FEDERAL COURT OF AUSTRALIA

Philipsen v American Medical Systems LLC [2018] FCA 246

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| File number: | NSD 35 of 2018 |
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| Judge: | **KATZMANN J** |
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| Date of judgment: | 7 March 2018 |
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| Catchwords: | **PRACTICE AND PROCEDURE** — service of documents in a foreign country — application for leave under r 10.43 of the *Federal Court Rules 2011* (Cth) to serve originating application and statement of claim outside jurisdiction — whether prima facie case for relief  |
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| Legislation: | *Evidence Act 1995* (Cth), s 75*Federal Court of Australia Act 1976* (Cth), s 19 *Judiciary Act 1903* (Cth), s 39B(1A)(c) *Trade Practices Act 1974* (Cth), ss 4, 74B, 74D, 75AC, 75AD, 86*Federal Court Rules 2011* (Cth), rr 1.41, 10.41, 10.42, 10.43, 10.44, 13.01*Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. Opened for signature 15 November 1965. 658 UNTS 163 (entered into force 10 February 1969), art 8 and 10  |
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| Cases cited: | *Australian Competition and Consumer Commission v Yellow Page Marketing BV* [2010] FCA 1218*Bray v F Hoffman-La Roche Ltd* (2003) 130 FCR 317*Carey-Hazell v Getz Bros & Co (Aust) Pty Ltd* [2004] FCA 853; (2004) ATPR ¶42-014*Fencott v Muller* (1983) 152 CLR 570*Ho v Akai Pty Limited (in liquidation)* (2006) 247 FCR 205 *Kadam v MiiResorts Group 1 Pty Ltd (No 2)* [2016] FCA 1343*VoR Environmental Australia Pty Limited v Taset Inc*. [2017] FCA 541 *WSGAL Pty Ltd v Trade Practices Commission* (1992) 39 FCR 472  |
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| Date of hearing: | 5 March 2018 |
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| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Regulator and Consumer Protection |
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| Category: | Catchwords |
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| Number of paragraphs: | 44 |
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| Counsel for the Applicant: | Mr D E Graham SC |
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| Solicitor for the Applicant: | Shine Lawyers |

ORDERS

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|  | NSD 35 of 2018 |
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| BETWEEN: | JODIE PHILIPSENApplicant |
| AND: | AMERICAN MEDICAL SYSTEMS LLCRespondent |

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| JUDGE: | KATZMANN J |
| DATE OF ORDER: | 7 MARCH 2018 |

THE COURT ORDERS THAT:

1. The applicant have leave, pursuant to rr 10.43(2) and 1.41 of the *Federal Court Rules 2011* (Cth), to serve the originating application and the statement of claim in this matter on the respondent in the United States of America in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965 (Hague Convention).
2. Service be effected either through diplomatic or consular agents, in accordance with article 8 of the Hague Convention, or by post in accordance with article 10.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

