C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF QUÉBEC

NO: 200-06-000173-149

SUPERIOR COURT
(Class Action)

SHARON ROSEMARY MCKEE
and

HANS MCKEE

Petitioners;

V.

TYCO HEALTHCARE GROUP CANADA ULC, doing business under **COVIDIEN,** legal person established pursuant to the Alberta *Business Corporations Act*, RSA 2000, c. B-9, having a place of business at 8455, Transcanada Highway, Saint-Laurent, Quebec, G4S 1Z1;

Defendant;

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVES
(Article 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF QUEBEC, YOUR PETITIONERS STATE AS FOLLOWS :

I. GENERAL PRESENTATION

A. THE CLASS ACTION

1. The Petitioners wish to institute a class action on behalf of the following Groups, of which they are Members (the "Groups"):

> « All women domiciled in Canada who have been implanted with pelvic mesh products manufactured, marketed, distributed, or sold in whole or in part by the Defendant and who suffered damages as a result of the implantation of these pelvic mesh products.
>
> AND
>
> All persons who have suffered damages as a result of the implantation to one of the persons referred to in the preceding paragraph of pelvic mesh products, including their spouse, father, mother and other ascendants, children, other parents, legal representatives, other relatives or their estate.»

or such other groups definition as may be approved by the Court.

B. THE DEFENDANT

2. Tyco Healthcare Group Canada ULC, doing business under Covidien (the "Defendant") is a corporation located in Saint-Laurent, Quebec. **[Statement from the Enterprise Register is attached hereto as exhibit R-1].** The Defendant is an affiliate or a subsidiary of Covidien PLC, a corporation located in Dublin, Ireland.

3. The Defendant, either directly or indirectly through an agent, affiliate, subsidiary, predecessor, related company, and/or Covidien PLC, designed, manufactured, prepared, processed, inspected, tested, packaged, promoted, marketed, distributed, and/or sold for a profit, Pelvic Mesh Products in Canada.

4. The development of Pelvic Mesh Products for sale in Canada, the conduct of clinical studies, the preparation of regulatory applications, the maintenance of regulatory records, the labelling and promotional activities regarding Pelvic Mesh Products, and other actions central to the allegations of this lawsuit, was undertaken by the Defendant in the Province of Quebec and elsewhere.

C. THE DEFENDANT'S PELVIC MESH PRODUCTS

5. The Defendant played an early role in the development of transvaginal mesh products.

6. In 2001, the Defendant's IVS Tunneller mesh became the first surgical mesh system approved by the U.S. Food and Drug Administration ("FDA") to specifically treat both pelvic organ prolapse and stress urinary incontinence in women.

7. Pelvic organ prolapse occurs when organs sag or fall into the vaginal canal because of weak pelvic muscles. Transvaginal mesh serves as a hammock beneath the organs to hold them up. Usually, the bladder, uterus, rectum or bowel is involved in the prolapse; the bladder is the most common organ affected.

8. Stress urinary incontinence occurs when the bladder leaks urine during moments of increased physical activity that increases pressure on the bladder. The mesh is used to support the urethra when pelvic muscles weaken.

9. The Defendant's mesh products used to treat pelvic organ prolapse and/or stress urinary incontinence in women include, but are not limited to: IVS Tunneller; TVT; Duo; Parietene mesh; and Surgipro mesh.

10. The Defendant's products listed in the previous paragraph, and any other as yet unidentified pelvic mesh products designed and sold for similar purposes, inclusive of instruments and procedures for implantation, are collectively referenced herein as "Pelvic Mesh Product(s)".

11. The Defendant's Pelvic Mesh Products are often referred to as a "hammock" or "sling" and/or vaginal mesh and/or transvaginal mesh.

12. The Defendant's Pelvic Mesh Products have been and continue to be marketed to the medical community, and in turn to patients, as safe, effective, and reliable medical devices, that can be implanted by safe, effective, and minimally invasive surgical techniques for the treatment of medical conditions, such as pelvic organ prolapse and stress urinary incontinence. They are marketed as being safer and more effective than traditional products and procedures and competing mesh products for the treatment of the aforementioned conditions.

13. The Defendant has marketed and sold its Pelvic Mesh Products to the medical community at large, and in turn to patients, through carefully planned, multifaceted marketing campaigns and strategies. These campaigns and strategies include aggressive marketing to health care

providers at medical conferences, hospitals, and private offices. The Defendant also utilized brochures and websites offering misleading expectations with respect to the safety and utility of its Pelvic Mesh Products.

D. THE RISKS

14. Contrary to the representations made to the medical community, and ultimately to the patients themselves, the Defendant's Pelvic Mesh Products have high failure, injury, and complication rates, fail to perform as intended, require frequent and often debilitating re-operations, and have caused severe and irreversible injuries, conditions, and damage to a significant number of women, including Sharon Rosemary McKee and other putative class Members.

15. The injuries, conditions, and complications suffered due to the Defendant's Pelvic Mesh Products include but are not limited to: mesh erosion; mesh contraction; mesh hardening or shrinking; extrusion of the mesh; vaginal erosion; urethral erosion; infection; fistula; inflammation; vaginal scarring; vaginal pain; organ perforation; dyspareunia; blood loss; neuropathic and other acute and chronic nerve damage and pain; pudendal nerve damage; neuromuscular problems; pelvic floor damage; pelvic pain; granuloma formation; urinary and fecal incontinence; prolapse of organs; and psychological damage.

16. In many cases putative class Members have also been forced to undergo intensive medical treatment, including but not limited to: operations to locate and remove the mesh; operations to attempt to repair pelvic organs; tissue and nerve damage; the use of pain control and other medications; injections into various areas of the pelvis, spine, and vagina; operations to remove portions of the female genitalia; and injuries to their intimate partners (collectively the "Injuries, Conditions, and Complications').

17. In October 2008, the FDA warned healthcare professionals about serious complications associated with vaginal mesh. **[Notice attached hereto as exhibit R-2].**

18. An article in the April 2009 issue of *The Female Patient* noted that while the Tunneller was initially a promising solution for women with pelvic organ prolapse and stress urinary incontinence, it is rarely used today, "presumably due to reports of high failure and complication rates." **[Article attached hereto as exhibit R-3].**

19. In February 2010, Health Canada issued a notice to hospitals warning of complications associated with transvaginal implantation of surgical mesh for the treatment of stress urinary incontinence and pelvic organ prolapse. **[Notice attached hereto as exhibit R-4].**

20. A study based on a multi-centre randomized controlled trial published in August 2010 in the *Journal of the American College of Obstetricians and Gynecologists* concluded high vaginal mesh erosion rates and questioned the value of additive synthetic polypropylene mesh for vaginal prolapse repairs. Numerous other studies published in a variety of medical journals have reached similar conclusions. **[Study attached hereto as exhibit R-5].**

21. In July 2011, the FDA issued a very detailed and comprehensive statement to warn doctors that they should consider not using mesh products to treat their patients on the basis that, in most instances, the risk of serious injury outweighs the benefits. **[Statement attached hereto as exhibit R-6].**

22. Following the July 2011 FDA warning (exhibit R-6) about the complications with vaginal mesh, the FDA convened a follow-up meeting with the Obstetrics & Gynecology Devices Panel. After two days of deliberations, the panel stated that safety with vaginal mesh was not well established, that more studies should be done on the products currently on the market, and that vaginal mesh should be reclassified as Class Ill (high-risk) rather than Class II (moderate-risk).

23. In December 2011, the Committee on Gynecologic Practice, which includes Members from the American College of Obstetricians and Gynecologists and the American Urogynecologic Society, warned doctors only to use mesh products where women are at high risk, which could justify exposure to potential mesh product complications. **[Committee opinion attached hereto as exhibit R-7].**

24. In January 2012, the FDA ordered the Defendant and other manufacturers to conduct new medical studies on the safety of surgical mesh products. **[Extract of the New York Times attached hereto as exhibit R-8].**

25. The Defendant's Pelvic Mesh Products are inherently dangerous and defective, unfit and unsafe for their intended and reasonably foreseeable uses, and do not meet or perform to the expectations of patients and their physicians.

26. The Defendant's Pelvic Mesh Products create risks to the health and safety of the patients that are far more significant than the risks posed by other products and procedures available to treat the underlying medical conditions, and which far outweigh

the utility of its Pelvic Mesh Products.

27. Despite the Defendant's knowledge of the Injuries, Conditions, and Complications caused by its Pelvic Mesh Products, the Defendant has, and continues to, manufacture, market, and sell its Pelvic Mesh Products, without adequately warning, labelling, instructing, and/or disseminating information with respect to these risks, either prior to and/or after the marketing and sale of the Pelvic Mesh Products.

28. At all material times, the Defendant, through its servants and agents, has failed to adequately warn physicians and consumers, including the Petitioners and putative class Members, of the risk of Injuries, Conditions, and Complications caused by its Pelvic Mesh Products.

29. The Defendant did not provide adequate safety data to Health Canada with respect to its Pelvic Mesh Products.

30. The Defendant knew or should have known that its Pelvic Mesh Products were unsafe, defective, unreasonably dangerous, and not fit for their intended purposes.

31. At all materials times, the Defendant knew or should have known that the risks of using its Pelvic Mesh Products included severe Injuries, Conditions, and Complications.

32. At all material times, the Defendant, through its servants and agents, negligently, recklessly and/or carelessly marketed, distributed and/or sold its Pelvic Mesh Products without adequate warnings of the products' serious side effects and unreasonably dangerous risks associated with these products.

E. CAUSES OF ACTION

33. The Defendant at all material times owed a duty of care to the Petitioners to:

    a. ensure that its Pelvic Mesh Products were fit for their intended and/or reasonably foreseeable use;

    b. conduct appropriate testing to determine whether and to what extent use of its Pelvic Mesh Products posed serious health risks, including the magnitude of risk of developing Injuries, Conditions, and Complications;

c. properly, adequately, and fairly warn the Petitioners and their physicians of the magnitude of the risk of developing Injuries, Conditions, and Complications with use of its Pelvic Mesh Products compared to alternative treatments;

d. ensure that physicians were kept fully and completely informed of all risks associated with its Pelvic Mesh Products;

e. monitor, investigate, evaluate and follow up on adverse reactions to the use of its Pelvic Mesh Products; and

f. properly inform Health Canada and other regulatory agencies of all risks associated with its Pelvic Mesh Products.

34. The Defendant negligently breached its duty of care.

35. The Petitioners state that their damages were caused by the negligence of the Defendant. Such negligence includes but is not limited to the following:

a. the Defendant failed to ensure that its Pelvic Mesh Products were not dangerous to recipients during the course of their use and that they were fit for their intended purpose and of merchantable quality;

b. the Defendant failed to adequately test its Pelvic Mesh Products in a manner that would fully disclose the magnitude of the risks associated with their use, including but not limited to injuries, Conditions, and Complications;

c. the Defendant failed to provide Health Canada complete and accurate information with respect to its Pelvic Mesh Products as it became available;

d. the Defendant failed to conduct any or any adequate follow-up studies on the efficacy and/or safety of its Pelvic Mesh Products;

e. the Defendant failed to conduct any or any adequate long-term studies of the risks of its Pelvic Mesh Products;

f. the Defendant failed to provide the Petitioners, their physicians and Health Canada with proper, adequate, and/or fair warning of the risks associated with use of its Pelvic Mesh Products, including but not limited to risk of Injuries, Conditions, and Complications

g. the Defendant failed to warn the Petitioners, their physicians and Health Canada about the need for comprehensive regular medical monitoring to ensure the early discovery of side effects related to using its Pelvic Mesh Products;

h. the Defendant failed to design and establish a safe, effective procedure for removal of its Pelvic Mesh Products. In the event of failure, injury, or complications, it is impossible to easily and safely remove the Defendant's Pelvic Mesh Products;

i. the Defendant failed to adequately monitor, evaluate and act upon reports of adverse reactions to its Pelvic Mesh Products in Canada and elsewhere;

j. the Defendant failed to provide any or any adequate updated and/or current information to the Petitioners, their physicians and/or Health Canada respecting the risks of its Pelvic Mesh Products as such information became available, from time to time;

k. the Defendant has consistently underreported and withheld information about the propensity of its Pelvic Mesh Products to fail and cause Injuries, Conditions, and Complications, and has misrepresented the efficacy and safety of its Pelvic Mesh Products through various means and media, misleading Health Canada, the medical community, patients, and the public at large;

l. the Defendant failed to provide adequate warnings of the risks associated with its Pelvic Mesh Products, including the risk of Injuries, conditions, and Complications in all persons receiving its Pelvic Mesh Products on the customer information pamphlets in Canada;

m. the Defendant, after noticing problems with its Pelvic Mesh Products, failed to issue adequate warnings, timely recall its Pelvic Mesh Products, publicize the problems and otherwise act properly and in a timely manner to alert the public, including adequately warning the Petitioners and their physicians of its Pelvic Mesh

Products inherent dangers, including but not limited to the danger of Injuries, Conditions, and Complications;

n. the Defendant failed to establish any adequate procedures to educate its sales representatives and physicians respecting the risks associated with its Pelvic Mesh Products;

o. the Defendant represented that its Pelvic Mesh Products were safe and fit for their intended purpose and of merchantable quality when it knew or ought to have known that these representations were false;

p. the Defendant misrepresented the state of research, opinion and medical literature pertaining to the purported benefits of its Pelvic Mesh Products and their associated risks, including the risk of Injuries, Conditions, and Complications;

q. the misrepresentations made by the Defendant were unreasonable in the face of the risks that were known or ought to have been known by the Defendant;

r. the Defendant failed to timely cease the manufacture, marketing and/or distribution of its Pelvic Mesh Products when it knew or ought to have known that its Pelvic Mesh Products caused Injuries, Conditions, and Complications;

s. the Defendant failed to conform with applicable disclosure and reporting requirements pursuant to the *Food and Drugs Act* and its associated regulations;

t. the Defendant failed to properly supervise its employees, subsidiaries and affiliated corporations;

u. the Defendant breached other duties of care to the Petitioners and putative class Members, details of which breaches are known only to the Defendant; and

v. in all of the circumstances of this case, the Defendant applied callous and reckless disregard for the health and safety of the Petitioners and putative class Members.

36. The Defendant's Pelvic Mesh Products were defective because they are unreasonably dangerous, beyond the dangers which could reasonably have been contemplated by the Petitioners, putative class Members, or their physicians.

37. Any benefit from using the Defendant's Pelvic Mesh Products is outweighed by the serious and undisclosed risks associated with their use, when used as the Defendant intended.

38. There are no individuals for whom the benefits of the Defendant's Pelvic Mesh Products outweigh the risks, given that there are many alternative products and procedures that are at least as efficacious as the Defendant's Pelvic Mesh Products and carry far less and/or less serious risks than the Defendant's Pelvic Mesh Products,

39. The risks associated with use of the Defendant's Pelvic Mesh Products, including Injuries, Conditions, and Complications in all persons receiving its Pelvic Mesh Products were in the exclusive knowledge and control of the Defendant.

40. The extent of the risks was not known to, and could not have been known by, the Petitioners.

41. The Petitioners' injuries would not have occurred but for the negligence of the Defendant in failing to ensure that its Pelvic Mesh Products were safe for use or, in the alternative, for failing to provide an adequate warning of the risks associated with using its Pelvic Mesh Products to the Petitioner and putative class Members, and to their physicians.

F. DAMAGES

42. The Petitioners and other putative class Members' injuries and damages were caused by the negligence of the Defendant, its servants, affiliates, and agents.

43. As a result of the Defendant's negligence, the Petitioners have suffered and continue to suffer serious personal injuries and pain and suffering.

44. As a result of the conduct of the Defendant, the Petitioners and other putative class Members suffered and continue to suffer expenses and special damages, of a nature and amount to be particularized prior to trial.

45. Some of the expenses related to the medical treatment that the Petitioners and class

Members have undergone, and will continue to undergo, have been borne by the various provincial health insurers as a result of the negligence of the Defendant.

46. The various provincial health insurers have suffered and will continue to suffer damages for which they are entitled to be compensated by virtue of their right of subrogation in respect of all past and future insured services.

47. The Petitioners claim punitive, aggravated and exemplary damages for the reckless and unlawful conduct of the Defendant.

II. THE PETITIONERS EXPERIENCES

48. The Petitioners Sharon Rosemary McKee ("Sharon") and Hans McKee ("Hans") are individuals residing in Omemee, Ontario.

49. Hans is the spouse of Sharon and is pursuing his claim in that capacity.

50. Sharon was implanted with one of the Defendant's Pelvic Mesh Products on June 15, 2005. She received IV Tunneller mesh to treat stress urinary incontinence.

51. Subsequent to being implanted with the Defendant's Pelvic Mesh Product, Sharon began suffering from multiple side effects including dyspareunia, bladder infections, scarring, urinary problems, pelvic pain, bleeding, vaginal pain, bulging, pain in buttocks and legs, estrogen level imbalance, emotional stress, ongoing vaginal drainage, lower backache and mesh removal.

52. The side effects Sharon has suffered as a result of the Defendant's Pelvic Mesh Product have, and continue to have, significantly negative consequences on her lifestyle, as well as the lifestyle of her family.

53. Due to the side effects suffered from the Defendant's Pelvic Mesh Product, Sharon has attended numerous medical appointments, been forced to miss work on a periodic basis, had to quit work. Technically at the age of 60 she was eligible to retire, but she was not ready to retire then and did not want to. However, she was forced to take her retirement anyway, due to the ongoing pain and issues from the mesh.

54. Prior to and at the time which Sharon was implanted with the Defendant's Pelvic Mesh Product, she received no or inadequate warnings about the magnitude of risks of developing Injuries, Conditions, and Complications (as defined herein).

55. Had Sharon been aware of the magnitude of risks of developing Injuries, Conditions, and Complications, she would never have agreed to being implanted with the Defendant's Pelvic Mesh Product. But for the Defendant's wrongful conduct, Sharon would not have incurred her damages.

56. Hans and other putative class Members have suffered and continue to suffer damages including, but not limited to, loss of care, guidance, and companionship and consortium, as well as financial expenses and special damages due to the wrongful conduct of the Defendant.

III. FACTS GIVING RISE TO THE PERSONAL CLAIM OF EACH MEMBER OF THE GROUPS:

57. The facts which give rise to the personal claim of each Member of the Groups against the Defendant are listed in the following paragraphs:

58. Each Member of the Groups has been implanted with Pelvic Mesh Products or is a relative of a user.

59. None of the Members of the Groups has been advised by the Defendant that implantation of Pelvic Mesh Products presented serious risks including severe Injuries, Conditions and Complications.

60. Each Member of the Groups is entitled to make a claim for physical, moral and pecuniary damages suffered as a result of the implantation of Pelvic Mesh Product marketed by the Defendant or its withdrawal, as well as for exemplary damages, if applicable.

IV CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

61. The composition of the Groups makes the application of article 59 or 67 C.C.P. impracticable for the following reasons :

    a. The Petitioners are unaware of the precise number of people who have had implantation of Pelvic Mesh Products, which are distributed throughout Canada, including the Province of Quebec;

    b. The number of persons included in the Groups is estimated to be more than 100;

c. The Petitioners do not know and cannot know the identity of the people who have had implantation of Pelvic Mesh Products, especially since medical records are confidential;

d. The names and addresses of persons included in the Groups are not known to the Petitioners;

e. All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.

62. The claims of the Members of the Groups raise identical, similar or related questions of fact or law, namely :

a. Does the implantation of Pelvic Mesh Products cause an increase in the risk of severe Injuries, Conditions and Complications?

b. Has the Defendant been negligent or has the defendant breached duties of care and information which it is responsible for as manufacturer, seller, importer, distributor of Pelvic Mesh Products and/or for having marketed these products in the Province of Quebec and elsewhere?

c. Are the Members of the Groups entitled to claim for physical, moral, monetary and punitive damages related to the implantation of Pelvic Mesh Products?

d. Is the Defendant required to compensate persons who are not themselves users of the Pelvic Mesh Products, but have suffered damages as a result of the use of these products by a third party, especially the wives, mothers, daughters and other relatives, their legal representatives, their other relatives or their estate?

e. If so, what is the nature of the damages that should be compensated, including: pain and suffering, loss of support, any other direct damages?

63. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

64. The action that the Petitioners wish to institute for the benefit of the Members of the Groups is an action in damages;

65. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the Petitioners' action against the Defendant;

CONDEMN Defendant to pay to the Members of the Groups:

- compensatory damages in the amount of 500 000.00$ for each person implanted with one of the Defendant's Pelvic Mesh Products (as defined herein) or as aggregated following a trial on the common issues;

- non-pecuniary damages in an amount to be assessed for each person who was implanted with one of the Defendant's Pelvic Mesh Products;

- punitive, aggravated, and exemplary damages in the amount of 20 000 000.00$;

- the costs of distributing all monies received to class Members;

or such other sum as this Court finds appropriate for all monetary losses;

GRANT the class action of the Petitioners on behalf of all the Members of the Groups;

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

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice expenses;

66. The Petitioners suggest that this class action be exercised before the Superior Court in the district of Quebec for the following reasons:

a. Their lawyers are domiciled in the district of Quebec.

67. The Petitioners, who are requesting to obtain the status of representatives, will fairly and adequately protect and represent the interest of the Members of the Groups for the following reasons:

    a. The Petitioner Sharon Rosemary McKee has been implanted with a Pelvic Mesh Product manufactured by the Dedendant;

    b. They suffered and still suffer damages following the implantation of a Pelvic Mesh Product;

    c. They understand the nature of the action;

    d. They are available to dedicate the time necessary for an action to collaborate with Members of the Groups; and

    e. Their interests are not antagonistic to those of other Members of the Groups.

68. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioners the status of representatives of the persons included in the Groups herein described as:

> « All women domiciled in Canada who have been implanted with pelvic mesh products manufactured, marketed, distributed, or sold in whole or in part by the Defendant and who suffered damages as a result of the implantation of these pelvic mesh products.
>
> AND
>
> All persons who have suffered damages as a result of the implantation to one of the persons referred to in the preceding paragraph of pelvic mesh products, including their spouse, father, mother and other ascendants, children, other parents, legal representatives, other relatives or their estate.»

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

a. Does the implantation of Pelvic Mesh Products cause an increase in the risk of severe Injuries, Conditions and Complications?

b. Has the Defendant been negligent or has the defendant breached duties of care and information which it is responsible for as manufacturer, seller, importer, distributor of Pelvic Mesh Products and/or for having marketed these products in the Province of Quebec and elsewhere?

c. Are the Members of the Groups entitled to claim for physical, moral, monetary and punitive damages related to the implantation of Pelvic Mesh Products?

d. Is the Defendant required to compensate persons who are not themselves users of the Pelvic Mesh Products, but have suffered damages as a result of the use of these products by a third party, especially the wives, mothers, daughters and other relatives, their legal representatives, their other relatives or their estate?

e. If so, what is the nature of the damages that should be compensated, including: pain and suffering, loss of support, any other direct damages?

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

GRANT the Petitioners' action against the Defendants;

CONDEMN Defendant to pay to the Members of the Groups:

- compensatory damages in the amount of 500 000.00$ for each person implanted with one of the Defendant's Pelvic Mesh Products (as defined herein) or as aggregated following a trial on the common issues;

- non-pecuniary damages in an amount to be assessed for each person who was implanted with one of the Defendant's Pelvic Mesh Products;

- punitive, aggravated, and exemplary damages in the amount of 20 000 000.00$;

- the costs of distributing all monies received to class Members;

or such other sum as this Court finds appropriate for all monetary losses;

GRANT the class action of the Petitioners on behalf of all the Members of the Groups;

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

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees;

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

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members of the Groups;

ORDER the publication of a notice to the Members of the Groups in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

Quebec City, March 31, 2014

(s) Siskinds, Desmeules, Avocats, S.E.N.C.R.L.

SISKINDS DESMEULES AVOCATS s.e.n.c.r.l.
Lawyers for the Petitioners

NOTICE TO DEFENDANT

To: **TYCO HEALTHCARE GROUP CANADA ULC,**
doing business under **COVIDIEN,**
8455, Transcanada Highway,
Saint-Laurent (Quebec) G4S 1Z1;
Defendant

Take notice that the plaintiff has filed this action or application in the office of the Superior Court of the judicial district of Québec.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Québec located at 300, boul. Jean-Lesage, Québec, G1K 8K6 within 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 10 day period.

If you file an appearance, the action or application will be presented before the court on **May 8, 2014, at 9h00**, in room 3.14 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, unless you have made a written agreement with the plaintiff or the plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Quebec City, March 31, 2014

(s) Siskinds, Desmeules, Avocats, S.E.N.C.R.L.

SISKINDS DESMEULES AVOCATS s.e.n.c.r.l.
Lawyers for the Petitioners

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF QUÉBEC

NO: 200-06-000173-149

SUPERIOR COURT
(Class Action)

SHARON ROSEMARY MCKEE;

and

HANS MCKEE;

Petitioners;

V.

TYCO HEALTHCARE GROUP CANADA ULC, doing business under **COVIDIEN**;

Defendant;

LIST OF EXHIBITS

EXHIBIT R-1:	Statement from the Enterprise Register
EXHIBIT R-2:	Notice from the FDA (October 2008)
EXHIBIT R-3:	Article of *The Female Patient* (April 2009)
EXHIBIT R-4:	Notice from Health Canada (February 2010)
EXHIBIT R-5:	Study of the *Journal of the American College of Obstetricians and Gynecologists* (August 2010)
EXHIBIT R-6:	Statement from the FDA (July 2011)

EXHIBIT R-7: Committee opinion (December 2011)

EXHIBIT R-8: Extract of the New York times (January 2012)

Quebec City, March 31, 2014

(s) Siskinds, Desmeules, Avocats, S.E.N.C.R.L.

SISKINDS DESMEULES AVOCATS s.e.n.c.r.l.
Lawyers for the Petitioners