

**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:

LINDA MILES AND STEPHEN MILES,

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**

1. Plaintiff(s), Linda Miles and Stephen Miles, 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, Linda Miles, is a resident and citizen of the State of Colorado and claims damages as set forth below.

3. Plaintiff's Spouse, Stephen Miles, is a resident and citizen of the State of Colorado, and claims damages as set forth below.

4. Venue of this case is appropriate in the United States District Court, District of Colorado. 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, District of Colorado. 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;
 In a representative capacity as the _____ of the _____ having
been duly appointed as the _____ by the _____ Court of
_____. A copy of the Letters of Administration for a wrongful
death claim is annexed hereto if such letters are required for the
commencement of such a claim by the Probate, Surrogate or other
appropriate court of the jurisdiction of the decedent.

FACTUAL ALLEGATIONS

6. Plaintiff was implanted with a Rejuvenate Modular hip stem on his/her right hip on or about March 27th, 2012, at the North Colorado Medical Center by Dr. Kelly Sanderford, MD.

7. Plaintiff had the right hip stem at issue explanted on January 13th, 2015, at North Colorado Medical Center by Dr. Kelly Sanderford, MD.

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):

 X LOSS OF SERVICES

 X 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.

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):

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

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

violation of the Colorado Consumer Protection Act, *Colo. Rev. Stat. § 6-1-105 et seq.*

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.

DATED: February 8, 2015

Respectfully submitted,

BACHUS & SCHANKER, LLC

/s/ J. Kyle Bachus

J. Kyle Bachus, CO #24441
BACHUS & SCHANKER, LLC
1899 Wynkoop Street, Suite 700
Denver, CO 80202
Phone: (303) 893-9800
Fax: (303) 893-9900
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Attorney for Plaintiffs

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

Linda Miles and Stephen Miles

(b) County of Residence of First Listed Plaintiff Weld, Colorado

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

J. Kyle Bachus, Esq.,

BACHUS & SCHANKER, LLC

1899 Wynkoop Street, Suite 700, Denver, CO 80202 (303) 893-9800

DEFENDANTSHOWMEDICA OSTEONICS d/b/a STRYKER ORTHOPAEDICS,
STRYKER CORP., STRYKER SALES CORPORATION and
STRYKER IRELAND LIMITEDCounty 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 OF LAND INVOLVED.

Attorneys (If Known)

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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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 ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332Brief description of cause:
Recalled Stryker Hip Device**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE HON. Donovan W. FrankDOCKET NUMBER 0:13-md-02441-DWF-FLN

DATE

02/08/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ J. Kyle Bachus

FOR OFFICE USE ONLY

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