1. This is a representative proceeding brought under Pt IVA of the *Federal Court of Australia Act 1976* (Cth). The applicant, Jodie Philipsen, brings the proceeding in her own right and on behalf of others, referred to as “group members” who have allegedly been injured as a result of being surgically implanted with one or more of 11 medical devices. Six of the 11 devices were designed to treat pelvic organ prolapse in women (**POP mesh**), five to treat women with stress urinary incontinence (**SUI slings**).
2. Each of the devices is said to have been manufactured by American Medical Systems LLC (formerly known as American Medical Systems, Inc) (**AMS**), and marketed, promoted and supplied by the company in various parts of the world, including Australia. Each of the devices is alleged to have been made in part or in whole from non-absorbable polypropylene mesh. Each is implanted transvaginally. Each is also said to be passed through and attached and/or brought close to the vagina and/or the urethra. Each was intended as a permanent implant. Each was allegedly supplied to an Australian company, American Medical Systems Australia Pty Ltd (**AMS Australia**), between 2003 and 2015 and acquired by that company for re-supply to doctors and hospitals in this country. AMS Australia has apparently been deregistered. `
3. Mrs Philipsen alleges that she was implanted with two AMS devices in 2006 to treat a symptomatic grade 2 utero-vaginal prolapse and a cystocele (an anterior prolapse, where the bladder bulging into the vagina). She contends that before she underwent the surgery she was not warned of the risk that the implants could cause certain complications, a number of which she went on to experience. One of those complications was the risk that the devices might erode and extrude through the vaginal wall. Apparently, as a result of the complications Mrs Philipsen has undergone three operations to excise exposed mesh, two from the posterior vaginal wall, the second involving also a vaginal hysterectomy, the third to remove exposed mesh from the anterior vaginal wall. She alleges that she now experiences chronic pain (including pain with sexual intercourse) and depression, has incurred treatment and other expenses, has sustained economic loss, and has and will require domestic assistance. This loss and damage she attributes to wrongdoing on the part of AMS.
4. Mrs Philipsen alleges that the devices were unsafe, unfit for the purpose for which they were acquired, and not of merchantable quality. In particular, she contends that the design of the various devices was such as to promote bacterial colonisation within them, aggravate the inflammatory response to the foreign body, increase the risk of complications as well as the degradation of the devices, and that removal surgery might be required which was difficult, if not impossible to carry out safely. She claims that she and the group members are entitled to relief against AMS for the injuries they allegedly sustained as a result of the devices, including damages at common law for negligence and compensation and/or damages under the *Trade Practices Act 1974* (Cth) and the *Competition and Consumer Act 2010* (Cth). In substance the case is that the implantation of the devices carried numerous risks which were not fully or properly disclosed and the devices had not been subjected to adequate clinical or other evaluation, particularly as to their long-term risks or efficacy, before they were launched on the Australian market.
5. An originating application, together with a statement of claim, was filed in the Court on 16 January 2018 but has not been served. AMS is a corporation registered in the United States. Service on foreign corporations can only be effected in accordance with the requirements of r 10.43 of the *Federal Court Rules 2011* (Cth). By an interlocutory application filed on 23 January 2018 Mrs Philipsen seeks leave to serve the originating application and statement of claim on AMS in the United States.

## What must be proved before the Court’s discretion is enlivened?

1. Service of an originating application on a person in a foreign country is not effective unless the Court has given leave under r 10.43(2) or confirms service, or the person served waives any objection to service: r 10.43(1). Service of any other document on a person outside the jurisdiction is governed by r 10.44.
2. Rule 10.43(2) entitles a party to apply for leave to serve an originating application on a person in a foreign country, in accordance with a convention, the Hague Convention, or the law of the foreign country. Rule 10.43(1) permits a party to apply for leave to serve other documents by the same means. If such an application is made, the Court has the power to grant or refuse the order sought or to make a different order: r 1.41.
3. The Hague Convention is a reference to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965 (and entered into force on 10 February 1969): r 10.41. The documents in question are “judicial documents” within the meaning of the Convention. “Judicial documents” for the purposes of the Convention include such documents as an originating process (writs of summons are specifically mentioned), pleadings, judgments, orders, subpoenas and requests for discovery: see *Practical Handbook on the Operation of the Hague Service Convention* (published by the Permanent Bureau of the Hague Conference on Private International Law in 2016) and the cases referred to there.
4. An application for leave must be accompanied by an affidavit stating the name of the foreign country where the person is to be served or is likely to be, the proposed method of service, and the fact that the proposed method is permitted by, amongst other things, the Hague Convention: rr 10.43(3), 10.44(2) (which picks up the requirements of r 10.43(4) for other documents). Mrs Philipsen’s interlocutory application was supported by three affidavits of Bridget Cook, her solicitor, affirmed on 22 January, 2 March and 3 March 2018. The affidavits meet the requirements of r 10.43(3) in that they name the foreign country where service is to take place, identify the proposed method of service, and state whether the proposed method of service is permitted by one of the methods mentioned in rr 10.43(2) and 10.44(1).
5. Both Australia and the United States are contracting parties to, and member states of, the Hague Convention. Mrs Philipsen proposed two methods of service under the Hague Convention: one is transmission through diplomatic channels, a method permitted by Article 8 of the Convention; the other is transmission by international registered post with return receipt, a method permitted by Article 10. To obtain leave the party seeking the order must satisfy the Court of three matters: first, that the Court has jurisdiction in the proceeding; second, that the proceeding is of a kind mentioned in r 10.42; and third, that the party has a prima facie case for all or any of the relief claimed in the proceeding: r 10.43(4).

