

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRANCES PEEL HENNINGTON,
Plaintiff

v.

CIVIL ACTION NO. _____

BOSTON SCIENTIFIC CORPORATION,
EMAI PLASTIC RAW MATERIAL CO, LTD.,
PROXY BIOMEDICAL LIMITED, LUXILON
INDUSTRIES NV, SHENZHEN YFL
INTERNATIONAL LOGISTICS LIMITED
Defendants.

CIVIL RICO CASE STATEMENT

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. 1962(a), (b), (c), and/or (d).

Plaintiff’s claim arises under 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d).

2. List the defendants and state the alleged misconduct and basis of liability of each defendant.

The defendants are:

- (a) **a. Boston Scientific Corporation (“BSC”) – a medical device company which**
- a. purchased counterfeit Marlex from China for use in its permanently implantable medical devices;**
 - b. colluded with shipper YFL to purchase, over-bag, conceal, ship, and smuggle the counterfeit resin out of China and into the United States and Belgium;**
 - c. developed a protocol to test the counterfeit Marlex that ensures that if the Marlex is in fact counterfeit, it will still meet “industry standards;” this included, but is not limited to, reducing standards or protocols to improperly “pass” the Chinese resin as authentic, Marlex mesh or approved product, or directing testing to so find;**
 - d. colluded with Proxy, Luxilon, and Cambridge to ensure that the counterfeit Marlex “passed” the equivalency and performance tests pursuant to BSC’s protocol; and**

- e. marketed and sold its mesh products which it knows were manufactured using counterfeit Marlex.
 - b. **EMAI Plastic Raw Materials, Co. Ltd. a/k/a Yi Mai Plastic Raw Materials, Co. Ltd. a/k/a Yi Mao Plastic Raw Materials, Co. Ltd. (referred to interchangeably as “EMAI”) – a known counterfeiter in China who sold BSC counterfeit Marlex HGX-030-01.**
 - c. **Proxy Biomedical Limited (“Proxy”) – colluded with BSC to ensure that the counterfeit Marlex “passed” the performance tests pursuant to BSC’s protocol and manufactured BSC’s mesh using the trafficked counterfeit Marlex resin.**
 - d. **Luxilon Industries, NV (“Luxilon”) – colluded with BSC to ensure that the counterfeit Marlex “passed” the performance tests pursuant to BSC’s protocol and manufactured BSC’s mesh using the trafficked counterfeit Marlex resin.**
 - e. **Cambridge Polymer Group, Inc. (“Cambridge”) - colluded with BSC to ensure that the counterfeit Marlex “passed” the equivalency tests pursuant to BSC’s protocol.**
 - f. **Shenzhen YFL International Logistics Limited (“YFL”) - colluded with BSC to purchase, over-bag, conceal, ship, and smuggle the counterfeit resin out of China and into the United States and Belgium.**
3. List alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

Plaintiffs have brought suit against all of the wrongdoers of whom they are aware at this time.

4. List the alleged victims and state how each victim was allegedly injured.

Plaintiff Frances Peel Hennington – Plaintiff was injured when she was permanently implanted with one of BSC’s Products on October 17, 2014. The BSC mesh Product implanted in Plaintiff was manufactured with counterfeit, adulterated Marlex resin.

This collusion between BSC, EMAI, Proxy, Luxilon, Cambridge, and YFL extends far beyond Plaintiff’s claim. Plaintiff represents a class of victims in this case, all of whom were injured in the same way—by being permanently implanted with BSC’s mesh Products made with counterfeit Marlex resin.

The class is defined as follows: All persons who were implanted with a Boston Scientific Corporation transvaginal mesh product after January, 2012.

5. Describe in detail the pattern of racketeering activities or collection of unlawful debts alleged for each RICO claim. The description of the pattern of racketeering shall include the following information:

a. List the alleged predicate acts and the specific statutes that were allegedly violated;

The alleged predicate acts are mail fraud (18 U.S.C. §1341) wire fraud (18 U.S.C. §1343), and trafficking in goods or services bearing counterfeit marks (18 U.S.C. §2320).

b. Provide the date of each predicate act, the participants in each predicate act, and a description of the facts constituting each predicate act;

1. Mail Fraud (18 U.S.C. §1341) – Defendants placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carrier, and received matter and things from the Postal Service or commercial interstate carriers, including but not limited to counterfeit products, counterfeit bags or marks, invoices, correspondence, payments, lab or test results, samples, and false written materials regarding the mesh Product being sold. Dates of this predicate act range from July 2011 to present.

