UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

CHERYL RILEY,

Plaintiff,

vs.

HOWMEDICA OSTEONICS CORPORATION
d/b/a STRYKER ORTHOPEDICS,

Defendant.
_____/

COMPLAINT

COMES NOW the Plaintiff, **CHERYL RILEY,** by and through her undersigned attorneys, and hereby sues the Defendant, **HOWMEDICA OSTEONICS CORPORATION, d/b/a STRYKER ORTHOPEDICS**, and as grounds therefore would state:

1. This is an action for damages which exceeds seventy-five thousand ($75,000.00) dollars.

2. The Plaintiff is an individual residing in the State of Florida.

3. The Plaintiff had Defendants' defective prostheses implanted in her body at Holy Cross Hospital located in Fort Lauderdale, Broward County, Florida.

4. The Defendant is a New Jersey corporation with its principal business at 325 Corporate Drive, Mahwah, New Jersey.

5. The Defendant manufactures, markets, and distributes a wide range of pharmaceutical products, medical devices, and related products.

6. At all relevant times, the Defendant marketed, sold, and/or distributed orthopedic and/or other products in the County of Broward, State of Florida.

7. **HOWMEDICA OSTEONICS CORPORATION d/b/a STRYKER ORTHOPEDICS** designs, develops, manufactures, markets, sells, and/or distributed medical devices, including the defective hip prosthesis at issue in this case.

8. On or about November 28, 2011, the Plaintiff had a total hip arthroplasty using the Defendant's "Rejuvenate system" (hereinafter referred to as "Rejuvenate" or Defective Device") The defective nature of the defective device relates to the premature deterioration and wear of the product, which results in fretting and corrosion at the modular neck junction, causing severe hip pain, requiring additional surgeries and premature replacement of the product.

9. At all times material hereto, the defective device at issue in this case was defective in design and/or manufacture and was unsafe, in that it was dangerous and unfit for its intended use as a hip replacement because such prosthesis, as designed and/or manufactured, prematurely degraded, deteriorated, weakened and/or failed, thereby causing grievous injuries to the Plaintiff.

COUNT I
STRICT PRODUCTS LIABILITY (DESIGN DEFECT)

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

10. At the time the defective device at issue in this case left the control of the Defendant herein, the prosthesis was defective, unfit, unsafe, and unsuitable for its intended and/or foreseeable uses.

11. The defective device at issue in this case, while still in its original condition and without substantial change, was implanted and applied in the Plaintiff's body in the manner intended and/or foreseen by the Defendant herein.

12. This express warranty became part of the basis of the bargain between the Plaintiff and the Defendant herein, in that the Plaintiff and/or her physicians, agents, and/or

medical personnel who participated in the selection of the prosthesis and its implantation and associated activities, relied on the warranty in selecting and implanting of the prosthesis.

13. The defective devise at issue in this case failed to serve its intended purpose thereby causing the Plaintiff to be injured.

14. The defective device at issue in this case failed to perform in accordance with the reasonable expectations of the Plaintiff and ordinary consumers, and the benefits of the design of the prosthesis did not outweigh the risk of its premature degradation, deterioration, weakening, and/or failure.

15. The defective nature of the rejuvenate at issue in this case was a substantial cause of the injuries sustained by the Plaintiff.

16. As a direct and proximate cause of the defective nature of said prosthesis, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT II
STRICT PRODUCTS LIABILITY (FAILURE TO WARN)

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

17. At all times relevant hereto, the hip prosthesis at issue in this case was defective in design and/or manufacture, and the Defendant knew or should have known that such prosthesis was unsafe, in that it was dangerous and unfit for its intended use as a hip replacement

because such prosthesis, as designed and/or manufactured, prematurely degraded, deteriorated, weakened, and/or failed, thereby causing grievous injuries to the human body. At all relevant times, the Defendant was in possession of knowledge concerning the safety, quality, and performance of the hip prosthesis at issue in this case.

18. Notwithstanding the actual or constructive knowledge, the defective device at issue in this case was implanted in the Plaintiff's body without any or adequate warnings concerning all of the risks of implantation and foreseeable use of such defective prosthesis, including, but not limited to, the risks of premature degradation, deterioration, weakening, and/or failure and medical complications arising therefrom.

19. The defective device at issue in this case was sold, designed, distributed, and/or manufactured by the Defendant.

20. At the time the defective device at issue in this case left the control of the Defendant, the prosthesis was defective, unfit, unsafe, and unsuitable for its intended or foreseeable uses.