## Does the Court have jurisdiction?

1. The Court plainly has jurisdiction in the proceeding. Original jurisdiction is vested in the Court by the laws of the Commonwealth Parliament: Federal Court of Australia Act, s 19. Section 39B(1A)(c) of the *Judiciary Act 1903* (Cth) gives the Court jurisdiction in relation to matters arising under a law of the Parliament. The originating application concerns, amongst other things, matters arising under the Trade Practices Actand the Competition and Consumer Act. Jurisdiction is also conferred on this Court by s 86 of those Acts in relation to some of the relief sought in the originating application. To the extent that Mrs Philipsen also raises a claim arising under the common law of negligence, the Court has accrued jurisdiction: *Fencott v Muller* (1983) 152 CLR 570.

## Is the proceeding of a kind mentioned in r 10.42?

1. Rule 10.42 relevantly provides that, subject to r 10.43, an originating application may be served on a person in a foreign country in a proceeding that consists of, or includes, any one or more of the kinds of proceeding mentioned in the table set out in the rule. Item 1 of the table is a proceeding based on a cause of action arising in Australia. Item 5 is a proceeding based on, or seeking the recovery of, damage suffered wholly or partly in Australia caused by a tortious act or omission (wherever occurring). Item 12 is a proceeding based on a contravention of an Act that is committed in Australia. Item 13 is a proceeding based on a contravention of an Act (wherever occurring) seeking relief in relation to damage suffered wholly or partly in Australia. The present proceeding seems to fall into each of these categories.

