CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000643-136

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

HANNELORE BERGER residing and domiciled at [redacted]

Petitioner

vs.

DEPUY ORTHOPAEDICS INC., a legal person duly constituted according to the law, with its head office being situated at 700 Orthopaedic Drive, Warsaw, Indiana, USA 46582;

and

JOHNSON & JOHNSON CORP., a legal person duly constituted according to the law, with offices being situated at One Johnson & Johnson Plaza, New Brunswick, New Jersey, USA 08933;

and

JOHNSON & JOHNSON INC., a legal person duly constituted according to the laws of Canada, with offices being situated at 7101 Notre-Dame East, Montréal, Québec, H1N 2G4;

Respondents

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER STATES THE FOLLOWING:

INTRODUCTION:

1. Petitioner wishes to institute a class action on behalf of the following Group of which Petitioner is a member:

    - All persons in Canada (including their estates, executors, personal representatives, their dependants and family members), who were implanted with a DePuy Pinnacle metal on metal Acetabular Cup System;

(hereinafter referred to as the "**Class Members**", the "**Class**", the "**Group Members**", the "**Group**", "**Consumers**" or "**Users**" or "**Patients**");

2. At all material times the Respondents, DePuy Orthopaedics Inc., Johnson & Johnson Corp., and Johnson & Johnson Inc. (hereinafter collectively referred to as the **"Respondents"**), carried on business inextricably interwoven with each other, and thus each Respondent is vicariously liable for the acts and omissions of the others. At all material times, the Respondents carried on business and sold their products worldwide, including Québec and Canada;

3. Respondents including their past and present related companies, are companies that research, develop, design, test, manufacture, distribute, label, package, supply, market, advertise and sell various healthcare products;

4. Respondents sold and/or sell hip replacement systems, including the DePuy Pinnacle Acetabular Cup System (hereinafter referred to as the **"Pinnacle Hip**

Implant"), for the purpose of surgical procedures in which the hip joints are replaced by one of their prosthetic implants;

5. DePuy's Pinnacle Hip Implants are used to repair parts of the hip that are worn or weakened;

6. The Respondents individually and collectively participated in one or more of: having researched, developed, designed, tested, manufactured, labeled, packaged, marketed, imported, distributed, promoted, and sold the Pinnacle Hip Implants;

7. After having one or more of the Hip Replacement Systems surgically implanted, numerous class members have reported:

   a. pain;
   b. infection;
   c. inflammation;
   d. the feeling of hip dislocation;
   e. heavy metal poisoning (metallosis) confirmed by blood tests;
   f. ALVAL fluid (Aseptic Lymphocytic Vasculitis Associated Lesion);
   g. necrotic tissue in and around the hip joint;
   h. premature wear, disarticulation, disassembly, and/or catastrophic failure of the Pinnacle Hip Implant.

8. Many of the Group Members have had to go back to have the Pinnacle Hip Implants surgically removed and replaced with models that are safer and more reliable. In some cases it has taken Group members years to recover from having to undergo additional surgery;

DePuy Pinnacle Implants:

9. The hip joint connects the thigh (femur) bone of a patient's leg to the patient's pelvis. The hip joint is often characterized as a ball and socket joint. The acetabulum is the cup shaped socket portion of the hip. The femoral head (ball) at the top of the femur bone rotates within the curved surface of the acetabulum;

10. A total hip system replaces the body's natural joint with an artificial one, usually made out of metal, plastic or ceramic. A typical hip replacement system consists of four separate components: (1) a femoral stem, (2) a femoral head, (3) a liner (bearing surface), and (4) an acetabular shell, as can be seen from Respondents' webpage titled "Hip replacement/hip implant basics" hereby filed as exhibit R-1;

11. After the surgeon hollows out a patient's femur bone, the metal femoral stem is implanted. The femoral head is usually a metal ball that is fixed on top of the femoral stem. The femoral head forms the hip joint that can rotate when it is placed inside a plastic, ceramic or metal liner that is attached to the interior portion of the metal acetabulum cup (socket) comprised of metal on its outer shell. When complete, the femoral stem anchors the metal femoral head that rotates within the liner sitting inside the acetabular cup;

