12:13PM 4 vagina all the way out to the abdominal</p> <p>12:13PM 5 wall on either side. And I used myself as</p> <p>12:13PM 6 a demonstration because they come out in</p> <p>12:13PM 7 the abdomen in approximately this area.</p> <p>12:13PM 8 The surgeon then pulls to make the</p> <p>12:13PM 9 mesh taught around the urethra, cuts the</p> <p>12:13PM 10 extra mesh off here, and then uses surgical</p> <p>12:13PM 11 glue or sutures to close the incisions here</p> <p>12:13PM 12 as well as the incision that's made in the</p> <p>12:13PM 13 vagina. So this has -- this is more than</p> <p>12:13PM 14 one incision and it's what's known as a</p> <p>12:13PM 15 retropubic approach because it lies behind</p> <p>12:13PM 16 the pubic bone, the mesh. Again the mesh</p> <p>12:13PM 17 is meant to be permanently implanted. It's</p> <p>12:13PM 18 not designed to be able to be taken out of</p> <p>12:13PM 19 the body should complications arise, which</p> <p>12:13PM 20 they knew would.</p> <p>12:13PM 21 Ella Ebaugh had a TVT-S implanted in</p> <p>12:14PM 22 May of 2007, didn't work and then her</p> <p>12:14PM 23 doctor put in a TVT. The recommended cure</p> <p>12:14PM 24 if one of their devices doesn't work, just</p> <p>12:14PM 25 put in a second one. And she developed, as</p>
<p style="text-align: right;">27</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:11PM 2 tissue behind the vagina, between the</p> <p>12:11PM 3 vagina and the urethra. These arrowhead</p> <p>12:11PM 4 introducers are sharp so they can push</p> <p>12:11PM 5 aside the tissues that's there. It's an</p> <p>12:11PM 6 intrusive device that affects the way the</p> <p>12:11PM 7 tissues sit in the vagina. It's designed</p> <p>12:11PM 8 to be permanently implanted there so that</p> <p>12:12PM 9 the mesh should not be removed.</p> <p>12:12PM 10 As I said earlier, the TVT-S was taken</p> <p>12:12PM 11 off the market in 2012. It's defective and</p> <p>12:12PM 12 you're going to hear all about how not only</p> <p>12:12PM 13 did it not work to relieve stress urinary</p> <p>12:12PM 14 incontinence in women, but it also created</p> <p>12:12PM 15 quite a few risks for them.</p> <p>12:12PM 16 This is the TVT Retropubic Sling,</p> <p>12:12PM 17 often called the TVT. Again it comes as a</p> <p>12:12PM 18 kit. You get an Instructions for Use, and</p> <p>12:12PM 19 you get a much longer piece of tape. I</p> <p>12:12PM 20 think it's about 18 centimeters.</p> <p>12:12PM 21 This device is also not implanted in</p> <p>12:12PM 22 noninvasive procedure. It is invasive.</p> <p>12:12PM 23 You have to cut into the vagina again and</p> <p>12:12PM 24 you use these tools. I measured them on my</p> <p>12:12PM 25 finger about eight centimeters. Insert</p>	<p style="text-align: right;">29</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:14PM 2 I said, a multitude of complications that</p> <p>12:14PM 3 have left her in very bad shape today.</p> <p>12:14PM 4 So let's talk a little bit about what</p> <p>12:14PM 5 the issues are with the products. Both the</p> <p>12:14PM 6 TVT and TVT-S, and now I'm talking just</p> <p>12:14PM 7 about the mesh themselves, the blue stuff</p> <p>12:14PM 8 you see, are made of plastic. It's called</p> <p>12:14PM 9 Prolene. That's the pretty name they give</p> <p>12:14PM 10 to it, but it's plastic. It's made by</p> <p>12:14PM 11 weaving together sutures, polypropylene</p> <p>12:14PM 12 sutures, stitches, into a mesh form. So</p> <p>12:14PM 13 pores are the holes between the sutures,</p> <p>12:14PM 14 and the easiest way for me to show you this</p> <p>12:14PM 15 is with a basketball net.</p> <p>12:15PM 16 If you picture the white here as</p> <p>12:15PM 17 polypropylene sutures woven into a mesh to</p> <p>12:15PM 18 form the neck, these spaces in between,</p> <p>12:15PM 19 those are what are called pores. Pore size</p> <p>12:15PM 20 is very important in implantable devices.</p> <p>12:15PM 21 It matters because you need something</p> <p>12:15PM 22 that's called macroporous. You need to</p> <p>12:15PM 23 maintain big pores. Why? Because we all</p> <p>12:15PM 24 are human and we all have human tissue that</p> <p>12:15PM 25 grows. So in order to get these</p>

<div>30</div> <div> <div>1</div> <div>Plaintiffs' Opening Statement</div> </div> <div> <div>12:15PM</div> <div>2</div> <div>integrated, we need the tissue to grow in</div> </div> <div> <div>12:15PM</div> <div>3</div> <div>and around the pore so the mesh is</div> </div> <div> <div>12:15PM</div> <div>4</div> <div>implanted safely.</div> </div> <div> <div>12:15PM</div> <div>5</div> <div>In the case of microporous mesh where</div> </div> <div> <div>12:15PM</div> <div>6</div> <div>the pores are smaller, the tissue is going</div> </div> <div> <div>12:15PM</div> <div>7</div> <div>to grow over the pores and encapsulate</div> </div> <div> <div>12:15PM</div> <div>8</div> <div>them, and this is a process that's called</div> </div> <div> <div>12:15PM</div> <div>9</div> <div>scar plating or bridging fibrosis.</div> </div> <div> <div>12:15PM</div> <div>10</div> <div>Fibrosis is a fancy word for scars. The</div> </div> <div> <div>12:15PM</div> <div>11</div> <div>scars bridge the pores and cover the mesh.</div> </div> <div> <div>12:16PM</div> <div>12</div> <div>Ethicon knew that in its TVT line of</div> </div> <div> <div>12:16PM</div> <div>13</div> <div>products, including the two that we're</div> </div> <div> <div>12:16PM</div> <div>14</div> <div>talking about here, that the pores were too</div> </div> <div> <div>12:16PM</div> <div>15</div> <div>small and that they would collapse if any</div> </div> <div> <div>12:16PM</div> <div>16</div> <div>tension was put on them during the implant</div> </div> <div> <div>12:16PM</div> <div>17</div> <div>surgery.</div> </div> <div> <div>12:16PM</div> <div>18</div> <div>The easiest way I can show you pore</div> </div> <div> <div>12:16PM</div> <div>19</div> <div>collapse is again with this net. If you</div> </div> <div> <div>12:16PM</div> <div>20</div> <div>tension it or pull on the mesh at all, the</div> </div> <div> <div>12:16PM</div> <div>21</div> <div>pores collapse and become smaller like</div> </div> <div> <div>12:16PM</div> <div>22</div> <div>this, but you need to tension those devices</div> </div> <div> <div>12:16PM</div> <div>23</div> <div>to get them under the urethra. You can't</div> </div> <div> <div>12:16PM</div> <div>24</div> <div>avoid collapsed pores which creates those</div> </div> <div> <div>12:16PM</div> <div>25</div> <div>scars. This is the first defect with the</div> </div>