2. Wire Fraud (18 U.S.C. §1343) – Defendants transmitted and received by wire things which include but are not limited to counterfeit product, emails, invoices, correspondence, payments, lab or test results, samples, photographs or descriptions of counterfeit bags or marks, and false written materials regarding the mesh product being sold. Dates of this predicate act range from July 2011 to present.

3. Trafficking in goods or services bearing counterfeit marks (18 U.S.C. §2320) – Defendants trafficked internationally and interstate polypropylene resin knowingly using counterfeit Marlex mark on or in connection with the resin. Dates of this predicate act range from July 2011 to present.

c. If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the “circumstances constituting fraud or mistake shall be stated

with particularity.” FED. R. CIV. P. 9(b). Identify the time, place, and substance of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

Defendants made misrepresentations to Plaintiff and Class Members that the mesh permanently implanted in their bodies was manufactured using authentic Marlex resin. This misrepresentation was knowingly false.

These misrepresentations were made to Plaintiff Hennington in 2014 on or about the date she provided informed consent for her implant and discussed the implant of the Product with her medical care providers.

These misrepresentations were made to Class Members on the date she provided informed consent for her implant or discussed the implant of the Product with her medical care providers.

- d. State whether there has been a criminal conviction for violation of any predicate act;

There have not yet been any criminal convictions stemming from the predicate acts that form the basis of this litigation.

- e. State whether civil litigation has resulted in a judgment with regard to any predicate act;

There have not yet been any civil judgments stemming from the predicate acts that form the basis of this litigation.

- f. Describe how the predicate act forms a “pattern of racketeering activity;”

BSC’s purchase of the counterfeit Marlex and wire payment for the product occurred on two separate dates, the illegal export of the polypropylene from China bearing counterfeit markings occurred on at least four different dates, the illegal import of the counterfeit Marlex bearing counterfeit markings occurred on at least four separate dates, all proving separate and definable predicate acts of racketeering activity. Additionally, Plaintiff’s and Class Members’ mesh implants manufactured from counterfeit Marlex were manufactured, sold, and transported interstate on different dates, proving separate and definable predicate acts of racketeering activity. The Boston

Scientific Enterprise provided false information regarding the mesh Products implanted into Plaintiff and Class Members through mail or interstate wire transfer on many different dates, proving separate and definable predicate acts of racketeering activity. Each act of racketeering activity was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results, and impacted similar victims, including Plaintiff and Class Members.

- g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe the alleged relationship and common plan in detail.

The predicate acts do relate to each other as part of a common plan. The common plan behind the predicate acts was to acquire in China counterfeit Marlex resin for concealed shipment to the United States and/or Belgium to be manufactured into BSC's mesh Products and then permanently implanted into Plaintiff and Class Members.

6. Describe in detail the alleged "enterprise" for each RICO claim. A description of the enterprise shall include the following:

- a. State the names of the individuals, partnerships, corporations, associations, or other legal entities which allegedly constitute the enterprise;

The Boston Scientific Enterprise consists of Defendants in this case: (1) BSC; (2) EMAI; (3) Proxy; (4) Luxilon; (5) Cambridge; and (6) YFL.

- b. A description of the structure, purpose, function, and course of conduct of the enterprise;

The Boston Scientific Enterprise's purpose was to acquire in China counterfeit Marlex resin for concealed shipment to the United States and/or Belgium to be manufactured into BSC's mesh Products and then permanently implanted into Plaintiff and Class Members. The Boston Scientific Enterprise structure and course of conduct is as follows:

BSC was the purchaser, controller and operator of the Enterprise colluding with the Enterprise to acquire in China counterfeit Marlex resin for concealed shipment to the United

States and/or Belgium to be manufactured into BSC's mesh Products and then permanently implanted into Plaintiff and Class Members.

