

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: ETHICON PHYSIOMESH FLEXIBLE COMPOSITE HERNIA MESH PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 2782 CIVIL ACTION NO. 1:17-md-02782-RWS
THIS DOCUMENT RELATES TO ALL CASES	


ORDER GOVERNING ESI PRODUCTION

Pursuant to the Federal Rules of Civil Procedure relative to production of electronically stored information, and to address the method of production of physically stored information, the plaintiffs and Johnson & Johnson and Ethicon, Inc. have stipulated to and have moved the court to enter the following Stipulation for the Production of Hardcopy Documents and Electronically Stored Information, attached as Exhibit A.

It is ORDERED that the Stipulation attached as Exhibit A applies to plaintiffs, Johnson & Johnson and Ethicon, Inc. in all actions that are or become a part of MDL 2782, until further order of the court.

The court DIRECTS the Clerk to file a copy of this order in 1:17-md-02782, and it shall apply to each member related case previously transferred to, removed to, or filed in this district.

It is SO ORDERED this 13th day of Oct, 2017.



JUDGE RICHARD W. STORY
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

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**STIPULATION FOR THE PRODUCTION OF HARDCOPY DOCUMENTS
AND ELECTRONICALLY STORED INFORMATION**

I. DEFINITIONS

- A. **“Document”** shall be interpreted to include all hardcopy documents or electronically stored information (“ESI”) existing in any medium from which information can be obtained or translated into reasonably usable form.
- B. **“Electronically stored information”** or **“ESI,”** as used herein, means and refers to computer-generated information or data of any kind, stored in or on any storage media located on computers, file servers, disks, tape, or other real or virtualized devices or media.
- C. **“Native File(s)”** means ESI in the file type for the application in which such ESI is normally created, viewed, and/or modified.
- D. **“Metadata”** means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.
- E. **“Load file”** means a set of hardcopy images or electronically processed files and indicates where individual pages or files belong together as documents, including attachments, and where each document begins and ends. A Load/Unitization file will also contain data relevant to the individual documents, such as agreed-upon Metadata, coded data, and OCR or Extracted Text.

- F. **“OCR”** means the optical character recognition file, which is created by software used in conjunction with a scanner that is capable of reading text-based documents and making such documents searchable using appropriate software.
- G. **“Extracted Text”** means the text extracted from a Native File and includes all header, footer, and document body information.

II. **PRODUCTION OF HARDCOPY (PHYSICALLY STORED) INFORMATION**

A. **TIFFs.** Each hardcopy document shall be scanned as single page, Group IV compression TIFF images using a print setting of at least 300 dots per inch (DPI). Each image shall have a unique file name, which is the Bates number of the image. To the extent technically available through the use of purely automated methods, and provided that no extra costs be incurred, original document orientation shall be maintained (*i.e.*, portrait to portrait and landscape to landscape). Each document shall be produced intact (single documents shall not be split into multiple records).

B. **Index Fields.** For each hardcopy document, the following information shall be produced and provided in the data load file at the same time that the TIFF images and the Optical Character Recognition (OCR) acquired text files are produced. Each index field shall be labeled as listed below:

- (a) Beginning Production Number (ProdBeg);
- (b) Ending Production Number (ProdEnd);
- (c) Beginning Attachment Production Number (BegAttach);
- (d) End Attachment Production Number (EndAttach);
- (e) Custodian_Source;
- (f) Confidentiality; and
- (g) Document Type.

C. OCR Acquired Text Files. For each hardcopy document, a single text file containing the OCR acquired text shall be provided along with the image file and metadata. The text file name shall be the same as the Bates number of the first page of the document to which it corresponds.

D. Unitizing of Documents. Distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records (*i.e.*, hardcopy documents should be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the BegAttach and EndAttach fields. The parties will make their best efforts to unitize documents.

III. PRODUCTION OF ELECTRONICALLY STORED INFORMATION

A. System Files. Common systems and program files need not be processed, reviewed or produced. To the extent collected, the producing party shall keep an inventory of the system files not being processed and the criteria (*e.g.*, non-human readable file, etc.) for not processing the files. In the event of a dispute regarding such matter, the parties shall meet and confer to discuss disclosure of inventory of non-produced files and criteria for non-processing of same.

