

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JERRE FREY, individually,

Plaintiff

VS.

**DEPUY ORTHOPAEDICS, INC., an
Indiana Corporation; JOHNSON &
JOHNSON SERVICES, INC., a New Jersey
Corporation,**

Defendant

§
§
§
§
§
§
§
§
§
§
§
§

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW the Plaintiff, by and through his undersigned attorney, and, for his
Complaint against the Defendant, alleges as follows:

1. The Plaintiff, is a citizen of the State of Pennsylvania, and resides in the County of York, Pennsylvania.
2. The Defendant is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business in the State of Indiana.

JURISDICTION AND VENUE

3. This Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. §1332(a). No Defendant is a citizen of the same state as Plaintiff and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(c) because Defendant is a corporation. A corporation is deemed to reside in any judicial district where its contacts would be sufficient to subject it to personal jurisdiction

at the time the action is commenced. Defendant distributed, recommended, merchandised, advertised, promoted, supplied and sold to distributors, physicians, hospitals and medical practitioners at all times relevant and including the day this action is commenced, certain orthopedic medical devices intended to be surgically implanted in patients in the State of California, and more particularly within the jurisdiction boundaries of the United States District Court of the Northern District of California.

5. Defendant DEPUY ORTHOPAEDICS, INC. is, and at all times relevant to this Complaint was, an Indiana Corporation with its principal place of business at 700 Orthopaedic Drive, Warsaw, Indiana 46581. Defendant DEPUY ORTHOPAEDICS, INC. is and was at all times relevant herein doing business in and/or having directed its activities in California, and specifically this judicial district.
6. Defendant JOHNSON & JOHNSON SERVICES, INC. is, and at all times relevant to this Complaint was, a New Jersey Corporation with its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Defendant JOHNSON & JOHNSON SERVICES, INC. is and was at all times relevant herein doing business in and/or having directed its activities at California, and specifically this judicial district.
7. At all times relevant herein, Defendants were the agents of each other, and in doing the things alleged herein, each defendant was acting within the course and scope of its agency and was subject to and under the supervision of its co-defendants.

8. The Defendant designed, manufactured, distributed, and sold an implantable orthopedic reconstructive device, under the name of “DePuy ASR”, hereinafter “the device”.
9. The device was surgically implanted into the body of Plaintiff by an orthopedic surgeon.
10. After the implant of the device, Plaintiff experienced pain and discomfort and exhibited symptoms of a loose implant.
11. As a direct and proximate result of defects in the device, the Plaintiff has suffered and will continue to suffer damages, including, but not limited to, past, present, and future pain and suffering, disability, disfigurement, expenses for medical, hospital, monitoring, rehabilitative and pharmaceutical costs, and lost wages or earnings.

COUNT I

(Strict Liability)

12. The allegations contained in paragraphs 1 through 11 are repeated and realleged as if fully set forth herein.
13. The Defendant designed, manufactured, distributed, and sold the device, which was implanted into the body of Plaintiff.
14. The device was defectively designed and manufactured, and was distributed and sold without the provision of reasonable instructions or warnings regarding the foreseeable risks of harm posed by this defective device.
15. The abovesaid defects in the device existed at the time the device caused the Plaintiff’s harm, and at the time the device was in the Defendant’s possession.

16. The device was in a defective and unreasonably dangerous condition when it left the Defendant's possession, and it reached the Plaintiff without a substantial change in its condition.
17. The Plaintiff suffered harm as a direct and proximate result of the unreasonably dangerous condition of the device.

WHEREFORE, the Plaintiff demands judgment against the Defendant for an amount in excess of \$75,000.00 together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

COUNT II

(Negligence)

18. The allegations contained in paragraphs 1 through 17 are repeated and realleged as if fully set forth herein.
19. The Defendant had a duty to design, manufacture, distribute, and sell the device in a manner making the device reasonably safe for its intended use and for other foreseeably probable uses.
20. The Defendant breached the abovesaid duty by designing, manufacturing, distributing, and selling the device in a defective condition, posing an unreasonable risk of harm to the Plaintiff and other users.
21. The Plaintiff suffered harm as a direct and proximate result of the abovesaid breach of duty by the Defendant.

WHEREFORE, the Plaintiff demands judgment against the Defendant for an amount in excess of \$75,000.00, together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

COUNT III

(Breach of Implied Warranty of Merchantability)

22. The allegations contained in paragraphs 1 through 21 are repeated and realleged as if fully set forth herein.
23. At all relevant times, the Defendant was a merchant with respect to the device.
24. The device was defectively designed and manufactured, and was distributed and sold without the provision of reasonable instructions or warnings regarding the foreseeable risks of harm posed by the device.
25. The device was not fit for its ordinary purposes.
26. The Plaintiff was a foreseeable user of the device.
27. The device was being used in the intended manner at the time of the Plaintiff's injury.
28. The Plaintiff suffered harm as a direct and proximate result of the above said defects in the device.

WHEREFORE, the Plaintiff demands judgment against the Defendant for an amount in excess of \$75,000.00, together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

COUNT IV

(Breach of Express Warranty)

29. The allegations contained in paragraphs 1 through 28 are repeated and realleged as if fully set forth herein.
30. The Defendant made affirmations of fact with respect to the device intended to induce the sale of the device for implantation into the Plaintiff's body.

31. Such affirmations related to the qualities and characteristics of the device regarding the device's design, manufacture, and safety, and the suitability of the device for implantation into the Plaintiff's body.
32. The abovesaid affirmations became part of the basis of the bargain involving the sale of the device for implantation into the Plaintiff's body.
33. The Defendant breached its express warranty relating to the device, in that the abovesaid affirmations were not true.
34. The Plaintiff has suffered harm as a direct and proximate result of the Defendant's breach of express warranty.

WHEREFORE, the Plaintiff demands judgment against the Defendant for an amount in excess of \$75,000.00, together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable in this civil action.

Dated: September 10, 2010



Steven M. Johnson
Texas Bar No. 10794040
THE JOHNSON LAW FIRM
3437 West Seventh Street #258
Fort Worth, TX 76107
Telephone: (817) 339-8878
Facsimile: (214) 853-4151
stevesemailbox@yahoo.com