## Does the applicant have a prima facie case?

1. As Gordon J observed in *Australian Competition and Consumer Commission v Yellow Page Marketing BV* [2010] FCA 1218 at [25], the obligation of a party to prove a prima facie case for relief is not especially onerous. The relevant principles were established under the former Rules of Court which, with respect to the rules relating to service outside the jurisdiction, are not materially different from the current rules.
2. First, the Court is not required to undertake a “substantial” inquiry: *WSGAL Pty Limited v Trade Practices Commission* (1992) 39 FCR 472 (FC) at 476 (Beaumont J); *Ho v Akai Pty Ltd (in liq)* (2006) 247 FCR 205 at [10] (the Court). In *WSGAL* Beaumont J remarked that the kind of evidence adduced on an inquiry such as this should be in proportion to the issue to be decided and that what is appropriate and proportionate in any given case is a matter for the trial judge.
3. Second, there is no need to do so in respect of all causes of action upon which the party relies; one will suffice: *Bray v F Hoffman-La Roche Ltd* (2003) 130 FCR 317 at [39], [55]. [190], [230].
4. Third, a prima facie case can be established on the basis of hearsay evidence, as the application is interlocutory in nature: *Evidence Act 1995* (Cth), s 75; *Bray* at [58].
5. The relevant question is whether on the material before the Court, inferences were open which, if translated into final findings of fact, would support the relief claimed: *Ho v Aktai* at [10]; *ACCC v Yellow Page Marketing* at [25]; *Kadam v MiiResorts Group 1 Pty Ltd (No 2)* [2016] FCA 1343; (2016) 118 ACSR 1 at [53] (Edelman J).
6. It is sufficient for present purposes to determine whether Mrs Philipsen has a prima facie case for the relief claimed based on one of the causes of action. The relief claimed includes damages and compensation for injury caused by the AMS devices.
7. Mrs Philipsen pleads several causes of action under the Trade Practices Act. She alleges contraventions of s 52 (misleading or deceptive conduct), s 74B (unfitness for the purpose for which the devices were acquired where that purpose was expressly or implicitly made known to the manufacturer), s 74D (unmerchantable quality in that the devices were unfit for the purpose for which they were commonly acquired), and s 75AD (defective goods in that the safety of the devices was “not such as persons generally are entitled to expect”). To the extent that the causes of action for other members of the class arose since the enactment of the Competition and Consumer Act, she relies on the comparable provisions of that Act. They are not materially different. The claim in tort is that AMS was negligent. The duty of care owed by a manufacturer to a consumer has been established for over 80 years. While liability in negligence (in contrast to liability under the relevant statute) is not strict, the alleged breach of the duty is substantially identical to the reasons advanced in support of the several statutory counts.
8. Putting to one side any available defence, I accept that, if the allegations made in Mrs Philipsen’s statement of claim are proved to the satisfaction of the Court, she and the other class members may well be entitled to relief of the kind claimed. Notwithstanding what was said in *VoR Environmental Australia Pty Limited v Taset Inc*. [2017] FCA 541 at [7], in my opinion that is not enough. In *VoR* Lee J appeared to suggest that it was sufficient for this purpose that allegations are made in a pleading or “cognate document” which, if proven, would support the relief claimed as long as that document is presented in evidence to the Court. If this is indeed what his Honour was suggesting, then I respectfully disagree. His Honour cited the passage in the judgment of Gordon J in *ACCC v Yellow Page Marketing* at [25] but that does not, at least in terms, endorse such an approach and I can find nothing in the other authorities which does. In my opinion, evidence must be adduced of the material facts themselves, although the evidence need not be in a form which would make it admissible at a trial over objection. Mrs Philipsen did not argue otherwise.
9. Counsel for Mrs Philipsen did not conduct a detailed analysis of the elements of the various causes of action. For present purposes it is unnecessary to do so. Each of the statutory causes of action (with the exception of the misleading or deceptive conduct case) rested on the following propositions:
10. AMS manufactured the relevant devices and supplied them to consumers (directly or indirectly) in trade or commerce in Australia.
11. All of the relevant devices were constructed of a knitted mesh material made of polypropylene, designed for surgical implantation in the female pelvis where they were intended to remain permanently.
12. Surgical implantation of the devices carried the risk of serious complications, many of which, such as erosion and extrusion, contraction, chronic and refractory pain, were specific to the devices themselves.
13. AMS failed to conduct any or any adequate evaluation of the efficacy or safety of the devices before they were put on the market, including long-term risks, and misled consumers as to both these matters in promotional material and instructions for use.
14. For these reasons the devices had a defect within the meaning of s 75AC of the Trade Practices Act (and a safety defect within the meaning of s 9 of the Australian Consumer Law, being Schedule 2 to the Competition and Consumer Act) in that their safety was not such as persons generally were entitled to expect and were unfit for the purpose for which they were acquired (treating stress urinary incontinence or pelvic organ prolapse as the case may be).
15. Mrs Philipsen and the other members of the class suffered injuries because of the defect and/or because they were unfit for the relevant purpose.
16. Goods may be defective within the meaning of s 75AC because of some inherent dangerous quality.If an adequate warning is included with the product, it may operate to remove the inherent dangerous quality. See *Carey-Hazell v Getz Bros & Co (Aust) Pty Ltd* [2004] FCA 853; (2004) ATPR ¶42-014 at [199] (Kiefel J). On other hand, the absence of an adequate warning might be apt to make the safety of a product less than persons generally are entitled to expect.
17. So are inferences open which, if translated into final findings of fact, would support the grant of relief?

### Manufacture and supply in trade or commerce in Australia

1. The relevant provisions of the Trade Practices Act and the Competition and Consumer Act apply to corporations engaged in trade or commerce. “Corporation” is defined (in s 4) to include a foreign corporation. “Trade or commerce” is defined to mean “trade or commerce within Australia or between Australia and places outside Australia”. It follows that, regardless of the place of manufacture, a foreign corporation will be engaged in trade or commerce for the purposes of the Act if it supplies its goods to or in Australia.
2. A purchase agreement that AMS Holdings Inc and Endo Health Solutions Inc entered into with Boston Scientific Corporation on 2 March 2015 provides evidence that:
* AMS was formerly known as American Medical Systems Inc;
* AMS Holdings, a wholly owned “indirect Subsidiary” of Endo International plc owns all of the issued and outstanding membership interests of AMS;
* AMS Australia was one of a number of foreign subsidiaries; and
* each of the devices named in the statement of claim was a “pelvic mesh product[s] manufactured, marketed, developed, … sold and distributed by [AMS and its foreign subsidiaries including AMS Australia] for the treatment of women”.
1. It is open to the Court on the basis of this material to infer that AMS manufactured the devices in question and supplied them to AMS Australia for re-supply to consumers in Australia.

### Manufactured from polypropylene

1. Instructions for use (**IFUs**) and patient and surgeon brochures for a number of the AMS devices designed to treat female stress urinary incontinence, annexed to Ms Cook’s second affidavit, show that those devices were made of non-absorbable polypropylene knitted into a mesh and intended to remain in the body permanently. The copyright in these documents is held by AMS. The earliest of the documents (a patient brochure) is dated 2004. The latest (two IFUs) are dated 2014.
2. A public notification issued by the Food and Drug Administration (**FDA**) of the United States in July 2011, annexed to Ms Cook’s first affidavit, records that:

Most surgical mesh devices cleared for urogynecologic procedures [both stress urinary incontinence and pelvic organ prolapse] are composed of non-absorbable synthetic polypropylene.

1. It is a fair inference that AMS’s POP mesh devices, like its SUI slings, were made from non‑absorbable polypropylene. Indeed, Ms Cook gave oral evidence that she had seen a 2013 IFU for Apogee, one of the products with which Mrs Philipsen was implanted, which stated that it was made from polypropylene.

### Potential complication, failure to undertake any or any adequate evaluation of the risks, and misleading consumers

1. The FDA notification followed a systematic review of the scientific literature on the use of surgical mesh for urogynecological purposes. The purpose of the review was to enable the FDA to learn more about the safety and effectiveness of pelvic organ prolapse repair and surgical treatment for the relief of stress urinary incompetence using surgical mesh. The literature review identified several safety concerns with transvaginally placed surgical mesh for pelvic organ prolapse repair. They included the following:
* patients who undergo such a procedure are subject to “mesh-related complications”, that is complications not experienced by patients undergoing traditional surgery without mesh;
* mesh-associated complications are not rare;
* the most common complication is erosion;
* more than half the women who experienced erosion required surgical excision in the operating room, some requiring two to three procedures;
* increasing reports in the literature of mesh contraction, causing vaginal shortening, tightening, and/or vaginal pain in association with mesh repair;
* adverse events can be “life-altering” for some women; and
* sequelae such as pain may continue despite removal of the mesh.
1. Based on an evaluation of adverse event reports as well as the scientific literature, the FDA said it had not seen conclusive evidence that the use of transvaginally placed mesh in pelvic organ prolapse repair improves clinical outcomes any more than traditional methods. What is more, it said “it may expose patients to greater risk”. In particular, the FDA noted:

[T]hese products are associated with serious adverse events, including vaginal mesh erosion (also called exposure, extrusion or protrusion), a complication which can require multiple surgeries to repair and may result in continued sequelae (e.g., pain) even after mesh removal. Compounding the concerns regarding adverse events are performance data that fail to demonstrate improved clinical benefit over traditional non-mesh repair, particularly for transvaginal apical and posterior repair. While the literature suggests an anatomic benefit to anterior repair with mesh augmentation, this anatomic benefit may not result in superior clinical outcomes, and the associated risk of adverse events should be considered.

1. Three journal articles were also annexed to Ms Cook’s first affidavit.
2. One was an article published in 2015 in *Nature Reviews Urology* entitled “Safety considerations for synthetic sling surgery”. The lead author of the article is Dr Jerry Blaivas, a urologist. One of its stated purposes was to summarise the published literature on complications “uniquely” associated with synthetic mid-urethral slings. It highlighted a number of such complications including urethral obstruction requiring surgery, vaginal, bladder and/or urethral erosion requiring surgery, and chronic refractory pain. It examined the potential causes of these complications. They included changes the mesh undergoes after implantation, bacterial contamination, tissue ingrowth, and the reaction of the host to the foreign body.
3. The authors wrote that:

Inflammatory mediators cause hypersensitivity to everyday stimuli that leads to pain in response to touch or on movement and, if the stimulus is sufficiently high, can even lead to pain sensations at rest. As discussed earlier, implantation of polypropylene meshes invariably results in an inflammatory response, which creates an environment capable of decreasing a patient’s pain threshold.

1. They described the evaluation of the incidence, severity and consequences of the complications as “a daunting task”. They pointed to a number of limitations in the published studies. In particular, they said:

The effects of long-term pain receive no attention at all in any study except for a few case studies of complications.

1. They also referred to the need for surgical removal of the mesh in some cases and the technical difficulties encountered by surgeons during such surgery. Even in the short-term, the authors reported, “outcomes are often sub-optimal”, repeat surgery is often required, and in patients requiring mesh removal, recurrence of stress urinary incontinence has been reported in up to 60% of cases.
2. A second article annexed to Ms Cook’s affidavit was entitled “The Ideal Mesh?”. It was published in the journal *Pathobiology* in 2013 and written by Uwe Klinge, a urologist, Bernd Klosterhalfen, a pathologist, and another, and drew upon their studies of more than 4,000 explanted mesh samples taken from humans. The authors emphasised that meshes designed to be implanted permanently in the body need to have large pores through which healthy tissue can grow. At the same time the authors pointed out that all meshes induce a foreign body reaction forming a granuloma around the filaments of the mesh. They said that the intensity of the inflammation and fibrosis can vary markedly depending on the porosity of the mesh or contamination by bacteria. They also pointed out that, no matter how large the pores of the mesh may be, they can collapse in any anatomical structure coming under mechanical strain, such as the pelvic floor. Moreover, they said that:

Any inadequate mesh design with locally enhanced inflammatory activity will increase the risk for mesh-related adverse side effects and may compromise the clinical outcome by, for example, bacterial infection, fibrotic immurement, chronic pain, restricted mobility, mesh migration cutting through the tissue or adhesions when placed within the abdominal wall cavity.

1. Ms Cook said that Mrs Philipsen intends to retain Prof Klinge, Prof Klosterhalfen, and Dr Blaivas as experts in the proceeding.
2. The Blaivas article suggests that at least in the case of the SUI slings, AMS did not conduct any adequate long term studies. The patient and surgeon brochures do refer to some risks but they do not indicate that the risks are caused by the mesh. Rather, they attribute them to any surgical procedure to correct urinary incontinence. If the authors of the Blaivas article are right about the mesh-specific risks, the Court could well find that representations of this kind are misleading.
3. Neither of the two IFUs annexed to Ms Cook’s second affidavit warned of the possibility of chronic refractory pain, the difficulty of removing the mesh, or the complications that might arise if the mesh has to be removed.
4. The inference is open from this material that the implantation of polypropylene mesh products, including the AMS devices the subject of the proceeding, is potentially dangerous. The inference is also open that, absent a proper pre-market evaluation or, at least, full and frank disclosure of the nature and extent of the risks posed by the mesh, the devices are defective and/or unfit for the purposes for which they were acquired.

### Injuries caused by the defect etc

1. Hearsay evidence is given in Ms Cook’s first affidavit concerning Mrs Philipsen’s implant surgery and its sequelae. The evidence is brief. Nevertheless, for present purposes it is sufficient proof that Mrs Philipsen was implanted with AMS mesh devices and suffered a number of complications thereafter. The inference is open from the FDA notification and the medical articles that there is a causal connection between the implantation of the mesh, the later operations, and the chronic pain she has allegedly experienced.

## Conclusion

1. On the basis of the material in Ms Cook’s first two affidavits, I am satisfied that there is a prima facie case against AMS in relation to the s 75AD claim for at least some of the relief claimed in the originating application. To the extent that the claims under ss 74B and 74D rely on the same evidence, I also consider that there is a prima facie case against AMS on those claims. Certainly, there is a serious issue to be tried: compare *Kadam* at [55]. It is unnecessary to go any further. As I am also satisfied that the Hague Convention permits service of the relevant documents in the United States, that the Court has jurisdiction to hear the action, and that the proceeding is of the relevant kind, the Court has the power to make the order sought. There is no reason why I should not exercise it.

## The form of order

1. The order sought in the interlocutory application is merely that leave be granted to serve the originating application and statement of claim on AMS. It is usual, however, in a matter of this kind for the Court to identify the method and place of service. I therefore propose making an order granting Mrs Philipsen leave to serve the documents on AMS in the United States under the Hague Convention. She must then approach the Registrar in accordance with Division 10.6 of the Rules to enable service to be effected.

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| I certify that the preceding forty-four (44) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Katzmann. |

Associate:

Dated: 7 March 2018