UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

JOANNA MCCOY :
1204 Hambrooks Boulevard
Cambridge, Maryland 21613
and

KENNETH BURGWIN
1204 Hambrooks Boulevard
Cambridge, Maryland 21613

Plaintiffs, :

v. :

BIOMET ORTHOPEDICS, LLC :
56 East Bell Drive
P.O. Box 587 :
Warsaw, Indiana 46581-0587
:
Serve: Corporate Creations Network
105 East Jefferson Boulevard #800 : **COMPLAINT AND JURY DEMAND**
South Bend, Indiana 46601
and : **Civil No. _____**

BIOMET, INC. :
56 East Bell Drive
P.O. Box 587 :
Warsaw, Indiana 46581-0587
:
Serve: Corporate Creations Network
105 East Jefferson Boulevard #800 :
South Bend, Indiana 46601
and :

BIOMET, LLC :
56 East Bell Drive
P.O. Box 587 :
Warsaw, Indiana 46581-0587
:
Serve: Corporate Creations Network
105 East Jefferson Boulevard #800 :
South Bend, Indiana 46601

:

Defendants.

:

* * * * * * * * * * * * * * * * *

NOW COMES the Plaintiffs, Joanna McCoy and Kenneth Burgwin, by and through their attorneys, and for their causes of action, brings suit against the Defendants, Biomet Orthopedics, LLC; Biomet, Inc.; and Biomet, LLC, stating and averring as follows:

INTRODUCTION

This is a product liability case involving a defective hip implant system. Plaintiff Joanna McCoy had a Biomet M2a Magnum Metal-on-Metal Hip System ("M2a Magnum Hip System") implanted in her hip. The M2a Magnum Hip System is defective because excessive amounts of cobalt and chromium corrode and wear from the surfaces of the acetabular cup, the femoral head, and the taper sleeve. The excessive wear in turn causes the hip implant to fail and the surrounding tissue and bone to die. As a result of these defects, Ms. McCoy's M2a Magnum Hip System failed in her body, causing toxic levels of cobalt and chromium, tissue and bone destruction, and the need for Ms. McCoy to undergo a complicated and risky surgery to remove and replace the defective implant.

PARTIES

1. Plaintiff Joanna McCoy is a citizen of the United States and a resident of the state of Maryland. Mrs. McCoy's home address is 1204 Hambrooks Boulevard, Cambridge, Dorchester County, Maryland.

2. Plaintiff Kenneth Burgwin is a citizen of the United States and a resident of the state of Maryland. Mrs. McCoy's home address is 1204 Hambrooks Boulevard, Cambridge, Dorchester County, Maryland.

3. At all relevant times hereto, and now, Joanna McCoy and Kenneth Burgwin were husband and wife, cohabitating at their marital home at 1204 Hambrooks Boulevard, Cambridge, Dorchester County, Maryland.

4. On information and belief, Defendant Biomet Orthopedics, LLC is a limited liability corporation organized and existing under the laws of the state of Indiana with its principal place of business in Warsaw, Indiana. Biomet Orthopedics, LLC designed, manufactured, marketed, promoted, and sold the M2a Magnum Hip system that is the subject of this lawsuit. Biomet Orthopedics, LLC does not maintain a principal local office in Maryland, but can be served at 56 East Bell Drive, P.O. Box 587, Warsaw, Indiana 46581-0587.

5. On information and belief, Defendant Biomet, Inc. is a corporation organized and existing under the laws of the state of Indiana with its principal place of business in Warsaw, Indiana. Biomet, Inc. designed, manufactured, marketed, promoted, and sold the M2a Magnum Hip system that is the subject of this lawsuit. Biomet, Inc. does not maintain a principal local office in Maryland, but can be served at 56 East Bell Drive, P.O. Box 587, Warsaw, Indiana 46581-0587.

6. On information and belief, Defendant Biomet, LLC is a limited liability corporation organized and existing under the laws of the state of Indiana with its principal place of business in Warsaw, Indiana. Biomet, LLC designed, manufactured, marketed, promoted, and sold the M2a Magnum Hip system that is the subject of this lawsuit. Biomet, LLC does not maintain a principal local office in Maryland, but can be served at 56 East Bell Drive, P.O. Box 587, Warsaw, Indiana 46581-0587.