B. De-duplication. Removal of duplicate documents shall only be done on exact duplicate documents (based on MD5 or SHA-1 hash values at the document level) and may be done across custodians and sources. Near-duplicate documents shall be produced rather than removed. The custodian associated with the first copy of a document processed will be considered the “pivot” custodian for that document (the custodian who will be used as the basis for determining which other collected documents are duplicates). After each production, the

producing party shall produce a de-duplication report listing all other custodians or sources who or which possessed each duplicate document. The de-duplication report will also contain the Bates number of the produced version of each de-duplicated document (for lookup purposes), and the de-duplicated custodian or source.

C. Email Threading.

Email threads are email communications that contain prior or lesser-included email communications that also may exist separately in the Party's electronic document collection. A most-inclusive email is one that contains unique content and all of the lesser-included emails, including attachments, for that branch of the email thread. The Parties agree that removal of lesser-included versions from potential production will reduce all Parties' costs of document review, production, and litigation-support hosting. Accordingly, each Party may produce only the most inclusive email threads from each and every email branch.

Participants in lesser-included emails shall be listed in the most-inclusive email's "ALL_PARTICIPANTS" field included in the data load file if the lesser-included emails otherwise would have been subject to review. Custodians in lesser-included emails shall be listed in the most-inclusive email's "THREAD_CUSTODIANS" field included in the data load file if the lesser-included emails otherwise would have been subject to review. Following production of most inclusive email threads, and for good cause, a Receiving Party may make reasonable requests, with respect to most-inclusive email threads particularly identified in the requests, for metadata associated with individual lesser-included emails. The Producing Party shall cooperate reasonably in responding to any such requests if the requested lesser-included emails otherwise would have been subject to production.

D. Metadata Fields and Processing. Each of the metadata and index fields set forth in Appendix 2 that can be reasonably extracted from a document shall be produced for that document. If either of the parties become aware of a problem extracting metadata or any other problem with the metadata fields or processing, the party who becomes aware of the problem will notify the other party and use the party's best efforts to meet and confer with the other party to arrive at a mutually acceptable resolution to the issue. The parties are not obligated to populate manually any of the fields in Appendix 2 if such fields cannot be extracted from a document. The Custodian-Source shall be identified for produced documents.

E. Native File Productions. The parties agree to produce the following documents in native format unless redactions are required, in which case the document will be produced in TIFF format pursuant to Section II.A.

- (a) Microsoft Excel documents;
- (b) Microsoft Powerpoint or Slide programs;
- (c) Microsoft Word files containing tracked changes or comments¹; and
- (d) Multimedia (audio and video) files.

Any native files that are produced shall be produced with the Source File Path provided, as well as all applicable metadata fields set forth in Appendix 2. In addition, a placeholder TIFF image, identifying the Bates number and confidentiality designation associated with the native document will be produced. The file name of the Native File produced shall be the Bates number of the corresponding TIFF slip sheet and the confidentiality designation associated with the native document. To the extent any Microsoft Excel documents are in excess of 500 pages and require redactions, the production will include a slipsheet for the spreadsheet along

¹ For documents produced after July 1, 2017.

with all applicable metadata fields for the spreadsheet, and such spreadsheets shall be available upon request.

F. Use of Native Files. Unless the Parties agree otherwise in writing, a Party seeking to use a native file shall print a hardcopy (*i.e.*, paper copy) and shall mark that hardcopy as an exhibit. If printing a hardcopy is impracticable (*e.g.*, because of the excessive number of pages that would be required to be imaged or copied), the Party shall generate a hardcopy of at least five pages that are representative of the entire native files.

- (a) When a TIFF image of the native file was produced pursuant to Section III.E and II.A, the Party shall print the required hardcopy from that TIFF image.
- (b) When the native file was initially produced in native format pursuant to Section III.E, the Party seeking to use the native file shall:
 - (1) generate from the native file a TIFF image or PDF file;
 - (2) prepend to the printed pages from the hardcopy the associated slipsheet included with the initial production of the native file.
- (c) Prior to printing a hardcopy, a Party may make alterations to a native file to facilitate its use with a witness or to use as an exhibit only on the following conditions:
 - (1) Such alterations shall not create a potential for confusion or prejudice. Examples of permitted alterations include (a) hiding columns or rows that contain no information, and (b) hiding columns containing information not relevant to the columns presented and not otherwise reasonably relevant for context.
 - (2) The Party will make best efforts to make explicit and specific disclosure of each such alteration at least 48 hours prior to use of the file in the proceeding.
 - (3) The Party seeking to use a hardcopy of an altered native file shall mark as exhibits both the hardcopy and a hardcopy of a slipsheet

setting out (a) the information regarding the unaltered native file required by Section III.E and (b) the MD5 or SHA-1 hash value of the originally produced unaltered native file.

G. TIFFs. Single page group IV compression TIFF images shall be provided using at least 300 DPI print setting. Each image shall have a unique file name, which is the Bates number of the image. The producing party will make reasonable efforts to produce these TIFF images consistent with the appearance of the documents as kept in the ordinary course of business.

H. Microsoft “Auto” Feature and Macros. Microsoft Word (.doc) Microsoft Excel (.xls) and Microsoft PowerPoint (.ppt) documents should be analyzed for the “auto” features, where documents have an automatically updated date and time in the document that when processed would be inaccurate for how the document was used in the ordinary course of business. If an “auto date” or dynamic file name is identified, the producing party will make reasonable efforts to produce document branded with the words “AUTO DATE” or “FILENAME.”

I. Embedded Objects. Objects embedded in Microsoft Word and RTF documents that have been embedded with the “Display as Icon” feature shall be extracted as separate documents and treated as attachments to the document.

J. Compressed Files. Compressed file types (*e.g.*, CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.

K. Text Files. For each document, a single text file shall be provided along with the image files and metadata. The text file name shall be the same as the Bates number of the first page of the document to which it corresponds. File names shall not have any special characters or embedded spaces. Electronic text must be extracted directly from the native electronic file

unless the document was redacted, an image file, or any other native electronic file that does not contain text to extract (*e.g.*, non-searchable PDFs). In these instances, a text file shall be created using OCR and shall be produced in lieu of extracted text. *See* Section II.C for OCR requirements.

L. English Language. If the Producing Party identifies a document in more than one language and an English version is among them, the English version shall be produced. The Producing Party shall not have an obligation to translate any documents that are not in English.

M. Color Copies. Upon reasonable request, the Producing Party shall provide a color copy of any requested document that is indicated in the load file as having original color content and was produced in black and white. If a dispute arises as to the reasonableness of the request, the parties agree to meet and confer to resolve their differences.

N. Structured Database Files. The parties agree to negotiate separately regarding the production of structured database files to the extent such structured database files have not already been produced.

O. Exceptions. The producing party shall make reasonable efforts to limit the extent of documents that cannot be processed.

IV. ADDITIONAL PRODUCTION PROTOCOLS REGARDING ESI AND HARDCOPY DOCUMENTS

A. Bates Numbering. All images must be assigned a Bates number that shall always: (1) be unique across the entire document production, (2) maintain a constant length (zero/0-padded) across the entire production, (3) contain no special characters or embedded spaces, and (4) be sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, the producing party will so note in a cover letter accompanying the production.

B. Attachments – Parent-Child Relationships. The parent-child relationships (the association between a produced attachment and its produced parent document) shall be preserved. When attachments and embedded files are combined with their parent documents, the “BegAttach” and “EndAttach” fields as referenced in Appendix 2 must be included in the data load file.

C. Database Load Files/Cross-Reference Files. Documents shall be provided with (a) a delimited metadata file (.dat and .txt) and (b) an image load file (.opt and .dii), as detailed in Appendix 1.

D. File Size Limitation/Non-Standard Files. The format of production of unusually large files and non-standard electronic files, large oversized documents (*e.g.*, blueprints) etc., will be discussed before production to determine the optimal production format.

E. Replacements. With the exception of documents that have been produced prior to the implementation of this protocol, all files that are replaced for any reason must be indicated as such in the load file accompanying the corresponding production.

F. Redaction Log. The producing party will provide a log identifying by Bates number each document that is redacted and the reason(s) for the redaction(s).

G. Prior Productions. If there are instances where a party is asked to produce hardcopy or electronically-stored information (ESI) that was previously produced in another case, proceeding or government investigation, the prior productions need not comply with this Stipulation.

V. Disaster-Recovery Backup Data and Archived Data.

Collection and production of responsive, non-privileged ESI will include archived data that is reasonably accessible. Consistent with the proportionality standard, and absent a Party’s specific written notice for good cause, no Party shall be required to modify or suspend

procedures, including rotation of backup media, used in the normal course of business to back up data and systems for disaster recovery purposes. Absent a showing of good cause, such backup media shall be considered to be not reasonably accessible.

VI. COST OF ESI

Each party will bear its costs related to the production of its own hardcopy documents and ESI. However, each party reserves the right to seek costs, including but not limited to cost shifting and cost sharing, related to document production and discovery pursuant to the Federal Rules and case law. Document production includes, but is not limited to, processing, collection, review and production.

VII. AGREEMENT DOES NOT WAIVE OR SUPERSEDE PARTIES' DISCOVERY RIGHTS AND/OR OBLIGATIONS UNDER THE FEDERAL RULES OF CIVIL PROCEDURE.

This agreement is without waiver or limitation of any rights of any party to obtain discovery, or to object to discovery, under the Federal Rules of Civil Procedure. The obligations of any party to this agreement to provide discovery under the Federal Rules of Civil Procedure are not limited or superseded by this agreement.

So stipulated this 12th day of October, 2017.

/s/ William Gage
Attorney for Defendants Johnson & Johnson and Ethicon, Inc.

/s/ Henry Garrard
Plaintiffs' Co-Lead Counsel

/s/ Donald Migliori
Plaintiffs' Co-Lead Counsel

APPENDIX 1: FILE FORMATS

Image Load Files

- Every document referenced in a production image load file shall have all available corresponding images, text and data.
- Documents shall be produced in only one image load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- The name of the image load file shall mirror the name of the delivery volume, and should have an .OPT or .DII extension (*e.g.*, ABC001.OPT).
- The volume names shall be consecutive (*e.g.*, ABC001, ABC002, . . .).
- The load file shall contain one line per image.
- Every image in the delivery volume shall be contained in the image load file.
- The image key shall be named the same as the Bates number of the image.
- Load files shall not span across media (CDs, DVDs, hard drives, etc.). A separate volume shall be created for each piece of media delivered

Metadata Load Files

- The .txt metadata load file shall use the following delimiters:
 - Column delimiter: Pipe | (ASCII 124)
 - Text qualifier: Caret ^ (ASCII 94)
 - New line: Registered sign ® (ASCII 174)
- The .dat metadata load file shall use the following delimiters:
 - Column delimiter: ¶ (ASCII 020)
 - Text qualifier: þ (ASCII 254)

- New line: Registered sign ® (ASCII 174)
- The first record shall contain the field names in the order of the data set forth in Appendix 2.
- All date/time fields shall be produced in “YYYYMMDD HH:MM AM/PM (GMT)” format.
- All date fields shall be produced in “YYYYMMDD” format.
- All time fields shall be produced in “HH:MM AM/PM (GMT)” format.
- A carriage-return line-feed shall be used to indicate the start of the next document.
- Load files shall not span across media (CDs, DVDs, hard drives, etc.). A separate volume shall be created for each piece of media delivered.
- The name of the metadata load file shall mirror the name of the delivery volume, and shall have a .DAT extension (*e.g.*, ABC001.DAT).
- The volume names shall be consecutive (*e.g.*, ABC001, ABC002, . . .).

APPENDIX 2: ESI AND HARDCOPY METADATA AND INDEX FIELDS

Field name	Field Description	Populated for (email, e-documents, e-attachments, physicals)	Sample Values
ProdBeg	Bates number for the first page of the document	All	Prefix-00000001
ProdEnd	Bates number for the last page of the document	All	Prefix-00000002
BegAttach	Bates number for the first page of the first document within the family	All	Prefix-00000003
EndAttach	Bates number for the last page of the last document within a family	All	Prefix-00000005
PgCount	Number of printed pages of the document	All	2
AttachmentCount	The total number of produced attachments.	All	3
Custodian_Source	Custodian name produced in format: Lastname, Firstname.	All	Smith, Jane
Confidentiality	Indicates if the document has been designated as "Confidential" pursuant to any applicable Protective Order	All	Consistent with the markings specified by the Protective Order
Document Type	Descriptor for the type of file	E-mail; E-documents	"Microsoft Word" or "Microsoft Outlook"
Email Subject	Subject line of an email.	Email	Text of the subject line
From	To the extent available, the email address of the sender that was included on the "From" line of the email	Email	Bart.Cole@email.com
To	To extent available, all SMTP addresses of all recipients that were included on the "To" line of the email. Multiple recipients should be delimited by a semicolon.	Email	Larry.murphy@email.com

CC	To extent available, the email addresses of all recipients that were included on the “CC” line of the email.	Email	Sstephens44@email.com
BCC	To extent available, the email addresses of all recipients that were included on the “BCC” line of the email.	Email	Sstephens44@email.com
Attach	The file name(s) of the produced documents attached to emails or e-documents. E-documents with embedded documents such as documents contained in a .ZIP file should have the embedded document name(s) listed here. Multiple files should be delimited by a semicolon.	Email, E-documents	AttachFilename1.ext
DateSent	Sent date of an email message.	Email	YYYYMMDD
DateRcvd	Sent date of an email message.	Email	YYYYMMDD
DateCreated	Creation date of native file.	E-documents	YYYYMMDD
Date/TimeLastMod	Date and time a native file was last modified.	E-documents	YYYYMMDD HH:MM AM/PM
TimeSent	Time an email message was sent.	Email	HH:MM AM/PM
TimeCreated	Creation time of a native file.	E-documents	HH:MM AM/PM
ReceivedTime	An email’s date and time when the email was received.	Email	HH:MM AM/PM
Title	Any value populated in the Title field of the document properties.	E-documents	Title
Subject	Any value populated in the Subject field of the document properties.	E-documents	Subject

Author	Any value populated in the Author field of the document properties.	E-documents	Author
DocExt	The file extension of the document is defined as the substring of the file name which follows but does not include the last occurrence of the dot character.	Email, E-documents	Htm
Size	Size (in bytes) of the original file.	Email, E-documents	1408
EdFolder / EDSOURCE	Full path to source files (if e-docs or loose email) or folder path contained with a mail source (if NSF or PST).		
Hash Value	Checksum for a file, a 128-bit value.	Email, E-documents	e4d909c290d0fb1ca068ffaddf22cbd0
Other Sources	Since global de-duping is being used – this field will track all other custodians that had possession of this file.	Email, E-Documents	Last Name, First Name
ALL_PARTICIPANTS	All participants on lesser included emails that are subject to review	Email	Last Name, First Name
THREAD CUSTODIANS	All custodians of lesser included emails that are subject to review	Email	Last Name, First Name
TEXTPATH	Path to the document level text file	Email, E-documents	TEXT\IMG_0001\HMES H_ETH_13146270.txt
NATIVEPATH	Link to native file within the production	E-documents	NATIVES\OF_0001\HME SH_ETH_13146269.xlsx
Message Unit ID	Family value across production population	Email, E-documents	19140f78-50d6-45bd-a752-1cfff58d424f
Color Original	Indicates whether the original file contains color	Email, E-documents	Yes

Replacement	Indicates whether a file has been replaced	Reproduction volumes only	Yes
Redaction ²	Indicates whether a document has redactions within it	All	Yes

² For documents produced after October 1, 2017.