Form 4.02A

2011

Hfx. No 355381

SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

KEN TAYLOR and **JUDY ROWTER**

PLAINTIFFS

- and -

WRIGHT MEDICAL TECHNOLOGY CANADA LTD, WRIGHT MEDICAL TECHNOLOGY, INC., and, **WRIGHT MEDICAL GROUP, INC.**

DEFENDANTS

Notice of Action

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

TO: **Wright Medical Technology Canada Ltd**
6581 Kitimat Road Unit 8
Mississauga Ontario L5N 3T5

TO: **Wright Medical Technology, Inc.**
2711 Centreville Road, Suite 400
Wilmington New Castle DE 19808

TO: **Wright Medical Group, Inc.**
2711 Centreville Road, Suite 400
Wilmington New Castle DE 19808

Action has been started against you

The Plaintiffs take action against you.

The Plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary. The Plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the Plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under $100,000

Civil Procedure Rule 57 limits pre-trial and trial procedures in a defended action so it will be more economical. The Rule applies if the Plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the Plaintiffs.

This action is *not within* Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Plaintiffs designate the following address:

Raymond F. Wagner
Wagners
1869 Upper Water Street
Halifax NS B3J 1S9

Documents delivered to this address are considered received by the Plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The Plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed September 13, 2011.

RAYMOND F. WAGNER
Solicitor for the Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on September 13, 2011.

Jessica Renfert

~~Prothonotary~~

JESSICA RENFERT
Deputy Prothonotary

FORM 4.02B

STATEMENT OF CLAIM

Proceeding under *the Class Proceedings Act*, S.N.S 2007, c. 28

I. OVERVIEW

1. The Profemur Hip Implant System was developed in order to reconstruct human hip joints that are diseased due to conditions such as osteoarthritis, rheumatoid arthritis, avascular necrosis, and fracture.

2. The Profemur Hip Implant System was designed to replace all or some of the parts of diseased hip joints in order to alleviate symptoms of such health conditions.

3. The Profemur Hip Implant System is composed of a Profemur Modular Stem (i.e. a Profemur Z stem, Profemur Plasma Z stem, Profemur LX stem, Profemur Tapered stem, Profemur RAZ stem, Profemur TL stem, Profemur Xm stem, or Profemur Renaissance stem) with a Profemur neck and femoral head. This modularity purports to allow orthopaedic surgeons more options for modifying the implant's geometry and should yield better results than conventional hip replacement systems.

4. The Profemur Hip Implant System received licensing approval from Health Canada in February 2001.

5. The Profemur Hip Implant System was approved in the United States by the Food and Drug Administration ("FDA") through a controversial 510(K) pre-market approval process. In this process, the manufacturer had to demonstrate only that the Profemur Hip Implant System was substantially equivalent to an existing medical device to obtain approval.

6. The Defendants have aggressively marketed the Profemur Hip Implant System as having advantages over other hip replacement or resurfacing systems. The Defendants advertised the Profemur Hip Implant System as a suitable, safe, effective, minimally invasive hip replacement, and as a "high performance" system.

7. The majority of total hip implant surgeries demonstrate an average longevity of ten to fifteen years before requiring a revision.

8. The Annual 2009 Report of the Australian Joint Registry advised that the Profemur Z Stem component of the Profemur Hip Implant System has an 11.2% failure rate at the three year interval.

9. For at least two years, the Defendants knew, contrary to their marketing campaigns, that a disproportionately high number of their Profemur Z Stems were failing and harming patients. The Defendants were aware of many complaints made to FDA and Health Canada regarding the failure of their Profemur Hip Implant Systems. The failure of these hip implants often requires complicated, expensive and painful revision surgery to correct.

10. The Defendants, however, consistently failed to disclose or warn Canadian patients of the significant risk of failure in the Profemur Hip Implant System. The Defendants knew or ought to have known of the significant risks associated with the use of Profemur Hip Implant System.