7. At all times mentioned, each of Biomet Orthopedics, LLC, Biomet, Inc., and Biomet LLC was the representative, agent, employee, joint venturer, or alter ego of each of the

other entities and in doing the things alleged herein was acting within the scope of its authority as such. Specifically, each Defendant was but an instrumentality or conduit of the other in the prosecution of a single venture, namely, the design, promotion, and sale of the M2a Magnum Hip System. Therefore, it would be inequitable for any Defendant to escape liability for an obligation incurred as much for that Defendant's benefit as for the other.

8. Biomet Orthopedics, LLC, Biomet, Inc., and Biomet LLC are collectively referred to herein as "Biomet."

JURISDICTION AND VENUE

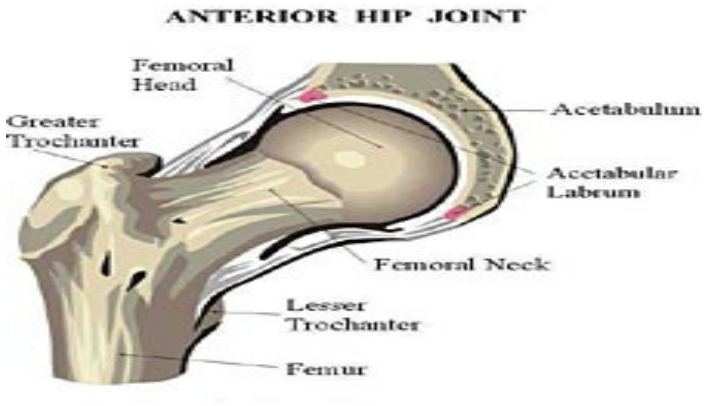
9. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. section 1332 because it is between citizens of different states and the amount in controversy exceeds the sum or value of $75,000, exclusive of costs and interest.

10. Venue is proper pursuant to 28 U.S.C. §1391(c) because Defendants are all corporations that have substantial, systematic, and continuous contacts in this District and they are all subject to personal jurisdiction in this District. Moreover, the Plaintiff's injuries occurred in this District.

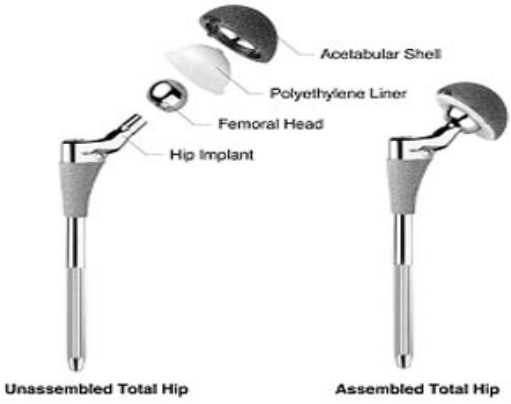
FACTUAL BACKGROUND

A. The M2a Magnum Hip System Is Defective And Was Not Adequately Tested

11. The hip joint is where the femur connects to the pelvis. The joint is made up of the femoral head (a ball-like structure at the very top of the femur) rotating within the acetabulum (a cup-like structure at the bottom of the pelvis.) In a healthy hip, both the femur and the acetabulum are strong and the rotation of the bones against each other is cushioned and lubricated by cartilage and fluids.



12. A total hip replacement replaces the body's natural joint with an artificial one, usually made out of metal and plastic. A typical total hip replacement system consists of four separate components: (1) a femoral stem (labeled as "hip implant" in the diagram to the left), (2) a femoral head, (3) a plastic (polyethylene) liner, and (4) an acetabular shell. After the surgeon hollows out a patient's femur bone, the femoral stem is implanted. The femoral head is a metal ball that is fixed on top of the femoral stem. The femoral head forms the hip joint when it is placed inside the polyethylene liner and acetabular shell.