12. Respondents developed, designed, tested, manufactured, distributed, and sold the Pinnacle Acetabular Cup System (the Pinnacle Hip Implant) which is a hip bearing system to be used in a total hip replacement or revision surgery. The Pinnacle Hip Implant includes two component parts: the liner and acetabular cup. Respondents developed, designed, tested, manufactured, and distributed at least four different metal acetabular cups and three different liners to be used as the Pinnacle Hip Implant. The three options are made of cobalt-chromium metal, polyethylene plastic, and ceramic. One of the cobalt-chromium metal liners is the Ultamet® XL;

13. The Pinnacle Hip Implant is critically different from most hip replacement devices because a metal acetabular liner may be used instead of a polyethylene plastic acetabular liner. The Pinnacle Hip Implant with a metal liner, such as the Ultamet® XL, is a "metal-on-metal" device due to the fact that both articulating surfaces - the femoral head (ball) and acetabulum liner (socket) - are comprised of cobalt-chromium (CoCr) metal. Therefore, the metal-on-metal design forces metal to rub against metal with the full weight and pressure of the human body creating metallic debris that is released into the Petitioner's hip socket and blood stream. Because of Respondents' defective design of the Pinnacle Hip Implant, hundreds of patients — including Petitioner — have been forced to undergo surgeries to remove and replace the remainder of the device, as well as the debris from the abraded and failed hip replacement implants;

14. Respondents developed, designed, tested, manufactured, and distributed the metal femoral heads that are used with the Pinnacle Hip Implant that make direct contact with the liner;

15. The Articuleze-M Spec Femoral Head and the aSphere M-Spec Femoral Head are metal femoral heads commonly used with the Pinnacle Hip Implant;

16. The Pinnacle Hip Implant is fully compatible with DePuy's complete line of advanced femoral stems that Respondents develop, design, test, manufacture, and distribute such as the AML®, Prodigy®, SummitTM, Corail®, Tri-Lock®, and S-ROM femoral stems and sleeves;

ADVERSE EVENTS

17. Regulatory agencies have recognized the problems that are caused by metal-on-metal implants such as the Pinnacle Hip Implant. For instance, The Medicines and Healthcare Products Regulatory Agency ("MHRA"), the government agency

which is responsible for ensuring that medicines and medical devices work, and are acceptably safe in Britain, investigated Respondents' metal-on-metal total hip replacement system after receiving widespread reports of soft tissue reactions and tumor growth in thousands of patients who had received these implants. MHRA has required physicians to establish a system to closely monitor patients known to have metal-on-metal hips by monitoring the cobalt and chromium levels in their blood and to evaluate them for related soft tissue reactions, as it appears on the Medical Device alert hereby filed as exhibit R-2;

18. Following this investigation, the U.S. Food and Drug Administration, a government agency which is responsible of protecting the public health by assuring that foods are safe, wholesome, sanitary and properly labeled; human and veterinary drugs, and vaccines and other biological products and medical devices intended for human use are safe and effective in the U.S.A. (**'The FDA'**) as of May of 2011, the FDA required the Respondents to provide data on levels of metal in the blood of patients implanted with their hip implants due to rising concerns regarding their use. The FDA issued a proposed order on January 17 2013 requiring manufacturers of metal-on-metal total hip replacement systems to submit premarket approval applications, as it appears on the FDA Safety Communication hereby filed as exhibit R-3;

19. Indeed, metal-on-metal hip implants never underwent safety and effectiveness reviews under the FDA, as their manufacturers were only required to demonstrate a "substantial equivalence" to those already on the market, thus avoiding scrutiny through a legal loophole, as it appears on an article from the New-York times titled "F.D.A. Seeks to Tighten Regulation of All-Metal Hip Implants" hereby filed as exhibit R-4;

20. Similarly, the Alaska Department of Health recently issued a bulletin warning of the toxicity of Respondents' metal-on-metal total hip replacement systems. The State of Alaska, like the MHRA, identified the need for close medical monitoring, surveillance and treatment of all patients who had received these and similar metal-on-metal implants, as it appears on the State of Alaska Epidemiology Bulletin hereby filed as exhibit R-5;

21. Furthermore, on or about April 11, 2012, Health Canada issued a safety advisory stating metal-on-metal hip implants can cause soft tissue reactions and that these implants can become loose. Further, Health Canada advised patients with painful hips and an MRI showing soft tissue damage to have the devices removed. Health Canada further advised all patients with metal-on-metal hips to be monitored by their surgeons, as it appears on the Health Canada advisory hereby filed as exhibit R-6;

22. Consequently, Respondents were fully aware that the Pinnacle Hip Implant was defective and that many patients already had been injured by the Pinnacle Hip Implant;

23. Had Respondents conducted clinical trials of the Pinnacle Hip Implant before it was first released on the market in the early 2000's, they would have discovered at that time that the Pinnacle Hip Implant results in a high percentage of patients developing pain, metallosis, biologic toxicity, and an early and high failure rate due to the release and accumulation of metal particles in the patient's surrounding tissue, amongst other symptoms listed above;

24. The metallic particles released by the friction between the metal surfaces can become toxic, causing metallosis or cobaltism, and giving rise to pseudotumors and other conditions. These conditions cause severe pain and discomfort, death of surrounding tissue, bone loss, and impaired mobility;

25. Despite their knowledge of the Pinnacle Hip Implant's inherent defect and the hundreds of patients who had been forced undergo the agony of further surgery, the Respondents continued to market and sell the defective hip replacement device. In so doing, Respondents actively concealed the known defect from doctors and patients — including the Petitioner and his doctor — and misrepresented that the Pinnacle Hip Implant was safe and effective;

26. To this day, Respondents continue to sell the defective Pinnacle Hip Implant to unsuspecting patients without any warning about the risks or the failures that have been reported over the years;

27. Respondents tout the metal-on-metal Pinnacle Hip Implant in brochures saying that it is "Used for active patients because it offers durability and strength", as it appears on page 10 of the brochure titled "Move Ahead with Confidence", hereby filed as exhibit R-7;

28. However, according to Dr. David Jacofsky of the Centre for Orthopedic Research and Education, metal on metal articulations have fairly high wear rates, as it appears on Dr. Jacofsky's powerpoint presentation titled "Metal on Metal THA, ~~The Good~~, The Bad, and The Ugly" hereby filed as exhibit R-8;

29. Respondents marketed the Pinnacle Hip Implant as high performance hip replacements and as superior products that would allow patients to return to their more active lifestyles. Respondents also advertised the Pinnacle Hip Implant would last longer than other hip replacement products;

30. Respondents have known for years that the implantation of their Pinnacle Hip Implant and other metal-on-metal total hip replacement systems results in

metallosis, biologic toxicity, an early and high failure rate, among other symptoms. Once the body is exposed to and absorbs the toxic metallic ions and particle debris from the Pinnacle Hip Implant, inflammation occurs, causing severe pain, necrosis (death) of the surrounding tissue, and bone loss. Pseudotumors also develop and grow as a direct and proximate result of the toxic metallic ions and particles released from the metal-on-metal hip components;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

Left Hip

31. The Petitioner, **Hannelore Berger,** is 73 years old and resides in the city of Pierrefonds, Quebec;

32. On September 16 2003, Petitioner had a DePuy Duraloc® Enduron Acetabular liner, a DePuy Duraloc 1200 series acetabular cup, a DePuy AML® hip stem and DePuy Articul/Eze femoral head surgically inserted in her left hip, as it appears on her Operation Report dated September 16 2003 and the Intra-Operative Nursing Record dated September 16 2003, hereby filed as exhibit R-9;

33. Following several dislocations in the weeks following the above mentioned surgery, on October 10 2003, the Petitioner had revision surgery, in which the DePuy Duraloc 1200 series acetabular cup was replaced by a DePuy Pinnacle acetabular cup, and the DePuy Duraloc® Enduron Acetabular liner was replaced by a DePuy Ultamet, surgically inserted on her left hip at the Lakeshore General Hospital in Montréal, Québec, as it appears on the Operation Report dated

October 10 2003 and the Intra-Operative Nursing Record dated October 10 2003 hereby filed as exhibit R-10;

34. This revision surgery effectively rendered the Petitioner's hip implant a metal on metal Pinnacle Hip Implant, as it appears on R-10;

35. On December 2 2011, after several dislocations and instability problems, the Petitioner underwent another revision surgery, where it was discovered that the hip joint had "*significant metallosis throughout the joint itself and there was a large cyst in the posterior aspect of the femur approximately 5 x 3 x 2 cm filled with metal debris*", as it appears on the Operation Report dated December 2 2011 hereby filed as exhibit R-11;

36. Following this discovery, the Petitioner requested to undergo blood testing, and the results indicated a presence of chromium in the order of 200 nmol/L and cobalt in the order of 75 nmol/L, as it appears on the blood tests results hereby filed as exhibit R-12;

37. A normal cobalt presence is in the order of 0-9.0 nmol/L, whereas the reference value for chromium is between 2.0 and 10 nmol/L, showing heavy metal poisoning;

38. Previous to these test results, Petitioner experienced unexplainable pains in several areas of her body outside the hip area, which she still experiences today;

39. Respondents failed to warn the Petitioner (and other Group Members), prior to the surgery, of the health risks posed by the Hip Implants;

40. Had the Respondents issued warnings, the Petitioner (and other Group Members) would not have used the Hip Implants;

Right Hip

41. On January 6 2011, Petitioner underwent a revision surgery of a previously installed hip implant;

42. During the said revision surgery, an Articul/Eze metal on metal femoral head was implanted into the Petitioner's right hip;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

43. Respondents researched, designed, tested, manufactured, marketed, labeled, distributed, promoted and sold Pinnacle Hip Implants in many countries including Canada;

44. At all material times, Respondents have marketed that Pinnacle Hip Implants are safe and beneficial, which is not true;

45. Respondents warranted and represented that the Pinnacle Hip Implants were fit for their use by Consumers and posed no significant health risks to those Users;

46. The Pinnacle Hip Implants are associated with increased negative health effects including but not limited to pain, infection, inflammation, the feeling of hip dislocation, heavy metal poisoning (metallosis) confirmed by blood tests, ALVAL fluid (Aseptic Lymphocytic Vasculitis Associated Lesion), necrotic tissue in and around the hip joint, premature wear, disarticulation, disassembly, and/or catastrophic failure of the Pinnacle Hip Implant, and/or other risks or side effects mentioned hereinabove;

47. The Group Members have incurred injuries and losses from the use of the Pinnacle Hip Implants, including expenses relating to medical treatment sought and received, physical injuries, opportunity costs incurred as a result of illness or

visits to medical facilities, loss of employment income, loss of enjoyment of life, pain and suffering, and anticipated future medical and health costs;

48. The Group Members have suffered and will continue to suffer physical injuries and other losses, or damages due to the Pinnacle Hip Implants, and claim damages as a result;

49. Had the Respondents done appropriate scientific research and testing, as well as carried out reviews of related medical journals or studies, they should have known that Pinnacle Hip Implants materially contribute to the risk of serious adverse medical events as described above and should have fully informed the medical professionals and Consumers, including the Petitioner and putative Group Members, of such risks in a timely manner;

50. Respondents knew or should have known of the risks from the use of the Pinnacle Hip Implants but portrayed Pinnacle Hip Implants as a safe and effective solution to helping those with weak or worn hips;

51. Had the true facts been disclosed that the Pinnacle Hip Implants are associated with devastating side effects, Consumers would not have used the Pinnacle Hip Implants;

52. Respondents misled or deceived Group Members by representing that Pinnacle Hip Implants do not pose the aforesaid risks to them during normal use;

53. Respondents warranted that Pinnacle Hip Implants were safe and fit for their intended and foreseeable purpose. However, Pinnacle Hip Implants were not, and are not, safe for their intended use in that they pose an undue risk of harm to the Members of the Group;

54. At all material times, Respondents failed to provide the medical community and the general public with a clear, complete, and current warning of the risks associated with Pinnacle Hip Implants' use, or failed to provide such warning in a timely manner, and Respondents were negligent in that regard;

55. Furthermore, or in the alternative, Respondents did inferior research, design, and tests on Pinnacle Hip Implants and therefore made defective products;

56. Had the true facts been disclosed that the Pinnacle Hip Implants are associated with increased negative health effects including but not limited to pain, infection, inflammation, the feeling of hip dislocation, heavy metal poisoning (metallosis) confirmed by blood tests, ALVAL fluid (Aseptic Lymphocytic Vasculitis Associated Lesion), necrotic tissue in and around the hip joint, premature wear, disarticulation, disassembly, and/or catastrophic failure of the Pinnacle Hip Implant, the use of said Pinnacle Hip Implants on an objective Group wide basis would not have occurred and the Group Members would not have experienced the aforementioned injuries or health risks;

57. Consumers reasonably relied and rely upon the Respondents to ensure that the Pinnacle Hip Implants were safe for their intended use;

58. Respondents are liable for the damages suffered by the Petitioner and the Group Members in that Respondents failed to use sufficient quality control, to conduct adequate testing, and to perform proper manufacturing, production, or processing, or failed to take sufficient measures to prevent harmful Pinnacle Hip Implants from being offered for sale, sold or used by Consumers, when they knew or ought to have known about the serious health risks but still sold and distributed their Pinnacle Hip Implants in Canada;

59. As a direct and proximate result of the Respondents' negligence, the Group Members suffered pain, damages, injuries and risks for which the Respondents are solely liable;

60. Each Member of the Group is entitled to claim damages because of the faults and/or negligence of the Respondents, which include but are not limited to personal injuries suffered, economic and financial losses (i.e. loss of income and earning capacity), pain and suffering, loss of amenities and enjoyment of life, costs of past and future care and related expenses, such further and other damages, the particular of which may be proven at trial on the merits;

61. Moreover, the Respondents' conduct, through actions, omissions, wrongdoings, and their awareness of the serious hazards of said Hip Implants, and their failure to fully, clearly, and in a timely way disclose and publicize the serious health effects resulting from the use of the Pinnacle Hip Implants (all detailed hereinabove), subject the Respondents to punitive and/or exemplary damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

62. The composition of the Group makes the application of Article 59 or 67 C.C.P. impractical for the following reasons:

a) The number of potential Group Members is so numerous that joinder of all Members is impracticable. While the exact number of Group Members is unknown to Petitioner at the present time and can only be ascertained from sales and distribution records maintained by the Respondents and their agents, it can be reasonably estimated that there are thousands of potential Group Members located throughout Canada;

b) Based on the number of potential Group Members, it is impossible for the Petitioner to identify all potential Group Members and obtain a mandate from each of them. Petitioner does not possess the names and addresses of potential Group Members;

63. The recourses of the members raise identical, similar or related questions of fact or law, namely:

a) Do the Pinnacle Hip Implants cause an increase in negative health effects, and to what extent?

b) Were the Pinnacle Hip Implants unsafe, or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce by the Respondents?

c) Were Respondents negligent or did they commit faults in the designing, developing, testing, manufacturing, marketing, distributing, labelling or selling of the Pinnacle Hip Implants?

d) Did Respondents fail to inform the Group Members of the health risks associated with the use of Pinnacle Hip Implants?

e) Are Respondents liable to pay damages to the Group Members as a result of their faults, negligence, or misrepresentations made in manufacturing, marketing, distributing or selling of the Pinnacle Hip Implants, or as a result of the use of Pinnacle Hip Implants?

f) Are Respondents liable to pay compensatory damages to the Group Members, and if so in what amount?

g) Are Respondents liable to pay moral damages to the Group Members, and if so in what amount?

h) Are Respondents liable to pay exemplary or punitive damages to the Group Members, and if so in what amount?

64. The interests of justice favor that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

65. The action that Petitioner wishes to institute for the benefit of the Members of the Group is an action in damages for product liability;

66. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Petitioner's action against Defendants;

CONDEMN Defendants to pay an amount in compensatory damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members.

67. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:

a) Petitioner lives in the district of Montreal

b) Petitioner was surgically implanted with two (2) Pinnacle Hip Implants in the District of Montréal;

c) Respondents sell the Pinnacle Hip Implants in the District of Montréal;

d) Many Group Members are domiciled or work in the District of Montréal;

e) Some of the Respondents have offices in the District of Montréal;

f) Petitioner's legal counsel practice law in the District of Montréal.

68. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the Group since Petitioner:

a) Was surgically implanted two (2) Pinnacle Hip Implants without being made aware of the health risks associated with the use of said devices;

b) suffered damages and injuries from using Pinnacle Hip Implants, as detailed above;

c) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;

d) is available to dedicate the time necessary for the present action before the Courts of Québec and to collaborate with Group attorneys in this regard;

e) is ready and available to manage and direct the present action in the interest of the Group Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;

f) does not have interests that are antagonistic to those of other members of the Group;

g) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments. In particular, Petitioner has instructed the undersigned attorneys to create and maintain a link on the website her attorneys in order to inform potential Group Members of this Motion for Authorization and to permit these people to provide their contact information and comments in order to receive information and updates about the action, and thereby create a database or potential Group Members;

h) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

69. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

ASCRIBE the Petitioner the status of representative of the persons included in the Group herein described as:

> All persons in Canada (including their estates, executors, personal representatives, their dependants and family members), who were implanted with a DePuy Pinnacle metal on metal Acetabular Cup System

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

a) Do the Pinnacle Hip Implants cause an increase in negative health effects, and to what extent?

b) Were the Pinnacle Hip Implants unsafe, or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce by the Respondents?

c) Were Respondents negligent or did they commit faults in the designing, developing, testing, manufacturing, marketing, distributing, labelling or selling of the Pinnacle Hip Implants?

d) Did Respondents fail to inform the Group Members of the health risks associated with the use of Pinnacle Hip Implants?

e) Are Respondents liable to pay damages to the Group Members as a result of their faults, negligence, or misrepresentations made in manufacturing, marketing, distributing or selling of the Pinnacle Hip Implants, or as a result of the use of Pinnacle Hip Implants?

f) Are Respondents liable to pay compensatory damages to the Group Members, and if so in what amount?

g) Are Respondents liable to pay moral damages to the Group Members, and if so in what amount?

h) Are Respondents liable to pay exemplary or punitive damages to the Group Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Petitioner's action against Defendants;

CONDEMN Defendants to pay an amount in compensatory damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, amount to be determined by the Court, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts'

fees and publication fees to advise members.

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with Article 1006 C.C.P. and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs to follow.

MONTRÉAL, February 26, 2013

MERCHANT LAW GROUP LLP
Attorneys for Petitioner

NOTICE TO DEFENDANT
(Art. 119 C.C.P.)

TO:

DEPUY ORTHOPAEDICS INC.,
700 Orthopaedic Drive, Warsaw, Indiana, USA 46582;

and

JOHNSON & JOHNSON CORP., a legal person duly constituted according to the law, with offices being situated at One Johnson & Johnson Plaza, New Brunswick, New Jersey, USA 08933;

and

JOHNSON & JOHNSON INC., a legal person duly constituted according to the laws of Canada, with offices being situated at 7101 Notre-Dame East, Montréal, Québec, H1N 2G4;

TAKE NOTICE that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montreal situated at 1 Notre Dame East, Montreal, Quebec, within ten (10) days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the ten (10) day period.

If you file an Appearance, the action or application will be presented before the Court on **April 15, 2012** at **9:00 AM**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

In support of the Motion To Authorize The Bringing Of A Class Action And To Ascribe The Status Of Representative, the Petitioner discloses the following Exhibits:

EXHIBIT R-1: Respondents' webpage titled "Hip replacement/hip implant basics;

EXHIBIT R-2: Medical Device alert;

EXHIBIT R-3: FDA Safety Communication

EXHIBIT R-4: article from the New-York times titled "F.D.A. Seeks to Tighten Regulation of All-Metal Hip Implants"

EXHIBIT R-5: State of Alaska Epidemiology Bulletin

EXHIBIT R-6: Health Canada advisory

EXHIBIT R-7: brochure titled "Move Ahead with Confidence",

EXHIBIT R-8: Dr. Jacofsky's powerpoint presentation titled "Metal on Metal THA, ~~The Good~~, The Bad, and The Ugly"

EXHIBIT R-9: operation report dated September 16 2003 and the Intra-Operative Nursing Record dated September 16 2003

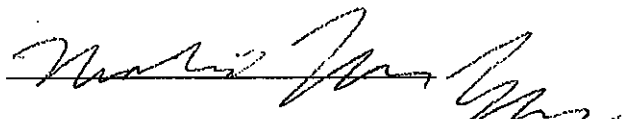
EXHIBIT R-10: Operation Report dated October 10 2003 and the Intra-Operative Nursing Record dated October 10 2003

EXHIBIT R-11: Operation Report dated December 2 2011

EXHIBIT R-12: blood tests results

These Exhibits are available on request.

MONTREAL, February 26, 2013



MERCHANT LAW GROUP LLP
Attorneys for Petitioners and the
Class Members

Nº: 500-06-000643-136

SUPERIOR COURT

DISTRICT OF MONTRÉAL

35455

HANNELORE BERGER

Petitioners

- vs –

DEPUY ORTHOPAEDICS INC, et al.

Respondents

1228

AUTO

VC

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE (art. 1002 C.C.P. and following)

ORIGINAL

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27 FEV. 2013

VC