<div>34</div> <div> <div>1</div> <div>Plaintiffs' Opening Statement</div> </div> <div> <div>12:20PM</div> <div>2</div> <div>human body. Not only does that make the</div> </div> <div> <div>12:20PM</div> <div>3</div> <div>mesh more rigid, which we're going to talk</div> </div> <div> <div>12:20PM</div> <div>4</div> <div>about in a minute, but it can also cause</div> </div> <div> <div>12:20PM</div> <div>5</div> <div>pain.</div> </div> <div> <div>12:20PM</div> <div>6</div> <div>The pelvis is an innervated region.</div> </div> <div> <div>12:20PM</div> <div>7</div> <div>You've got nerves all over down there.</div> </div> <div> <div>12:20PM</div> <div>8</div> <div>Again, this might be common sense, but you</div> </div> <div> <div>12:20PM</div> <div>9</div> <div>have nerves so that you can enjoy sexual</div> </div> <div> <div>12:20PM</div> <div>10</div> <div>experiences, you have nerves that tell you</div> </div> <div> <div>12:20PM</div> <div>11</div> <div>when you have to take a bowel movement, you</div> </div> <div> <div>12:20PM</div> <div>12</div> <div>have nerves that tell you when you have to</div> </div> <div> <div>12:20PM</div> <div>13</div> <div>urinate. They need to be there and they</div> </div> <div> <div>12:20PM</div> <div>14</div> <div>need to be intact. This is the fourth</div> </div> <div> <div>12:20PM</div> <div>15</div> <div>defect in the product.</div> </div> <div> <div>12:20PM</div> <div>16</div> <div>The TVT and the TVT-S also don't</div> </div> <div> <div>12:20PM</div> <div>17</div> <div>remain soft after implantation. And this</div> </div> <div> <div>12:20PM</div> <div>18</div> <div>is because of that inflammatory reaction I</div> </div> <div> <div>12:20PM</div> <div>19</div> <div>told you about. This is because of the</div> </div> <div> <div>12:20PM</div> <div>20</div> <div>scar tissue that I told you about. And</div> </div> <div> <div>12:20PM</div> <div>21</div> <div>also the way they're cut affects them. As</div> </div> <div> <div>12:20PM</div> <div>22</div> <div>a result, the mesh can migrate out of place</div> </div> <div> <div>12:20PM</div> <div>23</div> <div>from where it's supposed to be into organs</div> </div> <div> <div>12:21PM</div> <div>24</div> <div>that it's not supposed to be in.</div> </div> <div> <div>12:21PM</div> <div>25</div> <div>Erosion is a term you'll hear a lot.</div> </div>
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<p style="text-align: right;">38</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:24PM 2 of urinary dysfunction, but as I told you</p> <p>12:24PM 3 on your way here there's no way to safely</p> <p>12:24PM 4 get it all out. Ella's doctor in 2012</p> <p>12:24PM 5 tried really hard. He cut her open from</p> <p>12:24PM 6 hip to hip and dissected all the tissue</p> <p>12:24PM 7 around her bladder. And she had to have</p> <p>12:24PM 8 another mesh removal surgery in 2016. He</p> <p>12:24PM 9 couldn't get it all out. Nobody can get it</p> <p>12:24PM 10 all out.</p> <p>12:24PM 11 It doesn't have to be this way. There</p> <p>12:24PM 12 are other ways to treat stress urinary</p> <p>12:24PM 13 incontinence. There are noninvasive</p> <p>12:24PM 14 options like Kegel exercises. I'm sure</p> <p>12:25PM 15 some of the women have heard of those where</p> <p>12:25PM 16 you just practice tensioning the muscles in</p> <p>12:25PM 17 your pelvic. They can give you a plastic</p> <p>12:25PM 18 device called Hef3 that you can insert and</p> <p>19 take out yourself if it becomes</p> <p>12:25PM 20 problematic. You can use bulking agents</p> <p>12:25PM 21 that they can just inject in there to</p> <p>12:25PM 22 support the urethra.</p> <p>12:25PM 23 If your stress urinary incontinence is</p> <p>12:25PM 24 really bothersome, there are other surgical</p> <p>12:25PM 25 options available long before Ethicon ever</p>	<p style="text-align: right;">40</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:26PM 2 somewhere on your abdomen using a natural</p> <p>3 substance.</p> <p>12:26PM 4 The big risk with the MMK, it's a big</p> <p>12:26PM 5 one, it might not work. And if it doesn't</p> <p>12:26PM 6 work, there's no problem. There's</p> <p>12:26PM 7 literally almost no long-term problems.</p> <p>12:26PM 8 You won't get this from an MMK procedure.</p> <p>12:26PM 9 It can't happen.</p> <p>12:26PM 10 Despite these and the other options</p> <p>12:26PM 11 that were available, Johnson & Johnson</p> <p>12:26PM 12 launched the TVT on the market in 1996.</p> <p>12:27PM 13 They bought the device for \$24 million,</p> <p>12:27PM 14 paid its inventors millions more after the</p> <p>12:27PM 15 sale. They paid the inventor himself to</p> <p>12:27PM 16 test the product for them and they</p> <p>12:27PM 17 conditioned the payment on the results of</p> <p>12:27PM 18 his study. They never bothered to verify</p> <p>12:27PM 19 the results to see if what he was reporting</p> <p>12:27PM 20 was true. Why? \$24 million was a good</p> <p>12:27PM 21 investment. By 2004 the TVT was worth \$100</p> <p>12:27PM 22 million to the company. They had a 91%</p> <p>12:27PM 23 profit.</p> <p>12:27PM 24 In the mid-2000s other medical device</p> <p>12:27PM 25 manufacturers started getting on the</p>
<p style="text-align: right;">39</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:25PM 2 put this stuff on the market. One of them</p> <p>12:25PM 3 is called the Burch procedure. The Burch</p> <p>12:25PM 4 procedure is invasive. It's a surgery. It</p> <p>12:25PM 5 involves making an incision in the lower</p> <p>12:25PM 6 pelvis and then using a few sutures to</p> <p>12:25PM 7 stitch up the vagina so your whole organs</p> <p>12:25PM 8 support that urethra. The big problem with</p> <p>12:25PM 9 it, it might not work. And if it doesn't</p> <p>12:25PM 10 work, no long-term problems. If those few</p> <p>12:25PM 11 sutures give you a problem, they can easily</p> <p>12:25PM 12 be taken out. You're not going to get this</p> <p>12:25PM 13 from a Burch procedure. You're not going</p> <p>12:25PM 14 to met a mangled urethra from a Burch</p> <p>12:26PM 15 procedure.</p> <p>12:26PM 16 There's another surgery you can do.</p> <p>12:26PM 17 You can do what's called an MMK procedure.</p> <p>12:26PM 18 This is where surgeons go in and they use</p> <p>12:26PM 19 slings, but not mesh slings, not synthetic</p> <p>12:26PM 20 substances. They can use animal tissues,</p> <p>12:26PM 21 sometimes called a porcine graft. They can</p> <p>12:26PM 22 use cadaver tissue, which means a dead body</p> <p>12:26PM 23 that's been donated, or they can even</p> <p>12:26PM 24 harvest tissue from other parts of your</p> <p>12:26PM 25 body, from the inside of your thigh or</p>	<p style="text-align: right;">41</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:27PM 2 market, started entry of the synthetic</p> <p>12:27PM 3 slings, that went into the obturator tape,</p> <p>12:27PM 4 a slightly different area. Johnson &</p> <p>12:27PM 5 Johnson didn't want to lose its share of</p> <p>12:27PM 6 the market, so they put out an obturator</p> <p>12:27PM 7 tape. You'll hear a little about it, the</p> <p>12:27PM 8 TVT-O. They wanted to protect their share</p> <p>12:27PM 9 of that cash cow industry. Not my words,</p> <p>12:27PM 10 their words. You're going to see that</p> <p>12:27PM 11 that's what they call the stress urinary</p> <p>12:28PM 12 incontinence field.</p> <p>12:28PM 13 Renee Selman, the president of</p> <p>12:28PM 14 Ethicon, was given presentations on how</p> <p>12:28PM 15 Ethicon was losing its market share and</p> <p>12:28PM 16 they had to come out with a new sling</p> <p>12:28PM 17 because they weren't first in the market</p> <p>12:28PM 18 with that obturator sling. So that's when</p> <p>12:28PM 19 they decided to come out with the TVT-S.</p> <p>12:28PM 20 It was created by Dan Smith, an engineer,</p> <p>12:28PM 21 not a doctor, and it was a single-incision</p> <p>12:28PM 22 sling, as I told you earlier.</p> <p>12:28PM 23 The TVT-S was not effective,</p> <p>12:28PM 24 unreasonably dangerous, barely looked at in</p> <p>12:28PM 25 humans before it was launched on the</p>

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	1	Plaintiffs' Opening Statement		1	Plaintiffs' Opening Statement
12:28PM	2	market, but they did it anyway. Why?	12:30PM	2	referring to their TVT-S validation studies
12:28PM	3	You're going to see company documents that	12:30PM	3	as a big steaming pile of dot dot dot.