13. While most hip replacements use a polyethylene ***plastic*** acetabular liner, Biomet's M2a Magnum Hip System has a critical difference: it is a monoblock system which does not have an acetabular liner. Instead, the M2a Magnum Hip System forces metal to rub against metal with the full weight and pressure of the human body. Because of Biomet's defective design for the M2a Magnum Hip System, hundreds of patients—including Ms. McCoy—have been forced to undergo surgeries to replace the failed hip implants.

14. The M2a Magnum Hip System suffers from a design or manufacturing defect that cause excessive amounts of cobalt and chromium to wear and corrode from the surface of the

acetabular cup, from the femoral head, and from the taper adapter. These cobalt and chromium fragments prompt the body to react by rejecting the hip implant. This rejection often manifests with symptoms of pain, looseness, dislocation, and squeaking and popping sounds. Inside the hip joint, the metal reaction often causes fluids to accumulate and soft tissues and bone to die.

15. The design of the M2a Magnum Hip System was not sufficiently tested by Biomet, and it was never approved by the FDA as being safe or effective for the products' intended purpose.

16. On numerous occasions, Biomet met with orthopedic surgeons in cities throughout the United States to promote the M2a Magnum Hip Implant. At some or all of these meetings, a representative or representatives of Biomet was present. During these meeting, Biomet assured the orthopedic surgeons that the M2a Magnum Hip System was safe, was the best product on the market, had an excellent track record and a low and acceptable failure rate. Biomet continued to "defend" the M2a Magnum Hip Implant even after they became aware of numerous and serious complications with the M2a Magnum Hip System. Biomet did not reveal (and instead concealed) their knowledge of numerous and serious complications and other "bad data" during their meetings with orthopedic surgeons.

B. Biomet Sold the M2a Magnum Hip Implant To Ms. McCoy After It Knew It Was Defective, That It Had Injured Others, And That It Would Injure Her.

17. It was not long after Biomet launched the M2a Magnum Hip System that reports of failures began flooding into Biomet. For example, in August 2004, Biomet received a complaint that a patient had to undergo a surgery to remove and replace an M2a Magnum Hip System because it had become loose after only three years. Biomet closed its investigation of this complaint.

18. Biomet would go on to receive hundreds of similar complaints reporting that the

M2a Magnum Hip System had failed and that the failure had forced patients to undergo painful and risky surgeries to remove and replace the failed hip component. To date, more than 350 reports of adverse events associated with the M2a Magnum Hip System have been filed with the FDA.

19. By the time Biomet sold the M2a Magnum Hip System to Plaintiff, numerous reports had been filed with the FDA reporting an adverse event associated with the M2a Magnum Hip System. Consequently, Biomet was fully aware that the M2a Magnum Hip System was defective and that dozens of patients already had been injured by that defect. Based on this information, Biomet should have recalled the M2a Magnum Hip System before it was sold to Ms. McCoy. At minimum, Biomet should have stopped selling the defective implant when it became aware that it had catastrophically failed in several patients.

20. Despite its knowledge that the M2a Magnum Hip System had a defect and that it had failed hundreds of times, causing hundreds of patients to undergo the agony of another surgery, Biomet continues to sell the defective M2a Magnum Hip System. In so doing, Biomet actively concealed the known defect from doctors and patients—including Ms. McCoy and her doctor—and misrepresented that that the M2a Magnum Hip System was a safe and effective medical device.

21. As numerous failures of the M2a Magnum Hip Implant were reported to Biomet, it continued to actively promote, market and defend the defective products. For example, Biomet published marketing brochures touting the safety and durability of metal-on-metal implants and specifically, the M2a Magnum Hip System. These brochures were given to doctors around the world to encourage them to use the M2a Magnum Hip System.

22. Despite its knowledge that the M2a Magnum Hip System was defective, Biomet

also made several false representations about specific design elements of the M2a Magnum Hip System that they claimed made it superior to other more safe hip implants on the market. For example, Biomet said:

- "The M2a-Magnum™ Large Metal Articulation System offers optimal joint mechanic restoration and ultra low-wear rates *in vivo*."
- Many studies conducted over the last several decades have shown no definitive correlation of negative health issues to ion levels exhibited from metal-on-metal implants."