II. THE REPRESENTATIVE PLAINTIFFS

11. The Plaintiff, Ken Taylor, resides at 12 Chater Drive, Dartmouth, Nova Scotia.

12. The Plaintiff, Judy Rowter, resides at 2 Chalamont Drive, Hammonds Plains, Nova Scotia.

13. The Plaintiffs seek to certify this action as a Class Proceeding and plead the *Class Proceedings Act*, S.N.S. 2007, c. 28, as the basis for such certification. The Representative Plaintiffs do not have any interest adverse to any of the members of the proposed class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

14. The Plaintiffs propose to bring a class proceeding on behalf of themselves and a class of all other Canadian residents who have been implanted with a Profemur Hip Implant System at any time between February 2001 to the date of certification of this proceeding ("the Class Period"). The proposed class will be further defined in the motion for Certification.

III. DEFENDANTS

15. Wright Medical Technology Canada Ltd. is a Canadian limited company organized and existing under the laws of the Province of Ontario with its principal place of business located at 6581 Kitimat Road, unit 8, Mississauga, Ontario L5N 3T5. Wright Medical Technology Canada Ltd. manufactures, markets and distributes the Profemur Hip Implant System in Canada.

16. Wright Medical Technology, Inc. is a corporation organized and existing under the laws of the state of Delaware with its principal place of business located at 5677 Airline Road, Arlington, Tennessee 38002, and its registered office located at 2711 Centreville Road, Suite 400 Wilmington New Castle DE 19808. Wright Medical Technology, Inc. designed, manufactures, markets and distributes the Profemur Hip Implant System throughout the United States.

17. Wright Medical Group, Inc. is a corporation organized and existing under the laws of the state of Delaware with its principal place of business located at 5677 Airline Road, Arlington, Tennessee 38002 and its registered office located at 2711 Centreville Road, Suite 400 Wilmington New Castle DE 19808. Wright Medical Group, Inc. is the parent company of both Wright Medical Technology Canada Ltd, and Wright Medical Technology, Inc.

18. Wright Medical Technology Canada Ltd, Wright Medical Technology, Inc., and Wright Medical Group, Inc. shall herein be referred to individually by name or jointly as "the Defendants."

19. At all material times, the Defendants carried on business jointly in and throughout Canada from Wright Medical Technology Canada Ltd.'s head office in Mississauga. Collectively the Defendants researched, developed, tested, manufactured, marketed, distributed and sold the Profemur Hip Implant System as an appropriate, cost efficient, suitable, safe and effective medical product for use in hip replacement surgery throughout Canada.

IV. NATURE OF THE ACTION

20. The Defendants are U.S. and Canadian corporations involved in the design, manufacture, labelling, marketing, distribution and sale of the Profemur Hip Implant System.

21. The Profemur Hip Implant System was designed and manufactured improperly. These implants cause and have caused serious bodily injury and economic loss to the Plaintiffs and the Class. The Defendants knew or ought to have known that these products were improperly designed and manufactured at the time they introduced the products into the marketplace. The Defendants never properly warned the Plaintiffs or the Class about the risks associated with their products. The Defendants should not have sold improperly designed and manufactured products.

22. The Defendants conspired to injure the Plaintiffs and the Class. The Defendants' actions were unlawful and the Defendants knew or should have known that injury to the Plaintiffs and the Class would result from their actions.

23. The risks associated with the Profemur Hip Implant System were within the Defendants' exclusive knowledge and control. The Plaintiffs and the Class did not know and could not reasonably have been expected to know the extent of the risks. The injuries of the Plaintiffs and the Class would not have occurred but for the negligence and conspiracy of the Defendants in failing to ensure that the Profemur Hip Implant System was safe for use or, in the alternative, for failing to provide an adequate warning of the risks associated with the Profemur Hip Implant System to the Plaintiffs, to the Class and to their physicians.

24. The Defendants were aware of the defect in manufacture and design prior to the annual 2009 Report of the Australian Joint Registry. Nevertheless, they continued to market, distribute, and sell Profemur Hip Implant Systems.