12:28PM	4	they thought it was quote, priceless, to	12:30PM	4	You'll see the TVT-S referred to as a
12:28PM	5	get it on the market before their	12:30PM	5	failed product.
12:28PM	6	competitors.	12:31PM	6	You'll see the data for the TVT-S
12:28PM	7	Now, you'll hear a lot in this case	12:31PM	7	described as, quote, pretty awful.
12:28PM	8	about the types of studies you can do on	12:31PM	8	You'll see Power Points describe the
12:28PM	9	things. The most robust study you can do	12:31PM	9	launch without one year results as a risky
12:28PM	10	is called a Randomized Controlled Trial. I	12:31PM	10	situation.
12:28PM	11	shortened it to RCT. RCT looks at two	12:31PM	11	You'll see company employees saying
12:28PM	12	treatment methods to see which is better	12:31PM	12	the world was overdue for a status check on
12:28PM	13	and how safe they are. Ethicon was paying	12:31PM	13	the TVT-S, including the good, the bad, and
12:29PM	14	doctors millions to support its products.	12:31PM	14	the ugly.
12:29PM	15	These doctors they paid were called key	12:31PM	15	Ella just got up and I was going to
12:29PM	16	opinion leaders. Ethicon had two key	12:31PM	16	say this later, but I'll say it now. She
12:29PM	17	opinion leaders tell it do an RCT on the	12:31PM	17	has to use the bathroom sometimes, so
12:29PM	18	TVT-S before you put it on the market.	12:31PM	18	please forgive her if you see her get up.
12:29PM	19	They didn't do one. Why? There's why.	12:31PM	19	Good, bad, and ugly, we'll get back to
12:29PM	20	Budget constraints. \$72 billion and they	12:31PM	20	this. You'll see Ethicon employees refer
12:29PM	21	had budget constraints. So they couldn't	12:31PM	21	to the TVT-S as dead and weak.
12:29PM	22	test the product in humans before they put	12:31PM	22	Now, when studies were done on their
12:29PM	23	it on the market.	12:31PM	23	products, they had input on that as well.
12:29PM	24	The rest of this slide is interesting,	12:31PM	24	I don't have time to put all the documents
12:29PM	25	but we don't have time to go through it.	12:31PM	25	up now, but let's just go through what they
		43			45
	1	Plaintiffs' Opening Statement		1	Plaintiffs' Opening Statement
12:29PM	2	We'll do it later.	12:31PM	2	said when they got data about their
12:29PM	3	Instead of doing a RCT, they collected	12:31PM	3	products that they didn't like. I'm using
12:29PM	4	five weeks of data on 31 women. Now five	12:31PM	4	their words again. One, they said, "How
12:29PM	5	weeks is a short time. Many women haven't	12:32PM	5	can we jazz it up?" Jazzing up scientific
12:29PM	6	even gone back to an active lifestyle after	12:32PM	6	data.
12:29PM	7	getting an implant. The results were never	12:32PM	7	Two, "How can we spin it?"
12:29PM	8	published. They didn't share them with the	12:32PM	8	Three, "Let's probe the results."
12:29PM	9	medical community. Why? Sixty percent	12:32PM	9	Four, "Let's," quote, "tell doctors
12:30PM	10	complications at five weeks. Thirty	12:32PM	10	which complications they should report."
12:30PM	11	percent of women it had failed within five	12:32PM	11	In 2007 one of their key opinion
12:30PM	12	weeks. They got this information just	12:32PM	12	leaders, the people they made millions of
12:30PM	13	before they put it on the market and they	12:32PM	13	dollars to support their products and teach
12:30PM	14	launched it anyway.	12:32PM	14	other doctors how to use them, had very
12:30PM	15	For six years they got nothing but bad	12:32PM	15	poor efficacy results with the TVT-S. He
12:30PM	16	information about the product, didn't take	12:32PM	16	just couldn't get it to work. Ethicon
12:30PM	17	it off the market. Some of the stuff	12:32PM	17	employees discussed an internal e-mail
12:30PM	18	you're going to see. In November of 2006	12:32PM	18	whether they should review what patient
12:30PM	19	the top executive at Ethicon in Germany	12:32PM	19	report results to report and they weren't
12:30PM	20	sent an e-mail to Axel Arnaud, U.S. medical	12:32PM	20	going to report all the complications,
12:30PM	21	director in the company, that literally	12:32PM	21	well, maybe they should just stop and not
12:30PM	22	said, let me get this right, "The more	12:32PM	22	publish the data.
12:30PM	23	procedures," referring to the TVT-S	12:32PM	23	Now, a lot of what I just talked to
12:30PM	24	implant, "The more problems."	12:32PM	24	you is going to be shown through deposition
12:30PM	25	You'll see internal Ethicon documents	12:32PM	25	testimony. Bear with me. You're going to

<p style="text-align: right;">46</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:32PM 2 have to watch it on a TV. I can't bring</p> <p>12:33PM 3 these Ethicon folks in here and I don't</p> <p>12:33PM 4 think they're going to bring anybody from</p> <p>12:33PM 5 Ethicon either. So please bear with me.</p> <p>12:33PM 6 Pay attention. It's just as important as</p> <p>12:33PM 7 though it's live witnesses. We took their</p> <p>12:33PM 8 depositions under oath. They swore to tell</p> <p>12:33PM 9 the truth, just as important.</p> <p>12:33PM 10 Some other stuff you'll see. You'll</p> <p>12:33PM 11 see an internal e-mail from Dan Smith, the</p> <p>12:33PM 12 gentleman who created the TVT-S, full with</p> <p>12:33PM 13 information about the TVT-S. The first</p> <p>12:33PM 14 words of the e-mail, "Do not forward,</p> <p>12:33PM 15 please delete."</p> <p>12:33PM 16 So what are they trying to hide?</p> <p>12:33PM 17 Well, the TVT-S was pulled from the market</p> <p>12:33PM 18 in Australia in 2006 by their medical</p> <p>12:33PM 19 director there due to concerns of efficacy.</p> <p>12:33PM 20 They continue to launch it in the U.S. and</p> <p>12:33PM 21 sell it here without ever sending letters</p> <p>12:33PM 22 to doctors that they had this huge problem</p> <p>12:33PM 23 in Australia.</p> <p>12:33PM 24 One of their key opinion leaders,</p> <p>12:33PM 25 Professor Flam, told defendants very early</p>	<p style="text-align: right;">48</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:34PM 2 done called a Hota Study, it was stopped</p> <p>12:34PM 3 early because of lower success rates than</p> <p>12:34PM 4 anticipated, had a 50% failure rate and a</p> <p>12:34PM 5 19% complication rate.</p> <p>12:35PM 6 Most appalling of all of this, when a</p> <p>12:35PM 7 woman suffered a complication and her</p> <p>12:35PM 8 implant didn't work, the recommendation was</p> <p>12:35PM 9 put in another mesh, put in another implant</p> <p>12:35PM 10 right on top of the one you got. So you</p> <p>12:35PM 11 got two slings, twice the mesh, twice the</p> <p>12:35PM 12 scar plating, twice the inflammation, twice</p> <p>12:35PM 13 the risk of erosion, but Johnson & Johnson</p> <p>12:35PM 14 gets twice the sales.</p> <p>12:35PM 15 Now, there are plenty of surgeons who</p> <p>12:35PM 16 just won't use transvaginal mesh. They</p> <p>12:35PM 17 think it's dangerous, especially because</p> <p>12:35PM 18 there are other treatment options that are</p> <p>12:35PM 19 out there.</p> <p>12:35PM 20 Now, in this courtroom you're going to</p> <p>12:35PM 21 hear Johnson & Johnson in a few minutes get</p> <p>12:35PM 22 up here and say it's the gold standard,</p> <p>12:35PM 23 this product was the gold standard. Sure,</p> <p>12:35PM 24 among doctors that use mesh it is the gold</p> <p>12:35PM 25 standard. Why? One, it's a simple</p>
<p style="text-align: right;">47</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:33PM 2 on that the TVT-S had defects and that he</p> <p>12:34PM 3 wouldn't demonstrate it or promote it until</p> <p>12:34PM 4 they addressed those defects. They never</p> <p>12:34PM 5 changed the design.</p> <p>12:34PM 6 Dr. Vincent Lucente is one of their</p> <p>12:34PM 7 key opinion leaders, he trained Ella's</p> <p>12:34PM 8 implanter, was paid over \$2 million by the</p> <p>12:34PM 9 company, has horrible failure rates with</p> <p>12:34PM 10 the device, 60% failure rates. In the</p> <p>12:34PM 11 words of the company they were very</p> <p>12:34PM 12 concerning. They never published this</p> <p>13 data.</p> <p>12:34PM 14 The defendants knew doctors were</p> <p>15 struggling on how to put it in properly, so</p> <p>12:34PM 16 they came up with what's called cookbook.</p> <p>12:34PM 17 They circulated that to doctors. The</p> <p>12:34PM 18 failure rates never got any better. The</p> <p>12:34PM 19 product is so dangerous, there's no fixing</p> <p>12:34PM 20 it.</p> <p>12:34PM 21 By August of 2007 the key opinion</p> <p>12:34PM 22 leaders who told them to do the randomized</p> <p>12:34PM 23 controlled trials said we won't support the</p> <p>12:34PM 24 product. When they finally did a</p> <p>12:34PM 25 randomized controlled trial, and one was</p>	<p style="text-align: right;">49</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:35PM 2 procedure, it only take 20 minutes.</p> <p>12:35PM 3 If you want to do a Burch or an MMK,</p> <p>12:35PM 4 you need to be a skilled surgeon. So</p> <p>12:36PM 5 Johnson & Johnson found a way that OB/GYNs</p> <p>12:36PM 6 could not refer out their patients that</p> <p>12:36PM 7 needed surgeries, they can do it</p> <p>12:36PM 8 themselves. It's all about the money.</p> <p>12:36PM 9 Dr. Douglass, Ella's implanter, said,</p> <p>12:36PM 10 "Yeah, I like the TVT, I like to do it in</p> <p>12:36PM 11 outpatient centers because that way I could</p> <p>12:36PM 12 put more products in in one day."</p> <p>12:36PM 13 And Ethicon and Johnson & Johnson also</p> <p>12:36PM 14 paid a lot of money promoting its products.</p> <p>12:36PM 15 They had an \$800 million prelaunch</p> <p>12:36PM 16 marketing budget for the TVT-S. It fought</p> <p>12:36PM 17 hard against naysayers with its money.</p> <p>12:36PM 18 In addition to paying key opinion</p> <p>12:36PM 19 leaders and doing its marketing, they would</p> <p>12:36PM 20 sponsor industry events. AUGS is the</p> <p>12:36PM 21 American Urogynecologic Society, SUFU,</p> <p>12:36PM 22 Society of Urodynamics, Female Pelvic</p> <p>12:36PM 23 Medicine, and Urogenital Reconstruction.</p> <p>12:36PM 24 In 2014 they issued a position statement in</p> <p>12:36PM 25 support of these kind of products</p>

<p style="text-align: right;">50</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:36PM 2 midurethral slings.</p> <p>12:36PM 3 You're going to hear from Charles</p> <p>12:37PM 4 Nager. He was the president of AUGS and a</p> <p>12:37PM 5 member of the task force that wrote this</p> <p>12:37PM 6 statement. He had a relationship with mesh</p> <p>12:37PM 7 manufacturers. He was paid by mesh</p> <p>12:37PM 8 manufacturers. In the notes from the first</p> <p>12:37PM 9 meeting of this task force where they wrote</p> <p>12:37PM 10 this statement, they said we want our</p> <p>12:37PM 11 members to use this position statement at</p> <p>12:37PM 12 legal proceedings, like this. Guess who</p> <p>12:37PM 13 can joined AUGS? Medical device</p> <p>12:37PM 14 manufacturers. Guess who was a member?</p> <p>12:37PM 15 Ethicon. Guess who is going to stand up</p> <p>12:37PM 16 and show you that AUG statement? Ethicon</p> <p>12:37PM 17 and Johnson & Johnson.</p> <p>12:37PM 18 You're going to hear Ethicon's lawyers</p> <p>12:37PM 19 say we didn't have to do an RCT, we could</p> <p>12:37PM 20 rely -- RCT on the TVT-S, that study I told</p> <p>12:37PM 21 you about, because we could rely on the</p> <p>12:37PM 22 data of the TVT, it had been on the market</p> <p>12:37PM 23 for a very long time. The TVT-S was, in</p> <p>12:37PM 24 Ethicon's own words, a revolution. It was</p> <p>12:37PM 25 a shorter mesh life. The felt tips were</p>	<p style="text-align: right;">52</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:39PM 2 spasm, urgency, infection, bleeding, and it</p> <p>12:39PM 3 might not work. I told all that to Ella,</p> <p>12:39PM 4 no problem, show you the consent form. But</p> <p>12:39PM 5 he testified he thought the risks were</p> <p>12:39PM 6 exceedingly low, it almost never happened,</p> <p>12:39PM 7 and if those problems developed, that</p> <p>12:39PM 8 they'd be easily treatable. That's why he</p> <p>12:39PM 9 was putting it in women.</p> <p>12:39PM 10 Now, he retired in 2011. He wasn't</p> <p>12:39PM 11 around long enough to follow up with all of</p> <p>12:39PM 12 his patients to know the true harm that it</p> <p>12:39PM 13 was doing to women like Ella Ebaugh. He</p> <p>12:39PM 14 had no idea that her urethra was mangled</p> <p>12:39PM 15 and all the urinary problems she had. He</p> <p>12:39PM 16 stopped practicing. He was not aware of</p> <p>12:39PM 17 and did not warn her of the serious nature,</p> <p>12:39PM 18 the frequency, severity, and permanency of</p> <p>12:39PM 19 the true risks. He couldn't tell her. She</p> <p>12:39PM 20 never knew about them because Ethicon</p> <p>12:39PM 21 didn't let it out.</p> <p>12:39PM 22 Dr. Douglass testified he relied on</p> <p>12:39PM 23 his own training, his colleagues, and the</p> <p>12:39PM 24 literature that was out there in the field.</p> <p>12:39PM 25 But he never got any letters from Ethicon,</p>
<p style="text-align: right;">51</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:37PM 2 different. The arrowhead introducer was</p> <p>12:38PM 3 different. It was laser cut mesh.</p> <p>12:38PM 4 Their own internal people recognized</p> <p>12:38PM 5 they couldn't rely on the TVT data. And</p> <p>12:38PM 6 you're going to hear about how biased that</p> <p>12:38PM 7 TVT data is about them paying for the</p> <p>12:38PM 8 results and then never bothering to verify</p> <p>12:38PM 9 them.</p> <p>12:38PM 10 You'll see Ethicon recognized the</p> <p>12:38PM 11 mistakes it made with the TVT-S. Their</p> <p>12:38PM 12 slide, not my words, Ethicon is guilty of</p> <p>12:38PM 13 two cardinal sins, a rush to market in the</p> <p>12:38PM 14 absence of sound data, TVT-Secur.</p> <p>12:38PM 15 What they did was wrong. The bottom</p> <p>12:38PM 16 line is that TVT and TVT-S are defective.</p> <p>12:38PM 17 They didn't meet the expectations of Ella</p> <p>12:38PM 18 or her doctor. Dr. Douglass testified in</p> <p>12:38PM 19 deposition, again he's going to be on</p> <p>12:38PM 20 video, saying I love the TVT, I used it all</p> <p>12:38PM 21 the time, it was great. I knew there were</p> <p>12:38PM 22 risks. I knew there was a risk of erosion.</p> <p>12:38PM 23 There's a risk of erosion for all</p> <p>12:38PM 24 surgically implanted materials. I knew you</p> <p>12:39PM 25 could have urinary retention, bladder</p>	<p style="text-align: right;">53</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:40PM 2 which they could do, dear doctor letters</p> <p>12:40PM 3 saying, hey, we pulled it from the market</p> <p>12:40PM 4 in Australia; hey, we're seeing higher</p> <p>12:40PM 5 erosion rates in women; hey, you might want</p> <p>12:40PM 6 to be careful. Nothing. No communications</p> <p>12:40PM 7 from the company.</p> <p>12:40PM 8 There were no long-term studies on the</p> <p>12:40PM 9 TVT-S when Ella had it implanted in May of</p> <p>12:40PM 10 2007. When the defense lawyers get up here</p> <p>12:40PM 11 and they put up studies about problems with</p> <p>12:40PM 12 mesh to suggest that Ella should have</p> <p>12:40PM 13 known, look at what year they were</p> <p>12:40PM 14 published and what they were really</p> <p>12:40PM 15 studying. Were they studying the products</p> <p>12:40PM 16 at issue in this case? Was the information</p> <p>12:40PM 17 really available to Dr. Douglass? Did</p> <p>12:40PM 18 Ethicon have a say in jazzing up the data?</p> <p>12:40PM 19 The risks of the TVT-S and TVT far</p> <p>12:40PM 20 outweighed the benefits. They're not</p> <p>12:40PM 21 minimal and they're not temporary. They're</p> <p>12:40PM 22 severe, frequent, and permanent.</p> <p>12:40PM 23 Plaintiffs also have a negligent</p> <p>12:40PM 24 design claim. Quite simply, a medical</p> <p>12:40PM 25 device manufacturer must act in a</p>

<p style="text-align: right;">54</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:41PM 2 reasonably careful manner to avoid injuring</p> <p>12:41PM 3 others. Ethicon and Johnson & Johnson</p> <p>12:41PM 4 didn't do that.</p> <p>12:41PM 5 Defense counsel speaks after me and</p> <p>12:41PM 6 I'm really sure they're going to address</p> <p>12:41PM 7 almost none of this about their products or</p> <p>12:41PM 8 any of these internal documents. I'm</p> <p>12:41PM 9 probably the only one who is going to show</p> <p>12:41PM 10 them to you. They're going to focus on</p> <p>12:41PM 11 Ella and Ella's life.</p> <p>12:41PM 12 Ella has had a tough life. She's had</p> <p>12:41PM 13 some problems. But we're not here because</p> <p>12:41PM 14 of her problems. We're here because of her</p> <p>12:41PM 15 mangled urethra and her permanent urinary</p> <p>12:41PM 16 dysfunction and her pain.</p> <p>12:41PM 17 A little bit about Ella. And I'm just</p> <p>12:41PM 18 looking at the clock, so if you see me turn</p> <p>12:41PM 19 my head at all, don't think I'm ignoring</p> <p>12:41PM 20 you.</p> <p>12:41PM 21 Ella is 51 years old. She's married</p> <p>12:41PM 22 to her husband Marvin since December of</p> <p>12:41PM 23 2012. They live in, Manchester, which is</p> <p>12:41PM 24 just outside of York. She has four</p> <p>12:41PM 25 children from her first marriage, Jamie</p>	<p style="text-align: right;">56</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:42PM 2 She started getting urinary tract</p> <p>12:42PM 3 infections when she first started having</p> <p>12:42PM 4 sex. She's had them through the years.</p> <p>12:42PM 5 That's not why we're here.</p> <p>12:42PM 6 Pre-implant she had urgency issues.</p> <p>12:42PM 7 When she felt like she had to go to the</p> <p>12:42PM 8 bathroom, she had to go quick. She would</p> <p>12:42PM 9 get up one to two times a night to go to</p> <p>12:42PM 10 the bathroom. That's called nocturia.</p> <p>12:43PM 11 In 2005 she was diagnosed with</p> <p>12:43PM 12 urethral stenosis, a constriction of the</p> <p>12:43PM 13 urethra. Her doctor dilated it. No</p> <p>12:43PM 14 evidence it's ever been a problem after.</p> <p>12:43PM 15 And she's also had stress urinary</p> <p>12:43PM 16 incontinence. Couple drops here and there</p> <p>12:43PM 17 after she had kids. Got worse as she was</p> <p>12:43PM 18 playing softball. She would be sliding</p> <p>12:43PM 19 into base and losing a lot more than a</p> <p>12:43PM 20 couple drop. Started wearing a maxi pad</p> <p>12:43PM 21 all the time. And that's why she went to</p> <p>12:43PM 22 see Dr. Douglass to talk about treatment</p> <p>12:43PM 23 options for it.</p> <p>12:43PM 24 When she went to see Dr. Douglass in</p> <p>12:43PM 25 2005 her primary complaint was having to</p>
<p style="text-align: right;">55</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:41PM 2 Joseph, Jennifer, and Jacob. Jacob is in</p> <p>12:41PM 3 high school, still lives at home with them.</p> <p>12:41PM 4 Marvin has two children from his first</p> <p>12:42PM 5 marriage. His daughter Sarah lives at home</p> <p>12:42PM 6 with them. So there's a family of four in</p> <p>12:42PM 7 the house right now.</p> <p>12:42PM 8 Ella is a proud, proud grandmother.</p> <p>12:42PM 9 She has four grandchildren and a little</p> <p>12:42PM 10 boy -- am I getting that right -- a little</p> <p>12:42PM 11 boy grandchild on the way, so soon to be</p> <p>12:42PM 12 five grandchildren. The things she enjoys</p> <p>12:42PM 13 most in life is spending time with her</p> <p>12:42PM 14 family. She babysits her grandchildren</p> <p>12:42PM 15 when she can.</p> <p>12:42PM 16 Every Sunday her mom makes dinner and</p> <p>12:42PM 17 her whole family, all her siblings come.</p> <p>12:42PM 18 She's got nine siblings. Big family dinner</p> <p>12:42PM 19 every Sunday night, she tries to get there.</p> <p>12:42PM 20 She used to be an avid athlete, played</p> <p>12:42PM 21 a lot of sports. She's had some hip</p> <p>12:42PM 22 issues. She can't do that anymore, but she</p> <p>12:42PM 23 likes to go to her son Jacob's baseball and</p> <p>12:42PM 24 football games.</p> <p>12:42PM 25 She had a history of urinary problems.</p>	<p style="text-align: right;">57</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:43PM 2 wear that maxi pad all the time.</p> <p>12:43PM 3 In 2005 she actually scheduled a TVT-O</p> <p>12:43PM 4 implant surgery, but didn't get it. Her</p> <p>12:43PM 5 daughter was in a Junior Miss, a little</p> <p>12:43PM 6 beauty pageant, she wanted to focus on her</p> <p>12:43PM 7 daughter. Her stress urinary incontinence</p> <p>12:43PM 8 was so minimal that she didn't need to get</p> <p>12:43PM 9 surgery right away.</p> <p>12:43PM 10 In 2007 a new product was on the</p> <p>12:43PM 11 market, the TVT-S, and Dr. Douglass said</p> <p>12:44PM 12 let's do the new one. She agreed to have</p> <p>12:44PM 13 her implant May 31st, 2007. Two weeks</p> <p>12:44PM 14 after the implant Ella told her doctor it</p> <p>12:44PM 15 didn't work. July 12th, 2007, he puts in</p> <p>12:44PM 16 the TVT.</p> <p>12:44PM 17 She had some urinary tract infections</p> <p>12:44PM 18 in '08, not unusual for her.</p> <p>12:44PM 19 In 2009 she started to get more</p> <p>12:44PM 20 complaints of frequency, meaning she has to</p> <p>12:44PM 21 go to the bathroom more than normal.</p> <p>12:44PM 22 Another UTI, not unusual for her.</p> <p>12:44PM 23 But in 2011 things got markedly worse.</p> <p>12:44PM 24 She started getting urgency much worse and</p> <p>12:44PM 25 nocturia frequency and a pain and a burning</p>

<p style="text-align: right;">58</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:44PM 2 region in her pelvis. She was sent to a</p> <p>12:44PM 3 urologist and he had to do a cystoscopy.</p> <p>12:44PM 4 This is not a pleasant procedure. You take</p> <p>12:44PM 5 a tube with a camera and insert it into</p> <p>12:44PM 6 your urethra to look up into it. Dr.</p> <p>12:44PM 7 Shrine did it and he saw that mesh had</p> <p>12:44PM 8 eroded into her urethra. He didn't do mesh</p> <p>12:44PM 9 surgery, so he sent her to someone else,</p> <p>12:44PM 10 Dr. Mirsky.</p> <p>12:44PM 11 Dr. Mirsky did another cystoscopy</p> <p>12:45PM 12 putting a camera into her urethra. He saw</p> <p>12:45PM 13 the mesh had eroded right through the</p> <p>12:45PM 14 urethra, and I'm quoting his words, it</p> <p>12:45PM 15 looked like the sling was a gate</p> <p>12:45PM 16 obstructing urethra.</p> <p>12:45PM 17 Dr. Mirsky did a mesh removal June</p> <p>12:45PM 18 14th, 2011, very simple mesh removal, the</p> <p>12:45PM 19 kind of thing she had been warned about.</p> <p>12:45PM 20 Another cystoscopy, snip the mesh out, left</p> <p>12:45PM 21 the sling in place to treat her SUI, her</p> <p>12:45PM 22 stress urinary incontinence. He did see</p> <p>12:45PM 23 that the mesh had perforated, though, poked</p> <p>12:45PM 24 holes in two places in her urethra, so he</p> <p>12:45PM 25 tried to fix those.</p>	<p style="text-align: right;">60</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:46PM 2 incision vaginally, sliced up into those</p> <p>12:46PM 3 tunnels that were cut for the TVT and the</p> <p>12:46PM 4 TVT-S, and got out as much of the mesh as</p> <p>12:46PM 5 he could.</p> <p>12:46PM 6 The problems got a little better, but</p> <p>12:46PM 7 then they came back with a vengeance.</p> <p>12:46PM 8 Frequency, pain with urination,</p> <p>12:46PM 9 incontinence. A cystoscopy in August shows</p> <p>12:46PM 10 that there was still a little bit of a mesh</p> <p>12:46PM 11 on the one side. But he didn't want to</p> <p>12:46PM 12 take it out because of the risk of the</p> <p>12:46PM 13 procedure at this point. Ella was scared.</p> <p>12:46PM 14 She didn't really want to undergo another</p> <p>12:46PM 15 surgery.</p> <p>12:46PM 16 But things kept getting worse. She</p> <p>12:46PM 17 started losing the full contents of her</p> <p>12:46PM 18 bladder with little provocation. She was</p> <p>12:47PM 19 in pain all the time. She was in pain when</p> <p>12:47PM 20 she had sex. She had trouble emptying her</p> <p>12:47PM 21 bladder at times, a condition known as</p> <p>12:47PM 22 urinary retention.</p> <p>12:47PM 23 2015 she saw another doctor, Dr.</p> <p>12:47PM 24 Drolet. She did another cystoscopy, saw a</p> <p>12:47PM 25 mesh in the urethra and diagnosed Ella with</p>
<p style="text-align: right;">59</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:45PM 2 She got better. She thought things</p> <p>12:45PM 3 were on the up and up, but then after a few</p> <p>12:45PM 4 months the problems came back. He did</p> <p>12:45PM 5 another cystoscopy and saw more mesh in her</p> <p>12:45PM 6 urethra. The mesh had created what he</p> <p>12:45PM 7 called a large, almost false passage. He</p> <p>12:45PM 8 thought she might need all of the mesh</p> <p>12:45PM 9 taken out, so he sent her to see Dr. Chai</p> <p>12:45PM 10 at the University of Maryland.</p> <p>12:45PM 11 Dr. Chai did another cystoscopy, saw</p> <p>12:45PM 12 the mesh. She had to have six of these</p> <p>12:45PM 13 cystoscopies since she got her mesh</p> <p>12:45PM 14 implanted, never had one prior. He saw the</p> <p>12:46PM 15 mesh in her urethra and on top of her</p> <p>12:46PM 16 bladder. So this, as I said, is a serious</p> <p>12:46PM 17 operation. He made an abdominal incision.</p> <p>12:46PM 18 He told Ella he was cutting her open from</p> <p>12:46PM 19 hip to hip. He dissected the tissue all</p> <p>12:46PM 20 the way around the bladder. He couldn't</p> <p>12:46PM 21 find the mesh on the bladder. He thinks</p> <p>12:46PM 22 that perhaps it migrated when he did the</p> <p>12:46PM 23 dissection, meaning cutting all the tissue</p> <p>12:46PM 24 away from the bladder.</p> <p>12:46PM 25 He went in vaginally, made another</p>	<p style="text-align: right;">61</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:47PM 2 urgency and cystitis. Cystitis is an</p> <p>12:47PM 3 inflammation of the bladder.</p> <p>12:47PM 4 Ella went to see another specialist,</p> <p>12:47PM 5 this time at Johns Hopkins, and he</p> <p>12:47PM 6 performed her third mesh removal surgery.</p> <p>12:47PM 7 This is in 2016. He removed the mesh as</p> <p>12:47PM 8 best as he could and tried to fix the</p> <p>12:47PM 9 urethra, but it's very, very scarred.</p> <p>12:47PM 10 You're going to hear it's mangled.</p> <p>12:47PM 11 After the surgery the mesh was sent</p> <p>12:47PM 12 down to a pathology lab. They looked at</p> <p>12:47PM 13 it. They saw fibrous tissue, that's that</p> <p>12:47PM 14 scar tissue, and a giant cell reaction.</p> <p>12:47PM 15 Her body is still fighting the mesh.</p> <p>12:47PM 16 Today Ella's urethra is mangled. It</p> <p>12:47PM 17 covers in scar tissue distally near the</p> <p>12:48PM 18 opening and in the middle. In one place</p> <p>12:48PM 19 the scar tissue has propped the urethra</p> <p>12:48PM 20 open like this, which is why she has almost</p> <p>12:48PM 21 no control.</p> <p>12:48PM 22 She no longer has stress urinary</p> <p>12:48PM 23 incontinence. She has something now called</p> <p>12:48PM 24 Intrinsic Sphincter Deficiency. She's got</p> <p>12:48PM 25 uncontrolled spasms of the bladder. She</p>

<p style="text-align: right;">62</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:48PM 2 can't control the muscles down there. She</p> <p>12:48PM 3 wakes up in the middle of the night four to</p> <p>12:48PM 4 five times. She keeps a commode next to</p> <p>12:48PM 5 her bed so that she can hopefully make it</p> <p>12:48PM 6 in time. It's still possible for her to</p> <p>12:48PM 7 get a good night's sleep and a lot of</p> <p>12:48PM 8 nights she still can't make it in time and</p> <p>12:48PM 9 she ends up sleeping on wet towels because</p> <p>12:48PM 10 she's too tired to change all the sheets.</p> <p>12:48PM 11 Her husband's got to live with all of</p> <p>12:48PM 12 this and try to get a good night's sleep as</p> <p>12:48PM 13 best he can. When she does feel the urge,</p> <p>12:48PM 14 she gets up quickly and tries to make it.</p> <p>12:48PM 15 That's often not good enough.</p> <p>12:48PM 16 Everywhere she goes she's got a bag</p> <p>12:48PM 17 with spare clothes in it. She wears</p> <p>12:48PM 18 nighttime Poise pads everywhere she goes in</p> <p>12:48PM 19 the event she can't get there in time.</p> <p>12:48PM 20 She's in pain, constant pain in her</p> <p>12:48PM 21 pelvis, pain with the bladder filling, pain</p> <p>12:49PM 22 with sex. The pain is so bad, she and her</p> <p>12:49PM 23 husband almost never are intimate with each</p> <p>12:49PM 24 other anymore.</p> <p>12:49PM 25 She still goes to her son's baseball</p>	<p style="text-align: right;">64</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:50PM 2 to doctors. Ethicon never sent letters out</p> <p>12:50PM 3 to patients about all the things it knew.</p> <p>12:50PM 4 Defendants are going to get up here</p> <p>12:50PM 5 and say Ella's problems were there before</p> <p>12:50PM 6 the mesh and now that the mesh has been</p> <p>12:50PM 7 removed, it can't be the mesh. Come on.</p> <p>12:50PM 8 Nothing else mangled her urethra other than</p> <p>12:50PM 9 the mesh. There's no evidence of her</p> <p>12:50PM 10 having a scarred mangled urethra that was</p> <p>12:50PM 11 propped open like a train tunnel until she</p> <p>12:50PM 12 got the mesh.</p> <p>12:50PM 13 She had preexisting problems, I told</p> <p>12:50PM 14 you about it. They were minimal, so</p> <p>12:50PM 15 minimal she put off her surgery for almost</p> <p>12:50PM 16 two years before she decided to have one.</p> <p>12:50PM 17 But she did have some issues. They're not</p> <p>12:50PM 18 why we're here.</p> <p>12:50PM 19 She has a life-altering injury. She</p> <p>12:50PM 20 loses the entire contents of her bladder</p> <p>12:50PM 21 with seconds' warning.</p> <p>12:50PM 22 When they get up here and talk about</p> <p>12:50PM 23 warnings, think about all the things that</p> <p>12:50PM 24 Ella has that she wasn't warned about,</p> <p>12:51PM 25 chronic intrinsic sphincter deficiency,</p>
<p style="text-align: right;">63</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:49PM 2 games, but she has to plan her route so she</p> <p>12:49PM 3 can sit near a bathroom. Otherwise she</p> <p>12:49PM 4 can't go.</p> <p>12:49PM 5 Everything she does has limit. She's</p> <p>12:49PM 6 literally chained to a toilet, will be for</p> <p>12:49PM 7 the rest of her life, all because of these</p> <p>12:49PM 8 defective devices.</p> <p>12:49PM 9 In a few minutes defense counsel is</p> <p>12:49PM 10 going to get up. They're going to say she</p> <p>12:49PM 11 didn't file a lawsuit on time.</p> <p>12:49PM 12 Pennsylvania had two years from the date</p> <p>12:49PM 13 you knew or should have known your injury</p> <p>12:49PM 14 was caused by another's conduct. Dr.</p> <p>12:49PM 15 Douglass thought the risk of erosion was</p> <p>12:49PM 16 rare. He thought all the risks were rare.</p> <p>12:49PM 17 He thought the mesh was safe, and he's</p> <p>12:49PM 18 going to tell you that in his deposition;</p> <p>12:49PM 19 as are all of our other doctors, we thought</p> <p>12:49PM 20 the mesh was fine.</p> <p>12:49PM 21 She had no idea everything I just told</p> <p>12:49PM 22 you about the problems with the mesh</p> <p>12:49PM 23 because Ethicon didn't warn anybody.</p> <p>12:49PM 24 Ethicon influenced the literature that was</p> <p>12:49PM 25 out there. Ethicon never sent letters out</p>	<p style="text-align: right;">65</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:51PM 2 urethral stones, calcium deposits in her</p> <p>12:51PM 3 urethra, permanent deformation of her</p> <p>12:51PM 4 urethra. By the way, her urethra is not</p> <p>12:51PM 5 straight anymore. It's kind of bent and</p> <p>12:51PM 6 crooked because of all the scar tissue too.</p> <p>12:51PM 7 She can't aim her urine and often will</p> <p>12:51PM 8 urinate on the wall behind her.</p> <p>12:51PM 9 She's had urethral diverticulum,</p> <p>12:51PM 10 outpouchings of the urethra, and cystitis,</p> <p>12:51PM 11 an inflammation of her bladder. Three</p> <p>12:51PM 12 erosions, five perforations, all because of</p> <p>12:51PM 13 the mesh.</p> <p>12:51PM 14 Their expert found something called</p> <p>12:51PM 15 levator muscle spasm. It's when the pelvic</p> <p>12:51PM 16 floor muscles spasm. She never had this</p> <p>12:51PM 17 before she got her mesh. She may have it</p> <p>12:51PM 18 now. Our expert couldn't find it in her.</p> <p>12:51PM 19 Levator muscle spasms comes from injury of</p> <p>12:51PM 20 the pelvis. Sure she's had injury. She's</p> <p>12:51PM 21 had five surgeries in her pelvis because of</p> <p>12:51PM 22 this mesh. She's had five perforations of</p> <p>12:51PM 23 her urethra, three erosions, and doctors</p> <p>12:51PM 24 literally dissecting the tissue around</p> <p>12:51PM 25 every organ in her vagina and her bladder</p>

<p style="text-align: right;">66</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:51PM 2 trying to get the mesh out.</p> <p>12:52PM 3 Interestingly, their expert -- we have</p> <p>12:52PM 4 to consent they're allowed to do a medical</p> <p>12:52PM 5 exam of Ella -- didn't even bother to do a</p> <p>12:52PM 6 cystoscopy to take a peek at her urethra.</p> <p>12:52PM 7 You can't find scarring of the problems</p> <p>12:52PM 8 that you're not looking for.</p> <p>12:52PM 9 The defendant is going to say she has</p> <p>12:52PM 10 chronic pain, fibromyalgia. She never had</p> <p>12:52PM 11 that before and fibromyalgia does not cause</p> <p>12:52PM 12 pain specifically in one region of the</p> <p>12:52PM 13 body.</p> <p>12:52PM 14 They're going to blame all the</p> <p>12:52PM 15 problems on everything else she's had.</p> <p>12:52PM 16 Ella's had a hip implant. It was recalled.</p> <p>12:52PM 17 She had to get a replacement hip. That hip</p> <p>12:52PM 18 implant was excruciating before she got it</p> <p>12:52PM 19 out. She testified previously it ruined</p> <p>12:52PM 20 her life. That pain has since gone away.</p> <p>12:52PM 21 She's rehabbed. She has pain in her hip</p> <p>12:52PM 22 and it runs down the front of her leg.</p> <p>12:52PM 23 That has nothing to do with the pain in her</p> <p>12:52PM 24 pelvis from the mesh. She can make</p> <p>12:52PM 25 accommodations for that.</p>	<p style="text-align: right;">68</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:53PM 2 everyone else out of the line when you're</p> <p>12:53PM 3 waiting for a Porter-Potty.</p> <p>12:53PM 4 She would really like her husband</p> <p>12:53PM 5 Marvin just to be able to drive her places.</p> <p>12:53PM 6 Right now she has to drive for fear that</p> <p>12:53PM 7 someone else won't pull over in time. She</p> <p>12:53PM 8 needs control because she's so scared she's</p> <p>12:53PM 9 going to lose the contents of her bladder</p> <p>12:53PM 10 in the car.</p> <p>12:53PM 11 She goes to her mom's house on</p> <p>12:54PM 12 Sundays. It's fun, but it's also</p> <p>12:54PM 13 mortifying. Her mom went out and bought</p> <p>12:54PM 14 her a special chair that has a special pad</p> <p>12:54PM 15 that she can unzip and wash because</p> <p>12:54PM 16 everyone in her family, all of her nine</p> <p>12:54PM 17 siblings, know that Ella wets her chair</p> <p>12:54PM 18 almost every week.</p> <p>12:54PM 19 She wants to live her life not having</p> <p>12:54PM 20 to wear adult diapers and looking for a</p> <p>12:54PM 21 bathroom. She's 51 years old. She wants</p> <p>12:54PM 22 to be normal, and she can't because of the</p> <p>12:54PM 23 TVT-S and the TVT.</p> <p>12:54PM 24 Real quickly. I'm going to bring you</p> <p>12:54PM 25 two experts who are going to talk about the</p>
<p style="text-align: right;">67</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:52PM 2 In her life Ella has had some stuff</p> <p>12:52PM 3 happened. She divorced her first husband.</p> <p>12:53PM 4 They're a blended family. They have</p> <p>12:53PM 5 stepkids. They got in a fight before.</p> <p>12:53PM 6 She's had fibroid problems. She's a little</p> <p>12:53PM 7 overweight. She has arthritis. She has</p> <p>12:53PM 8 problems with her knee and her Achilles</p> <p>12:53PM 9 tendon. None of this is why we're all</p> <p>12:53PM 10 here. They're going to want to talk all</p> <p>12:53PM 11 about it.</p> <p>12:53PM 12 What she wants is a normal life now.</p> <p>12:53PM 13 When she had her hip problem, she could</p> <p>12:53PM 14 make accommodations. Instead of taking</p> <p>12:53PM 15 walks, they could ride bikes. They could</p> <p>12:53PM 16 do things together. They could get out of</p> <p>12:53PM 17 the house. She's a prisoner in her house</p> <p>12:53PM 18 or very close to it. She has to go where</p> <p>12:53PM 19 there's a bathroom within feet at all the</p> <p>12:53PM 20 time.</p> <p>12:53PM 21 They used to go walk around festivals,</p> <p>12:53PM 22 they can't do that, like a local apple</p> <p>12:53PM 23 picking festival, because there's no</p> <p>12:53PM 24 Porter-Potty and it's impossible for her to</p> <p>12:53PM 25 get changed in a Porter-Potty or to get</p>	<p style="text-align: right;">69</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:54PM 2 problems. One, Bruce Rosenzweig from</p> <p>12:54PM 3 Chicago, urogynecologist. He used mesh for</p> <p>12:54PM 4 many years. Stopped using it. He was</p> <p>12:54PM 5 trained by Ethicon because he saw problems</p> <p>12:54PM 6 with his own patients. He's going to go</p> <p>12:54PM 7 through all those details. He'll tell you</p> <p>12:54PM 8 the risks are exceptionally high. His</p> <p>12:54PM 9 testimony is long. Bear with me. They're</p> <p>12:54PM 10 on video.</p> <p>12:54PM 11 He went through all of those Ethicon</p> <p>12:54PM 12 documents. He spent a lot of time and he's</p> <p>12:55PM 13 going to show you all about them. They're</p> <p>12:55PM 14 not going to ask him one question about</p> <p>12:55PM 15 those company documents, about jazzing, or</p> <p>12:55PM 16 spinning up, or hiding the data.</p> <p>12:55PM 17 I'll bring you Dr. Tom Margolis, he's</p> <p>12:55PM 18 from California, urogynecologist. He did a</p> <p>12:55PM 19 cystoscopy when he saw Ella. He saw her</p> <p>12:55PM 20 once, he gave me a call, he said I need to</p> <p>12:55PM 21 take a look at her urethra, we sent her</p> <p>12:55PM 22 back, he looked, it's mangled. He'll</p> <p>12:55PM 23 explain to you all the problems that she's</p> <p>12:55PM 24 got.</p> <p>12:55PM 25 Defendants are going to cite to the</p>

<p style="text-align: right;">70</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:55PM 2 physician statements and the literature.</p> <p>12:55PM 3 Don't forget about bias. Don't forget</p> <p>12:55PM 4 about who is issuing these statements.</p> <p>12:55PM 5 Don't forget about Johnson & Johnson</p> <p>12:55PM 6 spinning and jazzing and probing.</p> <p>12:55PM 7 When they brag about the years of data</p> <p>12:55PM 8 they have, think about where it's coming</p> <p>12:55PM 9 from and whether it's reliable or whether</p> <p>12:55PM 10 they should have verified the results. And</p> <p>12:55PM 11 ask yourself if they address any of this.</p> <p>12:55PM 12 As the evidence comes in, think of all</p> <p>12:55PM 13 of Johnson & Johnson and Ethicon's</p> <p>12:55PM 14 motivation for everything they did with the</p> <p>12:55PM 15 TVT and the TVT-S, their cash cow products,</p> <p>12:56PM 16 their motivation for paying 24 million in</p> <p>12:56PM 17 the first place when there were other</p> <p>12:56PM 18 treatment options out there; their</p> <p>12:56PM 19 motivation for being a corporate member of</p> <p>12:56PM 20 AUGS; their motivation for paying key</p> <p>12:56PM 21 opinion leaders millions of dollars; their</p> <p>12:56PM 22 motivation for launching a product on the</p> <p>12:56PM 23 market having only tested it in 31 women</p> <p>12:56PM 24 for five weeks when they budgeted \$800</p> <p>12:56PM 25 million for prelaunch marketing on that</p>	<p style="text-align: right;">72</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:57PM 2 say.</p> <p>12:57PM 3 At the end of the case I'm going to</p> <p>12:57PM 4 ask you to make a monetary award to fairly</p> <p>12:57PM 5 compensate Ella and Marvin for the injuries</p> <p>12:57PM 6 they've suffered and I'm going to ask you</p> <p>12:57PM 7 to make an award for punitive damages, to</p> <p>12:57PM 8 punish these companies for their reckless</p> <p>12:57PM 9 conduct that permanently disabled my client</p> <p>12:57PM 10 Ella Ebaugh.</p> <p>12:57PM 11 Thank you very much.</p> <p>12:57PM 12 THE COURT: All right. Thank you,</p> <p>12:57PM 13 counsel.</p> <p>12:57PM 14 Members of the jury, we're going to</p> <p>12:57PM 15 take a lunch break. Please remember not to</p> <p>12:58PM 16 discuss the case with anyone. We'll ask</p> <p>12:58PM 17 you to be back in the jury room at 2</p> <p>12:58PM 18 o'clock.</p> <p>12:58PM 19 THE LAW CLERK: Please stand as the</p> <p>12:58PM 20 jury exits the courtroom.</p> <p>12:58PM 21 (Jury leaves courtroom)</p> <p>12:58PM 22 THE COURT: All right. We'll see</p> <p>12:58PM 23 everyone at 2:00.</p> <p>12:58PM 24 (Luncheon recess)</p> <p>25 -----</p>
<p style="text-align: right;">71</p> <p>1 Plaintiffs' Opening Statement</p> <p>12:56PM 2 same product; their motivation for not</p> <p>12:56PM 3 using Ultrapro or even trying other</p> <p>12:56PM 4 formulations for mesh and TVT line of</p> <p>5 products -- if they tried a different</p> <p>6 method, there would have to be more</p> <p>12:56PM 7 tests -- the motivation for keeping this</p> <p>12:56PM 8 thing on the market for six years when they</p> <p>12:56PM 9 knew it was a failed product in the face of</p> <p>12:56PM 10 horrific news about it; their motivation</p> <p>12:56PM 11 for still selling that when this trial was</p> <p>12:56PM 12 going on; the motivation for encouraging</p> <p>12:56PM 13 TVT implants when TVT-S fails.</p> <p>12:57PM 14 I just want to say thank you all for</p> <p>12:57PM 15 being here. I really do appreciate it.</p> <p>12:57PM 16 It's a Friday on a hot August day. I know</p> <p>12:57PM 17 you all probably want to be somewhere else.</p> <p>12:57PM 18 I wish I wasn't working. But jury service</p> <p>12:57PM 19 is extremely, extremely important. So</p> <p>12:57PM 20 please pay attention to every detail, do</p> <p>12:57PM 21 your best.</p> <p>12:57PM 22 This case is very, very important to</p> <p>12:57PM 23 Ella and her husband Marvin and I ask you</p> <p>12:57PM 24 to be fair to them as well as the</p> <p>12:57PM 25 defendants and listen to what they have to</p>	<p style="text-align: right;">73</p> <p>1</p> <p>2 (Afternoon session reported by Sharon</p> <p>3 Ricci)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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