23. Biomet's reason to conceal the defect in its M2a Magnum Hip System is clear. Hip implant sales are critically important to Biomet, and the M2a Magnum is one of its most profitable products During the time period relevant to this Complaint, Biomet's management was trying to make Biomet look appealing to investors, and they ultimately were purchased by a private equity firm in 2007 for $10 billion. Biomet was faced with a critical defect in one of its most profitable hip implant systems. The last thing Biomet wanted to do was to admit that these popular products had a critical defect that could cause a premature failure, forcing patients to have to undergo another painful surgery. Focused on corporate profits, and at the expense of patient safety, Biomet decided that it would continue to promote, market, and sell the M2a Magnum Hip System despite the fact that it knew the product was defective. To this day, Biomet continue to sell these defective implants to unsuspecting patients without any warning about the risks or the failures that have been reported to the company.

C. Ms. McCoy's M2a Magnum Hip System Was Defective And Failed, Forcing Her To Undergo An Additional Painful And Risky Surgery.

24. On or about December 6, 2007, Plaintiff underwent a right hip replacement surgery, during which a Biomet metal-on-metal Magnum prosthesis was implanted in her body.

Post-surgical imaging revealed good placement of the device. By this time, numerous reports of adverse events associated with the M2a Magnum had been filed with the FDA and Biomet knew that the product was defective. But Biomet refused to disclose that information to Ms. McCoy, her physicians, or the public. Instead, Biomet misrepresented to Ms. McCoy and her orthopedic surgeon that the M2a Magnum Hip System was safe and effective. In reliance on these representations, Ms. McCoy's orthopedic surgeon made the decision to use the M2a Magnum Hip System. If it were not for the misrepresentations made by Biomet, Ms. McCoy's orthopedic surgeon would not have used the M2a Magnum Hip System in Ms. McCoy's hip replacement surgery.

25. Approximately 18 months after her surgery, Plaintiff began experiencing pain in her right hip. Plaintiff sought and obtained medical treatment for the pain for approximately another 18 months, during which time the pain worsened.

26. By March 2009, the pain had become severe. However, imaging studies revealed that the product still enjoyed "overall good placement."

27. One year later, however, on April 15, 2010, new imaging studies revealed a dislocation of the right hip, with a shifting acetabular component. During this visit, upon the advice of her physician, Mrs. McCoy agreed to have her metal-on-metal prosthesis removed and replaced with a metal on polyethylene prosthesis.

28. April 17, 2010, radiographs performed on Plaintiff revealed vertical orientation of acetabular component consistent with loosening, when compared to an x-ray taken immediately after surgery. Further, the cup had changed in its position and was sitting approximately 90 degrees abduction. Additionally, radio lucency was consistent with loosening around the acetabular component and in fact the Plaintiff was noted as having osteolysis of the medial calcar

of the femur, which was found to be suggestive of fact that she may also have a granulomatous reaction about her hip related to the metal on metal implant.

29. The next month, on May 12, 2010, Plaintiff underwent a complex, risky, and painful surgery (known as a "revision surgery") to remove the failed M2a Magnum Hip System from her body. Revision surgeries are generally more complex than the original hip replacement surgery, often because there is a reduced amount of bone in which to place the new hip implants. Revision surgeries also usually take longer than the original hip replacement surgery and the revision surgery has a higher rate of complications. Post-surgical pathology reports indicated that the acetabular head and lining were surrounded by fibroconnective tissue and bone with necrosis, granulation, acute and chronic inflammation.

30. Approximately ten months later, due to the pressure placed on her left hip due to her right hip injuries, Plaintiff also underwent a left hip replacement.

31. As a result of the defective design, manufacture and composition of the M2a Magnum Hip System, and its accompanying warnings and instructions (or lack thereof), Ms. McCoy's hip implant failed, causing her severe pain.

32. Having to go through a revision surgery has subjected Ms. McCoy to much greater risks of future complications than she had before the revision surgery. For example, several studies have found that a revision surgery causes a much higher risk of dislocation compared with an original hip replacement surgery. In one study conducted by Charlotte Phillips and her colleagues at Brigham and Women's Hospital in Boston, 14.4 percent of patients who underwent a revision surgery suffered from a dislocation compared with 3.9 percent of patients who underwent a original hip replacement surgery. In other words, hip replacement patients who have undergone a revision surgery are almost ***four times more likely*** to suffer from

a hip dislocation than those who have not. (Phillips CB, *et al*. Incidence rates of dislocation, pulmonary embolism, and deep infection during the first six months after elective total hip replacement. *American Journal of Bone and Joint Surgery* 2003; 85:20–26.)

33. As a direct and proximate result of the failure of her defective M2a Magnum Hip System and Biomet's wrongful conduct, Ms. McCoy sustained and continues to suffer economic damages (including lost wages, medical and hospital expenses), severe and possibly permanent injuries, pain, suffering and emotional distress. As a result, Ms. McCoy has sustained and will continue to sustain damages in an amount to be proven at trial, but which will far exceed $75,000 jurisdictional minimum of this court.

FRAUDULENT CONCEALMENT

34. Defendants' failure to document or follow up on the known defects in their product, and concealment of known defects, constitutes fraudulent concealment that equitably tolls applicable statutes of limitation.

35. Defendants are estopped from relying on the statute of limitations defense because Defendants actively concealed the defects, suppressing reports, failing to follow through on FDA notification requirements, and failing to disclose known defects to physicians. Instead of revealing the defects, Defendants continued to represent their device as safe for its intended use.

36. Defendants are and were under a continuing duty to disclose the true character, quality, and nature of risks and dangers associated with their device. Because of Defendants' concealment of the true character, quality and nature of the product, Defendants are estopped from relying on any statute of limitations defense.

37. Defendants furthered this fraudulent concealment through a continued and systematic failure to disclose information to the Plaintiff, her physician and the public.

38. Defendants' acts before, during and/or after the act causing Plaintiff's injuries

prevented Plaintiff from discovering the injuries or cause thereof.

39. Defendants' conduct, as described in the preceding paragraphs, amounts to conduct purposely committed, which Defendants must have realized was dangerous, heedless and reckless, without regard to the consequences or the rights and safety of the Plaintiff.

COUNT I
(Strict Product Liability)

40. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

41. Biomet designed, manufactured, promoted, distributed, marketed, and sold the M2a Magnum Hip System.

42. At all times material hereto, the M2a Magnum Hip System that was designed, manufactured, promoted, distributed, marketed, and sold by Biomet was expected to reach, and did reach, prescribing physicians and consumers, including Ms. McCoy and Ms. McCoy's physician, without substantial change in the condition in which it was sold.

43. At all times material hereto, the M2a Magnum Hip System that was designed, manufactured, promoted, distributed, marketed, and sold by Biomet was in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce. Such condition included, but is not limited to, one or more of the following particulars:

a) When placed in the stream of commerce, the M2a Magnum Hip System contained manufacturing defects, subjecting Ms. McCoy and others to risks, including the risk that the acetabular component would not properly grow into the bone, causing the hip system to prematurely fail and requiring a complex, risky, and painful surgery to remove and replace the defective product;

b) When placed in the stream of commerce, the M2a Magnum Hip System contained unreasonably dangerous design defects and was not reasonably safe for the intended use, subjecting Ms. McCoy and others to risks, including the risk that the acetabular component would not properly grow into the bone, causing the hip system to prematurely fail and requiring a complex, risky, and painful surgery to remove and replace the defective product;

c) The M2a Magnum Hip System was insufficiently tested; and

d) The M2a Magnum Hip System was not accompanied by adequate instructions and/or warnings to fully inform Ms. McCoy or her physicians of the full nature or extent of the risks associated with its use.

44. Biomet knew or should have known of the dangers associated with the use of the M2a Magnum Hip System, as well as the defective nature of the M2a Magnum Hip System. Despite this knowledge, Biomet continued to manufacture, sell, distribute, promote and supply the M2a Magnum Hip System so as to maximize sales and profits at the expense of the public health and safety. Biomet's conduct was done in conscious disregard of the foreseeable harm caused by the M2a Magnum Hip System and in conscious disregard for the rights and safety of consumers such as Ms. McCoy.

45. Ms. McCoy and her doctor used the M2a Magnum Hip System as directed for its intended purpose.

46. At all times herein mentioned, the M2a Magnum Hip System was defective, and Biomet knew that it was to be used by the user without inspection for defects therein. Moreover, at the time of the use of the subject products, neither Ms. McCoy nor her physician knew or had reason to know of the existence of the aforementioned defects. Neither Ms. McCoy nor her

physicians could have discovered the defects in the M2a Magnum Hip System through the exercise of reasonable care.

47. The M2a Magnum Hip System had not been materially altered or modified prior to its implantation in Ms. McCoy.

48. As a direct and proximate result of the failure of the defective M2a Magnum Hip System, Plaintiff suffered the injuries and damages as described herein.

COUNT II
(Negligence)

49. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

50. At all times herein mentioned Biomet had a duty to exercise reasonable care and to comply with the existing standards of care in the design, manufacture, testing, inspection, labeling, promotion, marketing, and sale of the M2a Magnum Hip System to ensure that it would be safely used in a manner and for a purpose for which it was made.

51. In violation of its obligation to exercise due care and comply with existing standards of care, Biomet was negligent in the design, manufacture, testing, inspection, labeling, promotion, marketing, and sale of the M2a Magnum Hip System.

52. In further violation of the duties set forth above, Biomet negligently made misrepresentations about the safety and effectiveness of the M2a Magnum Hip System to Plaintiff and her orthopedic surgeon. In reliance on these misrepresentations, Plaintiff's orthopedic surgeon decided to use the M2a Magnum Hip Implant in Plaintiff's surgery. If it was not for the misrepresentations by Biomet, Plaintiff's orthopedic surgeon would not have used the M2a Magnum Hip System in Plaintiff's surgery, and Plaintiff would not have been injured in the manner set forth with particularity, above.

53. In further violation of the duties set forth above, Biomet negligently failed in their duty to exercise reasonable care in the provision of an adequate warning to Ms. McCoy and her physicians as to the risks of the M2a Magnum Hip System.

54. In further violation of the duties set forth above, Biomet negligently failed to exercise reasonable care in the post-marketing warnings as to the risks of the M2a Magnum Hip System when they knew or should have known of said risks.

55. As a proximate cause of Biomet's wrongful conduct, Plaintiff suffered injuries and damages as alleged herein.

COUNT III
(Breach of Implied Warranties)

56. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

57. Prior to the time that the M2a Magnum Hip System was used by Ms. McCoy, Biomet impliedly warranted to Ms. McCoy and her physicians that the M2a Magnum Hip System was of merchantable quality and safe and fit for the use for which it was intended.

58. Ms. McCoy and her physician were and are unskilled in the research, design and manufacture of the M2a Magnum Hip System, and they reasonably relied entirely on the skill, judgment and implied warranty of Biomet in using the M2a Magnum Hip System.

59. The M2a Magnum Hip System was neither safe for its intended use nor of merchantable quality, as warranted by Biomet, in that it had dangerous propensities when put to its intended use and would cause severe injuries to the user.

60. Biomet, by selling, delivering and/or distributing the defective M2a Magnum Hip System to Ms. McCoy, breached the implied warranty of merchantability and fitness and caused Ms. McCoy to suffer severe pain and emotional distress, incur medical expenses and incur a loss

of earning capacity.

61. As a result of the aforementioned breach of implied warranties by Biomet, Plaintiff suffered injuries and damages as alleged herein.

COUNT IV
(Breach of Express Warranty)

62. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

63. At all times herein mentioned, Biomet expressly warranted to Ms. McCoy and Ms. McCoy's physicians, by and through statements made by Biomet or their authorized agents or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that the aforementioned M2a Magnum Hip System was safe, effective, fit and proper for its intended use.

64. In utilizing the aforementioned M2a Magnum Hip System, Ms. McCoy and her physician relied on the skill, judgment, representations and foregoing express warranties of Biomet.

65. Said warranties and representations were false in that the aforementioned M2a Magnum Hip System was not safe and was unfit for the uses for which it was intended.

66. As a result of the foregoing breach of express warranties by Biomet, Plaintiff suffered injuries and damages as alleged herein.

COUNT V
(Loss of Consortium)

67. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

68. Mr. Kenneth Burgwin was at all times relevant hereto the spouse of Plaintiff

Joanna McCoy, and lived and cohabited with her at the time of Mrs. McCoy's injuries, and now.

69. Mr. Burgwin has necessarily paid and has become liable to pay for medical aid, treatment and medications, and will necessarily incur further expenses of a similar nature in the future.

70. Mr. Burgwin and Ms. McCoy have been caused, presently and in the future, to suffer the loss of each other's companionship, services, society, and the ability of the married couple has in those respects been impaired and depreciated, and the marital association between husband and wife has been altered, and, accordingly, has been caused great mental anguish.

PUNITIVE DAMAGES

71. Defendants' conduct, as described above, was done with actual malice, that is, evil motive, intent to injure, ill will and/or fraud. Defendants risked the lives of consumers and users of their products, including the Plaintiff, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-Label, warn or inform the unsuspecting consuming public, all to the detriment of the purchasers of the product, generally, and Linda McCoy, in particular.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment for the following:

1. Past and future lost wages, medical, permanency and incidental expenses, according to proof;
2. Past and future general damages for pain and suffering, according to proof;
3. Punitive and exemplary damages in an amount to be determined at trial;
4. Prejudgment and post judgment interest;
5. Costs to bring this action; and

6. Such other and further relief as the court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues raised herein.

Respectfully submitted,

JANET JENNER & SUGGS, LLC

/s/ Robert K. Jenner

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Justin A. Browne (Bar No. 29164)
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Counsel for Plaintiff (Pending Motion for Pro Hac Vice Admission)

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

JoAnna McCoy

(b) County of Residence of First Listed Plaintiff Dorchester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert K. Jenner, JANET JENNER & SUGGS, Commerce Centre East, 1777 Reisterstown Road, Suite 165, Pikesville, Maryland 21208.

DEFENDANTS

Biomet Orthopedics, LLC, Biomet, Inc., and Biomet, LLC.

County of Residence of First Listed Defendant St. Joseph, Indiana
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee (Prisoner Petition)
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 1332

Brief description of cause:
Product liability case.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ Over $75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ○ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: May 10, 2012

SIGNATURE OF ATTORNEY OF RECORD: /s/ Robert K. Jenner

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdicti on arises under the Constitution of the Unite States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

JoAnna McCoy

Plaintiff

v.

Biomet Orthopedics, LLC, et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Biomet Orthopedics, LLC
56 East Bell Drive
P.O. Box 587
Warsaw, IN 46581-0587
Serve: Corporate Creations Network
105 East Jefferson Boulevard, #800
South Bend, Indiana 46601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert K. Jenner
JANET JENNER & SUGGS, LLC
Commerce Centre East
1777 Reisterstown Road, Suite 165
Pikesville, MD 21208

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

JoAnna McCoy

Plaintiff

v.

Biomet Orthopedics, LLC, et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Biomet, Inc.
56 East Bell Drive
P.O. Box 587
Warsaw, IN 46581-0587
Serve: Corporate Creations Network
105 East Jefferson Boulevard, #800
South Bend, Indiana 46601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert K. Jenner
JANET JENNER & SUGGS, LLC
Commerce Centre East
1777 Reisterstown Road, Suite 165
Pikesville, MD 21208

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0 .

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Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

JoAnna McCoy

Plaintiff

v.

Biomet Orthopedics, LLC, et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Biomet, LLC
56 East Bell Drive
P.O. Box 587
Warsaw, IN 46581-0587
Serve: Corporate Creations Network
105 East Jefferson Boulevard, #800
South Bend, Indiana 46601

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JANET JENNER & SUGGS, LLC
Commerce Centre East
1777 Reisterstown Road, Suite 165
Pikesville, MD 21208

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

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Server's signature

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Printed name and title

_____

Server's address

Additional information regarding attempted service, etc: