

Court File No. *CY-10-395136-00CP*

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MARYANNE TASCIONE

Plaintiff

- and -



STRYKER CANADA LP, STRYKER CANADIAN MANAGEMENT INC., STRYKER CANADA CORP., STRYKER CORPORATION, and HOWMEDICA OSTEONICS CORPORATION, carrying on business as STRYKER ORTHOPAEDICS

Defendants

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the rules of court, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

2 - ISSUE DATE:

January 15, 2010th

Issued by

Y. Grant
Local Registrar

Address of court office:

Y. Grant
Registrar

10th Floor
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: STRYKER CANADA LP
45 Innovation Drive
Hamilton, Ontario
L9H 7L8

AND TO: STRYKER CANADIAN MANAGEMENT INC.
45 Innovation Drive
Hamilton, Ontario
L9H 7L8

AND TO: STRYKER CANADA CORP.
45 Innovation Drive
Hamilton, Ontario
L9H 7L8

AND TO: STRYKER CORPORATION
2825 Airview Boulevard, 49002
Kalamazoo, Michigan
U.S.A.

AND TO: HOWMEDICA OSTEONICS CORPORATION, carrying on business
 as
 STRYKER ORTHOPAEDICS
 325 Corporate Drive, 07430
 Mahwah, New Jersey
 U.S.A.

CLAIM

1. THE PLAINTIFF, MARYANNE TASCIONE, claims on behalf of herself and others similarly situated in Canada:

- (a) damages in the amount of \$500,000 for each class member;
- (b) punitive, aggravated, and exemplary damages in the amount of \$10,000,000;
- (c) In the alternative to the claim for damages, payment of the revenues realized by the Defendants from their sale of Stryker's Trident[®] Ceramic Acetabular System.
- (d) prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) her costs of this action on a substantial indemnity basis together with applicable Goods and Services Tax and/or Harmonized Sales Tax payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, and/or other provincial legislation; and,
- (f) such further and other relief as this Honourable Court may deem just.

NATURE OF THE ACTION

2. This class action concerns the Defendants' negligent design, testing, development, manufacture, assembly, licensing, marketing, distribution, importation and sale of Stryker's Trident[®] Ceramic Acetabular System (hereinafter the "Trident Device"). The Trident Device is an artificial hip replacement system that uses a ceramic on ceramic acetabular bearing couple intended for longer lasting durability than traditional metal or plastic components used in hip replacement systems. From 1999 to date, the Trident Device has

been implanted in thousands of patients in Canada who required total hip arthroplasty.

THE PARTIES

3. The Plaintiff, Maryanne Tascione, is an individual residing in the City of Vaughan in the Province of Ontario.

4. The Defendant, Stryker Canada LP is organized and existing under the laws of Ontario as a limited partnership with its headquarters located in Hamilton, Ontario. The Defendant, Stryker Canadian Management Inc. is the general partner of the Defendant, Stryker Canada LP and is incorporated pursuant to the laws of Ontario with its head office in Hamilton, Ontario. The Defendant, Stryker Canada Corp., is a company incorporated pursuant to the laws of Nova Scotia with its head office in Hamilton, Ontario. The Defendants, Stryker Canada LP, Stryker Canadian Management Inc. and Stryker Canada Corp. all carried on business together in Canada to import and distribute into Canada medical devices manufactured by related Stryker Corporations (and are hereinafter together referred to as "Stryker Canada"). Stryker Canada is currently involved in and/or responsible for the research, design, testing, development, manufacturing, assembly, licensing, marketing, distribution, importation and sale of the Trident Device in Canada.

5. The Defendant, Stryker Corporation ("Stryker") is an American corporation organized and existing under the laws of the State of Michigan, in the United States of America, with its headquarters located in Kalamazoo, Michigan. Stryker is currently involved in and/or responsible for the research, design,

testing, development, manufacturing, assembly, licensing, marketing, distribution, importation and sale of the Trident Device.

6. The Defendant, Howmedica Osteonics Corporation, carrying business as Stryker Orthopaedics (“Howmedica”), is an American corporation organized and existing under the laws of the State of New Jersey, in the United States of America, with its headquarters located in Mahwah, New Jersey. Howmedica is currently involved in and/or responsible for the research, design, testing, development, manufacturing, assembly, licensing, marketing, distribution, importation and sale of the Trident Device. Howmedica is licensed by Health Canada as a manufacturer of medical devices, including the Trident Device.

THE TRIDENT DEVICE

7. At all material times, the Defendants were together involved in and/or responsible for the research, design, testing, development, manufacturing, assembly, licensing, marketing, distribution, importation and sale of the product supplied and/or sold as the “Trident[®] Ceramic Acetabular System” (also referred to herein as the “Trident Device”) either directly or indirectly, to members of the general public within Canada, including the Plaintiff.

8. The Trident Device is a Class III medical device under the *Food and Drugs Act*, R.S.C. 1985, c. F-27. It may only be sold in Canada with the license and approval of Health Canada. The Defendants obtained a license from Health Canada to sell the Trident Device in Canada in or about February, 1999.

9. The business of each of Stryker, Howmedica and Stryker Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the research, design, testing, development, manufacturing, assembly, licensing, marketing, distribution, importation and sale of the Trident Device in the United States and/or Canada.

10. In bringing this action on behalf of a class of people in Canada who were implanted with the Trident Device (hereinafter referred to as “the Plaintiffs”), to be further defined in the motion for certification, the Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

11. The Defendants have designed, manufactured and sold the Trident Device internationally since September of 1999, distributing this device within the European Union countries, Australia and Canada. The Defendants received approval from the United States Food and Drug Administration to sell the Trident Device in the United States on February 3, 2003.

12. The Trident Device contains a ceramic-on-ceramic acetabular bearing couple and is indicated for patients requiring primary total hip arthroplasty or replacement due to painful disabling joint disease of the hip.

13. The Trident Device is an artificial hip replacement device consisting of four basic components: an alumina ceramic insert (socket liner), an alumina ceramic femoral head (ball), a metal acetabular shell (socket) and a femoral stem (hip stem).

14. The alumina ceramic insert contains a pre-assembled titanium alloy sleeve on the back of the insert which mates with the metal acetabular shell

component via a taper locking mechanism; and the bearing couple consists of a “Howmedica Osteonics Alumina C-Taper Head” and a “Howmedica Osteonics Alumina Insert.” The Trident Device has bearing surfaces made of alumina ceramic.

15. The Trident Device has been widely advertised and marketed by the Defendants as a safe and effective hip implant device, which because of its ceramic on ceramic bearing components (the ball and socket) is according to the Defendants, or any one or more of them, safer, more durable and longer lasting than traditional implant devices which use metal and plastic components.

THE INCIDENT

16. The Plaintiff, Maryanne Tascione is currently 49 years old. She has been married for 25 years. She is the mother of two children. She is employed as an educational assistant.

17. On or about August 4, 2006, the Plaintiff underwent total right hip arthroplasty surgery at York Central Hospital in Toronto, Ontario, involving the implantation of the Trident Device.

18. At all material times hereto, the hip implant device used in the Plaintiff's surgery was a Trident Device which was researched, designed, tested, developed, manufactured, assembled, licensed, marketed, distributed, imported and sold in Canada by the Defendants.

19. The Plaintiff chose to be implanted with the Trident Device over other hip implants systems because it was advertised by the Defendants as