21. The defective device at issue in this case, while still in its original condition and without substantial change, was implanted and applied in the Plaintiff's body in the manner intended or foreseen by the Defendant.

22. The Defendant failed to provide any or adequate warnings of the defective and unsafe condition of the defective device at issue in this case.

23. The defective device at issue in this case failed to serve its intended purpose, thereby causing the Plaintiff to be injured.

24. The defective device at issue in this case failed to perform in accordance with the reasonable expectations of the Plaintiff and ordinary consumers, and the benefits of the design of said prosthesis did not outweigh the risk of failure.

25. Defendant's failure to provide any or adequate warnings of the aforementioned risks was a substantial factor in causing the injuries sustained by the Plaintiff.

26. As a direct and proximate cause of the defective nature of said prosthesis, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT III
NEGLIGENCE

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

27. The Defendant had a duty to the Plaintiff to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, packaging, marketing, sale, post-sale surveillance, and/or formulation of any or adequate warnings of the hip prosthesis at issue in this case, and at all relevant times were in possession of knowledge concerning the safety, equality, and performance of the defective device at issue in this case.

28. The Defendant breached its duty to the Plaintiff by negligently designing, manufacturing, marketing, selling, packaging, distributing, surveilling, and/or failing to warn the

Plaintiff that the hip prosthesis at issue in this case was defective and would prematurely degrade, deteriorate, weaken, and/or fail causing injury and damage to the Plaintiff.

29. The Defendant negligently failed to recall, withdraw, or remove such defective device from the market once the Defendant knew or should have known of the risks and dangers associated with such defective prosthesis; and the Defendant failed to promptly respond to date, reports, and publications describing problems associated with such prosthesis by conducting any or adequate analyses, tests, and/or surveillance.

30. The Defendant negligently and carelessly failed to implement pre-marketing and post-marketing measures to notify and warn the public and the Plaintiff, as well as the Plaintiff's physicians, surgeons, and agents, of the risks and dangers associated with such prosthesis.

31. As a direct and proximate cause of the defective nature of said prosthesis, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT IV
BREACH OF IMPLIED WARRANGY

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

32. At the time of the sale of the defective device at issue in this case, the Defendant dealt in goods of that type and held itself out as having knowledge or skill peculiar to the manufacture, sale, and/or distribution of such goods.

33. Moreover, at all times relevant, the Defendant was in possession of knowledge concerning the safety, quality, and performance of the hip prosthesis at issue in this case.

34. The Defendant impliedly warranted that the hip prosthesis at issue in this case was of merchantable quality and was safe and suitable for the intended use of implantation into the human body.

35. Defendant's warranty(ies) fail because its/their essential purpose was to warrant that the hip prosthesis at issue in this case was safe and suitable for its intended use of implantation into the human body which, in fact, it was not.

36. After the Plaintiff was made aware of the injuries caused by the defective hip prosthesis at issue in this case, the Plaintiff, by means of this action, provided notice to the Defendant of their breach of said warranty(ies).

37. The Defendant, due to its own knowledge of the defective and unsafe nature of such prosthesis, was, at all times material, on notice of its breach of said warranty(ies).

38. As a direct and proximate cause of the Defendant's breach of its warranty(ies), the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT V
BREACH OF EXPRESS WARRANTY

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

39. At the time of the sale of the defective device at issue in this case, the Defendant dealt in good of that type and held itself out as having knowledge or skill peculiar in the manufacture, sale, and/or distribution of such goods.

40. Moreover, at all relevant times, the Defendant was in possession of knowledge concerning the safety, quality, and performance of the defective device at issue in this case.

41. The Defendant expressly warranted that the hip prosthesis at issue in this case was safe and suitable for its intended use of implantation into the human body, and warranted such prosthesis to be, in all respects, fit, safe, effective, and proper for such purpose.

42. The Defendant breached said warranty(ies) because the hip prosthesis at issue in this case was, in fact, unsafe and unsuitable for its intended use of implantation into the human body.

43. The Defendant's warranty(ies) failed in its essential purpose because it purported to warrant that the hip prosthesis at issue in this case was safe and suitable for the intended use of implantation into the human body which, in fact, it was not.

44. After the Plaintiff was made aware of the injuries caused by the defective hip prosthesis at issue in this case, the Plaintiff, by means of this action, provided notice to the Defendant due to its own knowledge of the defective and unsafe nature of such prosthesis was, at all times material, on notice of their breach of said warranty(ies).

45. As a direct and proximate cause of the Defendant's breach of their warranty(ies), the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of

earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT VI
NEGLIGENT MISREPRESENTATION

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

46. The Defendant, at all times relevant to this action, was engaged in the business of manufacturing, selling, and/or distributing medical devices and was in possession of knowledge concerning the safety, quality, and performance of the defective device at issue in this case.

47. The Defendant had a duty to the Plaintiff to exercise reasonable and ordinary care in the provision of the defective device at issue in this case, and at all relevant times was in possession of knowledge concerning the safety, quality, and performance of the defective device at issue in this case.

48. The Defendant, through advertising or otherwise, represented to the public, including the Plaintiff, as well as the Plaintiff's physicians, surgeons, and/or other medical agents that the hip prosthesis at issue in this case was, in fact, safe for use in the human body. Such representations were, in fact, false and untrue, and the Defendant knew or should have known of their falsity.

49. The Plaintiff, as well as the Plaintiff's physicians, surgeons, and/or other medical agents were, at all times relevant, ignorant of the falsity of the representations made by the Defendant herein, and each of them, justifiably and reasonably, believed such representations to be true. In justifiable and reasonable reliance on such representations, the Plaintiff and here

physicians, surgeons, and/or other medical agents were induced to, and did, implant the unsafe hip prosthesis at issue in the case into the Plaintiff's body.

50. As a direct and proximate cause of the negligent misrepresentation by the Defendant, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT VII
FRAUDULENT DECEIT (SUPPRESSION)

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

51. The Defendant, at all times relevant to this action, was engaged in the business of manufacturing, selling, and/or distributing medical devices and was in possession of knowledge of material facts concerning the safety, quality, and performance of the hip prosthesis at issue in this case.

52. The Defendant intentionally, willfully, and maliciously withheld, concealed, and/or suppressed from the public, including the Plaintiff, as well as her physicians, surgeons, and/or other medical agents material facts concerning the defective device at issue in this case, including that such prosthesis was, in fact, unsafe for use in the human body, that such prosthesis was subject to premature deterioration, degradation, weakening, and/or failure, and that the risks

attendant to such prosthesis was far greater than was generally known by the public and medical community at large.

53. The Defendant intentionally, willfully, and maliciously withheld, concealed, and/or suppressed the material facts alleged herein with the intention of defrauding and inducing the Plaintiff as well as the Plaintiff's physicians, surgeons, and/or other medical agents to use the Defendant's prosthesis at issue in this case and implant such prosthesis into the Plaintiff's body.

54. The Plaintiff , as well as the Plaintiff's physicians, surgeons, and/or other medical agents were, at all times relevant hereto, ignorant of the material facts alleged herein and, had they been aware of such facts, would not have implanted the unsafe hip prosthesis at issue into the Plaintiff's body.

55. In committing the acts herein alleged, the Defendant acted with oppression, fraud, and malice, and such wrongful conduct was committed with the knowledge, authorization, and/or ratification of one or more officers, directors, and/or managing agents of said Defendant.

56. As a direct and proximate cause of the Defendant's fraudulent suppression of material facts known by said Defendant, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT VIII
FRAUDULENT DECEIT (MISREPRESENTATION)

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

57. The Defendant, at all times relevant hereto, was engaged in the business of manufacturing, selling, and/or distributing medical devices and was in possession of knowledge of material facts concerning the safety, quality, and performance of the defective device at issue in this case.

58. The Defendant intentionally, willfully, and maliciously, and/or recklessly suggested, asserted, and otherwise represented to the public, including the Plaintiff, as well as the Plaintiff's physicians, surgeons, and/or other medical agents that the defective device at issue in this case was, in fact, safe for use in the human body, that such prosthesis was not subject to premature deterioration, degradation, weakening, and/or failure, that the risks attendant to such prosthesis were not as great as they actually were, and/or other representations of material fact concerning the quality and performance of such prosthesis.

59. Such representations were, in fact, false and untrue, and were known by said Defendant to be false and untrue when made, or were made by Defendant intentionally, willfully, and maliciously, and/or with reckless disregard as to their truth or falsity and/or with no reasonable ground for believing such representations to be true.

60. Such representations were made with the intention of inducing the Plaintiff, as well as Plaintiff's physicians, surgeons, and/or other medical agents to use the Defendant's prosthesis at issue in this case and implant such prosthesis into the Plaintiff's body.

61. The Plaintiff, as well as Plaintiff's physicians, surgeons, and/or other medical agents were, at all times relevant, ignorant of the falsity of the representations made by the Defendant and justifiably and reasonably believed such representations to be true. In justifiable

and reasonable reliance on such representations, the Plaintiff, as well as Plaintiff's physicians, surgeons, and/or other medical agents were induced to and did implant the unsafe hip prosthesis at issue in this case into the Plaintiff's body.

62. In committing the acts herein alleged, the Defendant acted with oppression, fraud and malice, and such wrongful conduct was committed with the knowledge, authorization, and/or ratification of one or more officers, directors, and/or managing agents of said Defendant.

63. As a direct and proximate cause of the Defendant's fraudulent misrepresentation of material facts known by said Defendant, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT IX
NEGLIGENCE IN GOOD MANUFACTURING PRACTICES

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

64. The Defendant had a duty to the Plaintiff to establish reasonable quality systems for the design, production, and distribution of the prosthesis to be implanted in the Plaintiff and other patients. Such quality systems must encompass and adequate organizational structure to ensure that a quality policy for prosthesis is understood, implemented, and maintained at all levels of the organization and that adequate quality audits are carried out. Such quality systems must establish adequate design controls, including design input, design output, design review,

design verification, design validation, and design transfer procedures, with adequate documentation and document controls. Such quality systems must also establish purchasing controls adequate to ensure that the prosthesis conforms to specifications, including adequate sterilization processes, adequate controls of inspection, measuring and test equipment, and process validation, labeling and packaging control, and adequate procedures for device acceptance and control of non-conforming product. Such quality systems must also establish procedures for implementing corrective and preventative action to identify existing and potential causes of non-conforming product and other quality problems.

65. The Defendant breached its duty to the Plaintiff by negligently failing to adopt and maintain reasonable quality systems in one or more respects specified in the previous paragraph.

66. As a direct and proximate cause of the Defendant's negligence in manufacturing, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

COUNT X
POSTMARKETING NEGLIGENCE IN FAILING TO WARN OR RECALL

The Plaintiff adopts and realleges paragraphs 1 through 9 above and further states:

67. The Defendant failed to recall, withdraw, or remove such defective prosthesis from the market once the Defendant knew or should have known of the risks associated with such defective prosthesis; Defendant failed to promptly respond to data, reports, and publications describing problems associated with such prosthesis by conducting adequate analyses, tests, and surveillance; Defendant negligently failed to notify and warn the public and the Plaintiff and the Plaintiff's physicians of the risks associated with such prosthesis.

68. As a direct and proximate cause of the Defendant's failure to warn or recall the prosthesis at issue in this case, the Plaintiff suffered bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of capacity for the enjoyment of life, the cost of medical and nursing care and treatment, loss of earnings, and the loss of capacity to earn money, and the Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant in an amount exceeding seventy-five thousand ($75,000.00) dollars, exclusive of costs and interest and further demands a trial by jury on all issues.

DATE: _____

ATTORNEYS DELL & SCHAEFER, CHARTERED
Attorneys for Plaintiff
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Hollywood, FL 33020
(954) 920-7932
(954) 922-6864/facsimile
Email: Purow@dnslaw.com

MALCOLM A. PUROW, ESQUIRE
Florida Bar No.: 282790

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 12/6/12 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet 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 THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Riley, Cheryl

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Malcolm A. Purow, Esq., Attorneys Dell & Schaefer, Chartered
2404 Hollywood Boulevard, Hollywood, FL 33020
954-620-8300

DEFENDANTS

Howmedica Osteonics Corp., d/b/a Stryker Orthopedics

County of Residence of First Listed Defendant Bergen, New Jersey
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☑ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

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

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

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

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☒ 365 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

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

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus-Alien Detainee
- ☐ 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
- ☐ 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
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

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

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☐ YES ☑ NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause **(Do not cite jurisdictional statutes unless diversity):**

28 U.S.C. 1332 - Medical Device Product Liability

LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

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

DEMAND $

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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Cheryl Riley

Plaintiff(s)

v.

Howmedica Osteonics Corporation d/b/a Stryker Orthopedics

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Howmedica Osteonics Corporation d/b/a Stryker Orthopedics
c/o REGISTERED AGENT
CT Corporation System
1200 S. Pine Island Road
Plantation, FL 33324

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: Malcolm A. Purow, Esq.
Attorneys Dell & Schaefer, Chartered
2404 Hollywood Boulevard
Hollywood, FL 33020

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 $ 0.00 .

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: