

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: Stryker Rejuvenate and ABG II Hip
Implant Products Liability Litigation

MDL No. 13-2441 (DWF/FLN)

This Document Relates to:

DANA D. & KEVIN L. MILLER,

Plaintiff(s),

vs.

HOWMEDICA OSTEONICS d/b/a
STRYKER ORTHOPAEDICS, STRYKER
CORP., STRYKER SALES CORPORATION
and STRYKER IRELAND LIMITED,

Defendants.

**SHORT FORM COMPLAINT AND
JURY TRIAL DEMAND**

Case No.:

Judge:

1. Plaintiff(s), Dana D. & Kevin L. Miller, state(s) and bring(s) this civil action in MDL No. 2441, entitled *In Re: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*. Plaintiff(s) is/are filing this Short Form Complaint as permitted by Pretrial Order #10 dated January 23, 2014 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Dana D. Miller, is a resident and citizen of the State of Indiana and claims damages as set forth below.

3. Plaintiff's Spouse, Kevin L. Miller, is a resident and citizen of the State of Indiana, and claims damages as set forth below.

4. Venue of this case is appropriate in the United States District Court, Southern

District of Indiana, Terre Haute Division. Plaintiff states that but for the Order permitting directly filing into the District of Minnesota pursuant to Pretrial Order No. 4, Plaintiff would have filed in the United States District Court, Southern District of Indiana, Terre Haute Division. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

5. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of himself/herself;

FACTUAL ALLEGATIONS

Allegations as to **Right-Side** Implant/Explant Surgery(ies): *[Cross out if not applicable]*

6. Plaintiff was implanted with a Rejuvenate Modular hip stem on his/her right hip on or about 11/15/2011, at the Terre Haute Regional Hospital, 3901 S 7th Street, in Terre Haute, Indiana 47802 by Dr. Jeffrey A. Bollenbacher.

7. Plaintiff had the right hip stem at issue explanted on 12/31/2014 at Franciscan St. Francis Medical Center, 1201 Hadley Road, Mooresville, IN 46158 by Dr. Jeffrey A. Bollenbacher.

ALLEGATIONS AS TO INJURIES

8. (a) Plaintiff claims damages as a result of (check all that are applicable):

- X INJURY TO HERSELF/HIMSELF
- _____ INJURY TO THE PERSON REPRESENTED
- _____ WRONGFUL DEATH
- _____ SURVIVORSHIP ACTION
- X ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

LOSS OF SERVICES

LOSS OF CONSORTIUM

9. Plaintiff has suffered injuries as a result of implantation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

10. Plaintiff has suffered injuries as a result of the explantation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein. *[Cross out if not applicable.]*

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

12. Plaintiff(s) could not have known that the injuries he/she suffered were as a result of a defect in the Device(s) at issue until after the date the Device was recalled from the market and the Plaintiff(s) came to learn of the recall.

13. In addition, Plaintiff could not have known that he/she was injured by excessive levels of chromium and cobalt until after the date he/she had his/her blood drawn and he/she was advised of the results of said blood-work and the fact that those blood work abnormalities were attributable to a defect in the Device(s) at issue.

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

14. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- COUNT I - NEGLIGENCE;
- COUNT II - NEGLIGENCE PER SE;
- COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN;
- COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT;
- COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN;
- COUNT VI - BREACH OF EXPRESS WARRANTY;
- COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY;
- COUNT VIII - BREACH OF IMPLIED WARRANTIES;
- COUNT IX - VIOLATION OF MINNESOTA DECEPTIVE ACTS AND PRACTICES, UNFAIR TRADE PRACTICES, CONSUMER PROTECTION, MERCHANDISING PRACTICES AND FALSE ADVERTISING ACTS
- COUNT X – VIOLATION OF CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW;
- COUNT XI - NEGLIGENT MISREPRESENTATION
- COUNT XII - LOSS OF CONSORTIUM
- COUNT XIII – UNJUST ENRICHMENT
- COUNT XIV – WRONGFUL DEATH

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. For restitution and disgorgement of profits; and,
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff(s) hereby demand(s) a trial by jury as to all claims in this action.

Date: February 5, 2015

Respectfully submitted,

/s/ Zachary Peter Lowe
BY: Zachary Peter Lowe (13792)
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Plaintiffs' Counsel

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dana E. & Kevin L. Miller

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Lowe Law Group 6028 S. Ridgeline Dr., Suite 203, Ogden, UT 84405 Tel: 801-917-8500

DEFENDANTS

Howmedica Osteonics d/b/a Stryker Orthopaedics, Stryker Corp., Stryker Sales Corporation, and Stryker Ireland Limited

County of Residence of First Listed Defendant unknown (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) unknown

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 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 U.S.C. 1332 Diversity. Brief description of cause: Action for injuries as a result of Defendant's mesh implant.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/05/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Zachary Peter Lowe

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.Cv.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 jurisdiction arises under the Constitution of the United 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; **NOTE: 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 clerk(s) 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 six 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 28 U.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.
- 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 actual dollar amount 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.