EMAI was the distributor colluding with the Enterprise to acquire the counterfeit Marlex resin in bags with the appropriate spurious marks;

YFL was the shipper colluding with the Enterprise to conceal and smuggle the counterfeit resin in bags with the appropriate spurious marks out of China and into the United States and/or Belgium.

Luxilon was the component manufacturer (extruder) colluding with the Enterprise to ensure that the counterfeit Marlex passed the performance tests pursuant to BSC's protocol and extruded the counterfeit resin for use in BSC's mesh Products;

Proxy was the component manufacturer (weaver) colluding with the Enterprise to ensure that the counterfeit Marlex passed the performance tests pursuant to BSC's protocol and weave the counterfeit resin into mesh for use in BSC's mesh Products; and

Cambridge was the "independent" lab colluding with the Enterprise to ensure that the counterfeit Marlex passed the equivalency tests pursuant to BSC's protocol and permitted the alteration of its test standards and/or results.

- c. A statement of whether any defendants are employees, officers, or directors of the alleged enterprise;

The Boston Scientific Enterprise consists of a collection of corporate entities, but it is not itself a corporate entity; so the Enterprise does not have employees, officers, or directors.

- d. A statement of whether any defendants are associated with the alleged enterprise;

All Defendants work together to make up the Boston Scientific Enterprise.

- e. A statement of whether plaintiff is alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise;

The Defendants, combined, comprise the Boston Scientific Enterprise.

- f. If any defendants are alleged to be the enterprise itself, or members of the enterprise, an explanation of whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

Defendants are all perpetrators in the Boston Scientific Enterprise; all of Defendants either had a hand in committing the fraud or allowed perpetration of the fraud through willful blindness.

7. State and describe in detail whether plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

The Boston Scientific Enterprise essentially consists of the defendants' pattern of racketeering activity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual daily activities of the enterprise, if at all.

The Boston Scientific Enterprise is a pattern of racketeering activity perpetrated by several entities and individuals that actually were formed and are employed for other purposes.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

All Defendants forming the Boston Scientific Enterprise received monetary benefit by participating in the alleged pattern of racketeering.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

The members of the Boston Scientific Enterprise colluded to obtain, smuggle, and test the counterfeit resin to be used in BSC's mesh products which are sold nationwide. Their actions affect thousands women all over the United States who are being permanently implanted with BSC's products. The counterfeit resin was trafficked interstate.

11. If the complaint alleges a violation of 18 U.S.C. 1962(a), provide the following:

- a. State who received the income derived from the pattern of racketeering activity or through the collection of unlawful debt; and
- b. Describe the use or investment of such income.

Plaintiffs are not alleging a violation of 18 U.S.C. 1962(a) at this time.

12. If the complaint alleges a violation of 18 U.S.C. 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

Plaintiffs are not alleging a violation of 18 U.S.C. 1962(b) at this time.

13. If the complaint alleges a violation of 18 U.S.C. 1962(c), provide the following:
 - a. State who is employed by or associated with the alleged enterprise, and

Defendants comprise the Boston Scientific Enterprise. The Enterprise is not itself an entity and does not have employees.

- b. State whether the same entity is both the liable “person” and the “enterprise” under 18 U.S.C. 1962(c).

The Boston Scientific Enterprise consists of Defendants, all of whom are liable persons under the statute.

14. If the complaint alleges a violation of 18 U.S.C. 1962(d), describe in detail the facts showing the existence of the alleged conspiracy.

1. **Defendants conspired, within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c); that is, BSC and its Defendant co-conspirators conspired to manage and operate the Boston Scientific Enterprise, and conduct and/or participate in the business and financial affairs of the Boston Scientific Enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(c)—to wit, the above-described open-ended, unlawful and fraudulent schemes to cheat and defraud Plaintiff and Class Members to obtain money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members by means of false or fraudulent pretenses and/or intentional misrepresentations. Alternatively, Defendants fraudulently and intentionally failed to disclose to Plaintiffs and Class Members the adulterated and counterfeit nature of the Products.**

2. **BSC conspired with Defendants and other persons and/or entities, the identities of whom are known only to BSC at this time and await discovery, within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(a); that is, BSC and its co-conspirators conspired to receive income derived, directly or indirectly, from a pattern of unlawful activity in which BSC and its co-conspirators participated as principals within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(a)—to wit, the above-described open-ended, unlawful and fraudulent schemes to manage and operate the Boston Scientific Enterprise and cheat and defraud Plaintiff and Class Members to obtain money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members by means of false or fraudulent pretenses and/or intentional misrepresentations. Alternatively, Defendants fraudulently and intentionally failed to disclose to Plaintiff and Class Members the adulterated and counterfeit nature of the Products.**

15. Describe the alleged injury to business or property.

Plaintiff and Class Members have suffered (and will continue to suffer) damages to their businesses and/or property, and other injury and harm in the form of, inter alia, (i) loss of money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to purchasing a counterfeit, adulterated Products, and (ii) loss of money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to costs associated with revision surgeries necessitated by the purchase of the counterfeit adulterated Products.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

Mail Fraud (18 U.S.C. §1341) – Defendants’ placement in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carrier, and receipt of matter and things from the Postal Service or commercial interstate carriers, including but not limited to counterfeit products, counterfeit bags or marks, invoices, correspondence, payments, lab or test results, samples, and false written materials regarding the mesh Product being sold directly caused Plaintiff and Class Members to lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to purchasing a counterfeit, adulterated Products, and (ii) lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to costs

associated with revision surgeries necessitated by the purchase of the counterfeit adulterated Products.

Wire Fraud (18 U.S.C. §1343) – Defendants’ transmittal and receipt by wire things which included but are not limited to counterfeit product, emails, invoices, correspondence, payments, lab or test results, samples, photographs or descriptions of counterfeit bags or marks, and false written materials regarding the mesh Product being sold directly caused Plaintiffs and Class Members to lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to purchasing a counterfeit, adulterated Products, and (ii) lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to costs associated with revision surgeries necessitated by the purchase of the counterfeit adulterated Products.

Trafficking in goods or services bearing counterfeit marks (18 U.S.C. §2320) – Defendants’ trafficking, internationally and interstate, of polypropylene resin knowingly using counterfeit Marlex mark on or in connection with the resin directly caused Plaintiffs and Class Members to lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to purchasing a counterfeit, adulterated Products, and (ii) lose money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to costs associated with revision surgeries necessitated by the purchase of the counterfeit adulterated Products.

17. List the damages sustained by reason of the violation of 18 U.S.C. 1962, indicating the amount for which each defendant is allegedly liable.

Plaintiff and Class Members sustained damages, including but not limited to, (i) loss of money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to purchasing a counterfeit, adulterated Products, and (ii) loss of money, funds, credits, assets, and/or other property owned by, or under the custody or control of, Plaintiff and Class Members due to costs associated with revision surgeries necessitated by the purchase of the counterfeit adulterated Products.

Plaintiffs are entitled to:

- (i) threefold the actual, consequential and/or incidental damages sustained by Plaintiff and Class Members, along with attorneys’ fees, litigation expenses, and court costs, all pursuant to 18 U.S.C. § 1964(c), together with pre- and post-judgment interest at the highest legal rates; and**

- (ii) **equitable relief, as may be appropriate, pursuant to 18 U.S.C. § 1964(a) or other law, including an equitable accounting for all benefits, consideration, and revenues, profits, and/or earnings received, directly or indirectly, by Defendants from sales of the counterfeit and adulterated products, the disgorgement of all ill-gotten revenues, profits, and/or earnings, and/or all amounts by which Defendants have been unjustly enriched.**

Boston Scientific is 100% liable and/or jointly and severally liable with EMAI, YFL, Proxy, Luxilon, and Cambridge.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

None.

19. List all pendent state claims, if any.

Plaintiff and Class Members have alleged the following pendent state claims:

**Negligence
Strict Liability – Design Defect
Strict Liability – Manufacturing Defect
Strict Liability – Failure to Warn
Breach of Express Warranty
Breach of Implied Warranty
Intentional Misrepresentation
Negligent Misrepresentation
Fraud
Unjust Enrichment**

20. Provide any additional information that you feel would be helpful to the court in processing your RICO claims.

Extensive additional information is set forth in Plaintiff's complaint and the attachments thereto.

DATED: November 14, 2016

Respectfully submitted,

THE MOSTYN LAW FIRM

/s/ J. Steve Mostyn

J. Steve Mostyn

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