25. The Defendants' conduct was unlawful because they knowingly marketed and sold Profemur Hip Implant Systems and permitted the Profemur Hip Implant System to be implanted into members of the Class. Despite knowing, or having reason to know, that the Profemur Hip Implant System was defective, the Defendants concealed the risks from

members of the Class, health care providers, the medical community, and regulatory authorities, including Health Canada and the FDA.

V. HARM TO THE PLAINTIFFS

26. On or about June 4, 2007, Ken Taylor underwent a left total hip arthroplasty and had implanted a Profemur Hip Implant System.

27. On or about September 3, 2009, Ken Taylor underwent revision surgery to correct a fracture of the neck of his left femoral Profemur Hip Implant. He was issued a Wright Perfecta Femoral Stem and a Wright Ceramic Femoral Head.

28. On or about February 24, 2010, Ken Taylor underwent further revision surgery and bone graft to his left hip prosthesis as Mr. Taylor's bone was not growing around his previous prosthesis.

29. He continues to endure chronic discomfort and pain as a result of the failure of his Profemur Hip Implant System and the subsequent revision surgeries that failure necessitated.

30. On or about January 8, 2007, Judy Rowter underwent a left total hip arthroplasty and had implanted a Profemur Hip Implant System.

31. On or about March 31, 2010, Judy Rowter was informed by her surgeon that she should discontinue working due to numerous reports concerning the risk of fracture and susceptibility to personal injury resulting from such a fracture of the Profemur Long Neck component of the Profemur Hip Implant System.

32. Ms. Rowter has discontinued her employment as per her surgeon's advice and is concerned about the possibility of injury and potential necessity of revision surgery as a result of her Profemur Hip Implant System.

V1. CAUSES OF ACTION

(a) Conspiracy

33. During the class period, the Defendants, by their directors, officers, servants and agents, wrongfully, unlawfully, maliciously and without bona fides, conspired and agreed together, the one with the other and with persons unknown, as hereinafter set out.

34. The Defendants conspired with each other and others to unlawfully market, distribute, advertise and sell the Profemur Hip Implant System, intentionally directing their conduct towards the Class Members, when they knew or should have known that in the circumstances, injury and damage to the Class Members was likely to result.

35. The Defendants' conspiracy involved both lawful and unlawful means with the predominant purpose of inducing the Plaintiffs and the other Class Members to use the Profemur Hip Implant System when they knew or should have known that such use would cause harm to the Plaintiffs and Class Members.

36. The Defendants derived substantial compensation and revenues from the conspiracy.

37. As a result of the conspiracy, the Plaintiffs and Class Members have suffered and continue to suffer damage and loss.

38. Some, but not all, of the Defendants' concerns, motivations and intentions in engaging in the conspiracy were to:

    (a) increase the sales of the Profemur Hip Implant System and increase their profits;

    (b) increase or hold their market share;

    (c) avoid adverse publicity;

    (d) prioritize their profits over the safety of the Plaintiffs and Class Members;

    (e) maintain a brand trust and a positive corporate image;

    (f) avoid alerting the Plaintiffs, Class Members, Health Canada, the FDA, health practitioners, the public and their competitors to the dangerous properties and effects of the Profemur Hip Implant System; and

(g) induce Class Members to acquire a Profemur Hip Implant System.

39. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out by the Defendants:

(a) they submitted false, inaccurate and misleading information to Health Canada for the purpose of obtaining approval to market the Profemur Hip Implant System in Canada;

(b) they concealed and disguised information about the dangerous properties and effects of the Profemur Hip Implant System from Health Canada, from health practitioners, and from the Plaintiffs and Class Members;

(c) they misled the Plaintiffs, Class Members, health practitioners and others about the efficacy, safety and effects of the Profemur Hip Implant System;

(d) they refused to issue correcting information or to stop selling the Profemur Hip Implant System even after its harmful effects manifested;

(e) they decided not to warn Class Members and others in Canada of the dangers of the Profemur Hip Implant System; and

(f) they developed and used marketing and promotional strategies that covered up the truth about the Profemur Hip Implant System's dangerous properties and effects.

(b) Negligence

40. Each of the Defendants owed a duty of care to the Plaintiffs and Class Members and breached the standard of care required of them in the circumstances.

41. The Plaintiffs and Class Members state that the negligence of the Defendants caused damage to them. Such negligence falls below the standard of care. The particulars of the Defendants' negligence include but are not limited to the following, that the Defendants, jointly and severally:

(a) chose not to ensure that the Profemur Hip Implant System was safe and fit for its intended use;

(b) chose to inadequately test the Profemur Hip Implant System in a manner that concealed the magnitude of the risks associated with its use;

(c) misinformed Health Canada by providing it with incomplete and inaccurate information;

(d) conducted inadequate follow-up studies on the efficacy and safety of the Profemur Hip Implant System;

(e) concealed and misled the Plaintiffs, Class Members and their physicians through inadequate and incomplete warnings of the risks associated with the Profemur Hip Implant System;

(f) provided inadequate, incomplete, or no up-to-date information to the Plaintiffs, Class Members and/or their physicians respecting the risks and efficacy of the Profemur Hip Implant System as it became available from time to time;

(g) chose not to provide warnings of the potential hazards of the Profemur Hip Implant System on package labels or by other means;

(h) chose not to provide warnings of the risks associated with the Profemur Hip Implant System on the customer information pamphlets distributed in Canada;

(i) chose not to warn the Plaintiffs, Class Members and/or their physicians about the need for comprehensive regular medical monitoring to ensure early discovery of serious problems from the use of the Profemur Hip Implant System;

(j) after noticing problems with the Profemur Hip Implant System, chose not to issue adequate warnings, recall the product in a timely manner, publicize the problem and otherwise act properly and in a timely manner to alert the public;

(k) engaged in a system of improper and inadequate direction to their sales representatives and prescribing physicians respecting the correct usage of the Profemur Hip Implant System and the risks associated with the product;

(l) represented that the Profemur Hip Implant System was safe and fit for its intended purpose and of merchantable quality when they knew or ought to have known that these representations were false;

(m) misrepresented the state of research, opinion and medical literature pertaining to the purported benefits of the Profemur Hip Implant System and its associated risks;

(n) made misrepresentations that were unreasonable considering the risks that were known or ought to have been known to the Defendants;

(o) continued to manufacture, market, and promote the sale and/or distribution of the Profemur Hip Implant System when they knew or ought to have known that this product caused or could cause serious problems;

(p) actively encouraged the aggressive dispensation of the Profemur Hip Implant System;

(q) chose to inadequately monitor, evaluate, and act upon high revision rates in the Profemur Hip Implant System in Canada and throughout the world; and

(r) continued to manufacture, distribute and sell the Profemur Hip Implant System notwithstanding that:

i. the FDA and Health Canada had received numerous complaints involving patients with Profemur Hip Implant Systems; and

ii. the annual 2009 Report of the Australian Joint Registry shows that the Profemur Z Stem component of the Profemur Hip Implant System has an 11.2% failure rate at the three year interval; and

(s) breached other duties of care to the Plaintiffs and the Class Members, details of which breaches are known only to the Defendants.

(c) Strict Liability

42. The Defendants are strictly liable for some or all of the damages suffered by the Plaintiffs and other Class Members in that:

(a) the Defendants manufactured the Profemur Hip Implant System;

(b) the Profemur Hip Implant System is considered to be inherently dangerous;

(c) the Plaintiffs and other Class Members had no opportunity to inspect or test the Profemur Hip Implant System to ensure their safety; and

(d) the Profemur Hip Implant System was used by the Plaintiffs and other Class Members.

(d) Breach of Contract

43. In exchange for consideration received, the Defendants entered into a contract with the Plaintiffs and Class Members. An implied term of this contract was the Defendants warranty to the Plaintiffs and the Class Members that the Profemur Hip Implant System was of merchantable quality and fit for use.

44. The Defendants breached the warranty to the Plaintiffs and the Class Members by designing, testing, researching, formulating, developing, manufacturing, producing, labelling, advertising, promoting, distributing and/or selling the Profemur Hip Implant System which is inherently dangerous to users and which the Defendants knew or ought to have known would lead to serious complications.

(e) Waiver of Tort

45. As a result of the Defendants' conduct described herein, the Plaintiffs and Class Members reserve the right to elect at the trial of the common issues to waive the torts and to have damages assessed in an amount equal to the gross revenues earned by the Defendants, or the net income received by the Defendants, or a percent of the proceeds, from the sale of the Profemur Hip Implant System as a result of the Defendants' conduct.

46. The Plaintiffs and Class Members claim that such an election is appropriate for the following reasons, among others:

(a) revenue was acquired in a manner in which the Defendants cannot in good conscience retain it;

(b) the integrity of the marketplace would be undermined if the court did not require an accounting;

(c) absent the Defendants' tortious conduct, the Profemur Hip Implant System could not have been marketed, nor would the Defendants have received any revenue from its sale in Canada; and

(d) the Defendants engaged in wrongful conduct by putting into the marketplace products which cause or have the potential to cause serious injury.

(f) Breach of the *Competition Act*, R.S. 1985, c. C-34

47. The Plaintiffs rely on the *Competition Act,* ss.36(1) and s.2 and plead that the Defendants for the purpose of promoting, directly, or indirectly, the supply and use of the Profemur Hip Implant System, and for the purpose of promoting their business interests, knowingly or recklessly, made representations to the public that were materially false or misleading.

(g) Breach of the *Food and Drugs Act*, R.S. 1985, c. F-27

48. The Defendants engaged in unfair trade practices that were specifically declared unlawful by ss. 3 and 9 of the *Food and Drugs Act*. Such practices included making false or misleading representations or advertisements, knowingly or with reason to know, as to the characteristics of the Profemur Hip Implant System.

(h) Unjust enrichment

49. The Defendants voluntarily accepted and retained profits and benefits, derived from the Plaintiffs and Class Members, with full knowledge and awareness that, as a result of their wrongdoings, the Plaintiffs and Class Members did not receive a product of the quality, nature or fitness that had been represented by the Defendants or that Plaintiffs and Class Members, as a reasonable consumer, expected.

50. By virtue of the wrongdoings alleged, the Defendants have been unjustly enriched at the expense of the Plaintiffs and Class Members, who have experienced a corresponding deprivation. There is no juristic reason for the enrichment.

VII. DAMAGES

51. As a result of the conduct of the Defendants as hereinbefore set out, the Plaintiffs and Class Members have sustained serious personal injuries and damages.

52. As a result of the conduct of the Defendants, the Plaintiffs and Class Members suffered and continue to suffer expenses and special damages of a nature and an amount to be particularized prior to trial.

53. Some of the expenses related to the medical treatment that the Plaintiffs and Class Members have undergone, and will continue to undergo, have been borne by provincial health insurers. As a result of the negligence of the Defendants, the provincial health insurers have suffered and will continue to suffer damages.

(A) Manifest Harm and Injuries:

54. The past and ongoing use of the Profemur Hip Implant System has resulted in the Plaintiffs and Class Members' physical and mental health injuries pleaded above, and have also led to pain and suffering, loss of income, impairment of earning ability, loss of valuable services, future care costs, medical costs, loss of amenities and enjoyment of life, anxiety, nervous shock, mental distress, emotional upset, loss of consortium and out of pocket expenses.

55. The Plaintiffs and Class Members assert a claim for each of the types of damages listed above.

(B) Medical Monitoring: Responding to Material Risk of Illness

56. The past and ongoing use of the Profemur Hip Implant System has caused or materially contributed to increased health risks to the Plaintiffs and other Class Members. As a result of this use, the Plaintiffs and Class Members have already and will continue to suffer illness, anxiety, loss of amenities and loss of enjoyment of life.

57. There are medically accepted tests and diagnostic tools which, if used properly and on a timely basis, will detect at an early stage the serious problems which may result from the use of the Profemur Hip Implant System by the Class Members. However, not all of these tests are generally available or being administered to the Class Members despite their elevated risk. The early detection of these conditions will significantly reduce the harm and risk of death therefrom.

58. The Class Members seek to recover damages in the form of the total funds required to establish a 'medical monitoring' process to be made available to the Class Members.

Such damages include the costs of medical screening and treatment incurred by or on behalf of the Class Members.

59. The damages referred to above may have been incurred directly by the Plaintiffs and Class Members, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

60. The Plaintiffs further allege that the establishment of a medical monitoring process is a necessary and appropriate step for all of the Defendants to take in the course of fulfilling their obligation to minimize the damages suffered by Class Members.

VIII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

61. The Defendants manufactured, marketed, promoted and sold the Profemur Hip Implant System with full knowledge of the fact that they were adversely impacting the physical and psychological health of the Plaintiffs and the Class Members. Knowledge of the risks associated with the use of the Profemur Hip Implant Systems was not released to the Plaintiffs and Class Members. Despite having specific information that the Plaintiffs and Class Members were at risk of serious problems associated with the use of the Profemur Hip Implant System, the Defendants continued or permitted the continuation of the manufacturing, marketing, promoting and selling of the Profemur Hip Implant System without reasonable controls.

62. These activities were carried out with reckless, callous and wanton disregard for the health, safety and pecuniary interests of the Plaintiffs and other Class Members. The Defendants knowingly compromised the rights and interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain and profit. Furthermore, once the Defendants knew of the extraordinary dangers that the Profemur Hip Implant System posed to the Plaintiffs and Class Members, the Defendants failed to advise the Plaintiffs and Class of them in a timely fashion, fully or at all.

63. The Defendants' negligence was callous and arrogant and offends the ordinary community standards of moral and decent conduct. The actions and/or omissions of the Defendants involved such want of care as could only have resulted from actual

conscious indifference to the rights, safety and welfare of the Plaintiffs and Class Members.

64. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behaviour of the Defendants.

IX. GENERAL PROVISIONS

65. The Plaintiffs and Class Members plead that, by virtue of the acts described herein, the Defendants are liable to them in damages. Each of the Defendants are vicariously liable for the acts and omissions of the others for the following reasons:

(a) each was the agent of the others;

(b) each Defendants' business was operated so that it was inextricably interwoven with the business of the others;

(c) each Defendant entered into a common advertising and business plan with the others to distribute and sell the Profemur Hip Implant System;

(d) each Defendant owed a duty to the others and to the Plaintiffs and Class Member by virtue of the common business plan to distribute and sell the Profemur Hip Implant System; and

(e) each Defendant intended that the businesses be run as one global business organization.

66. The Plaintiffs and Class Members state that the Defendants are liable, jointly and severally, for the injuries and damages suffered by the Plaintiffs and other Class Members.

67. The Plaintiffs and Class Members plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable to the Plaintiffs and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

X. RELIEF SOUGHT

68. The Plaintiffs repeat the foregoing paragraphs and seek as relief the following:

(a) an Order certifying this proceeding as a national opt-out class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;

(b) general damages, including aggravated damages for personal injuries;

(c) special damages for medical expenses and other expenses related to the use of the Profemur Hip Implant System;

(d) aggravated, punitive and exemplary damages;

(e) further or alternatively the Plaintiffs claim, on their own behalf and on behalf of the Class Members:

(i) a declaration that the benefits which accrued to the Defendants as a result of their wrongful acts unjustly enriched the Defendants;

(ii) an accounting of the benefits which accrued to the Defendants as a result of their wrongful acts;

(iii) a declaration that the Defendants hold in trust for the Class the benefits which accrued to the Defendants as a result of their wrongful acts;

(iv) disgorgement of the benefits which accrued to the Defendants as a result of their wrongful acts;

(f) damages for the funding of a "Medical Monitoring Program," supervised by the Court, for the purpose of retaining appropriate health and other experts to review and monitor the health of the Class Members, and to make recommendations about their treatment;

(g) subrogated claims on behalf of the Provincial providers of medical services;

(h) interest;

(i) costs; and

(j) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 13th day of SEPTEMBER 2011.

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