UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

RICHARD STIPELCOVICH	*	**DOCKET NO.**
	*	
V.	*	
	*	
C.R. BARD AND	*	
DAVOL, INC.,	*	
	*	
**********		

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, **RICHARD STIPELCOVICH**, who files this Complaint against Defendants, C.R. Bard and Davol, Inc., as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Richard Stipelcovich, is a person of the full age of majority, and resident of Orleans Parish, Louisiana;
2. Defendant, C.R. Bard, Inc. ("Bard") is a New Jersey Corporation headquartered in Murray Hill, New Jersey;
3. Defendant, Davol, Inc., ("Davol") is a Delaware Corporation and subsidiary of Defendant, Bard, headquartered in Warwick, Rhode Island;
4. Defendant Bard and Defendant Davol are hereinafter collectively referred to as "the Defendants."

5. This is a lawsuit for personal injury damages in excess of $75,000.00. There is complete diversity of citizenship between Plaintiff and all of the Defendants as the parties are citizens/entities of different states. Accordingly, subject matter jurisdiction in proper in this Court pursuant to 28 U.S.C. 1332. Further, this Court has personal jurisdiction over the Defendants because they have done business in the State of Louisiana, have committed a tort in whole or in part in the State of Louisiana, have substantial and continuing contact with the State of Louisiana, and derive substantial revenue from goods used and consumed within the State of Louisiana. The Defendants actively sell, market and promote their Ventralex ST Mesh to physicians and consumers in this state on a regular and consistent basis.

6. Defendants are subject to *in personam* in the U.S. District Court for the Eastern District of Louisiana because they placed a defective product in the stream of commerce and that product caused personal injuries to Plaintiff (who resides in Louisiana) in Louisiana. Further, venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claim occurred in this District, and because Defendants conduct substantial business in this District.

ALLEGATIONS

10. The Bard Defendants design, manufacture, market, package, label and sell medical devices, including a medical device known as the Ventralex ST Mesh, a medical device implanted to treat persons like Plaintiff for hernias.

11. On October 4, 2016, Plaintiff presented to Tulane Medical Center in New Orleans, Louisiana. His preoperative diagnosis was incarcerated umbilical hernia. The hernia

repair was performed by Dr. James E. Brown using the Product at issue designed, manufactured, marketed, packaged, labeled and sold by Defendants.

12. During the operation, Plaintiff was implanted with the Ventralex ST Mesh (hereinafter referred to as "the product") product designed, manufactured, marketed, packaged, labeled, sold, and placed in the stream of commerce by Defendants.

13. Due to defective design, defective manufacturing, defective construction/composition, inadequate warning, breach of express warranties, improper marketing, negligent marketing, and negligence by Defendants, the Product has caused Plaintiff severe and permanent bodily injuries, including but not limited to excruciating abdominal pain, physical pain and suffering, and economic losses.

14. Additionally, Plaintiff has undergone and revision surgery on April 18, 2017 from a recurrent umbilical hernia.

15. The product has numerous defects that create a high risk of unreasonable and dangerous injuries and side effects with severe permanent adverse health consequences including that the material in the Product abrades tissues adversely affecting patient health and regularly fail to perform the purpose of its implantation such that the patient requires repair and/or removal of the Product and repeated treatment and surgery.

16. At all times material hereto, Defendants, by and through their agents, servants and employees, negligently, recklessly and carelessly marketed, distributed and sold the

Product at issue herein without adequate instructions or warning of its serious side effects and unreasonably dangerous risks.

17. Defendants, through their affirmative misrepresentations and/or omissions, actively concealed from Plaintiff, and from Plaintiff's treating/implanting physicians the true and significant risks associated with Defendants' Product at issue.

18. Prior to the time that the Product was implanted in Plaintiff, Defendants were aware of numerous defects in the Product. Despite being aware of the numerous defects and unreasonable ricks in the Product, Defendants designed, manufactured, marketed, and distributed the Product with the intent they would be implanted in patients. Defendants were aware or should have been aware that implanting the Product in patients was likely to cause injury and harm to the patients into whom the Product were implanted. Alternatively, Defendants failed to exercise reasonable care in determining the risks and potential adverse consequences of implanting the Product into patients.

19. Defendants made public statements in the form of written product descriptions, product labels, promotional materials and other materials that asserted that implanting the Product in patients was safe and would not cause harm to patients. These statements were made with the intent that medical professionals, potential patients (including plaintiff) and members of the public would rely upon them, with the intent that potential patients and members of the public would pay for the Product and that the Product would be implanted in patients. When Defendants

made these statements, Defendants knew or should have known that the statements were inaccurate.

20. Representatives of Defendants also made statements to numerous individuals, including medical professionals, that implanting the Product in patients was safe and would not cause harm to patients. When Defendants' representatives made these statements, Defendants knew that the statements were inaccurate. Alternatively, when Defendants' representatives made these statements, Defendants should have known the statements were inaccurate.

21. The Defendants owed Plaintiff, and other consumers a duty to exercise reasonable care when designing, manufacturing, marketing, advertising, distributing, and selling the Product, including the duty to take all reasonable steps necessary to ensure the Product was not unreasonably dangerous to its consumers and users, and to warn Plaintiff and Plaintiff's treating/implanting physicians, other consumers, and the medical community of the dangers associated with the Product at issue.

22. At all times material hereto, Defendants had actual knowledge, or in the alternative, should have known through the exercise of reasonable and prudent care, of the hazards and dangers of the Product at issue.

23. Defendants had a duty to disclose to potential consumers, potential patients, and to health care professionals the causal relationship or association of the Product to the development of the types of injuries sustained by Plaintiff herein.

24. Defendants' duty of care owed to consumers, health care professionals, and patients included providing accurate information concerning: (1) the clinical safety and

effectiveness profiles of the Product at issue, and (2) appropriate, complete, and accurate warnings concerning the adverse effects of the Product at issue, including the injuries suffered by Plaintiff herein.

25. During the time that Defendants designed, manufactured, packaged, labeled, promoted, distributed, and/or sold the Product at issue, Defendants knew, or in the exercise of reasonable care should have known, that the Product was defective, dangerous, and otherwise harmful to potential consumers and/or patients, including Plaintiff.

26. Defendants breached their duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, marketing, supplying, promotion, marketing, advertisement, packaging, sale, testing, quality assurance, quality control, sale, and distribution of the Product at issue in interstate commerce, in that Defendants knew and had reason to know that use of the Product at issue created a significant risk of suffering unreasonably dangerous health related side effects, including the types of injuries suffered by Plaintiff herein, and failed to prevent or adequately warn of the severity of these risks and injuries.

27. Defendants were further negligent in that they manufactured and produced the defective Product - aware of the defects inherent in the Product, failed to act in a reasonably prudent manner in designing, testing, and marketing the Product, and failed to provide adequate warnings of the Product's defects and risks.

28. The Defendants' failed to exercise due care under the circumstances, and their negligence includes the following acts and omissions:

a. Failing to properly and thoroughly test the Product before releasing it to market;

b. Failing to properly and thoroughly analyze the data resulting from the pre-marketing tests of the Product;

c. Failing to conduct sufficient post-market testing and surveillance of the Product;

d. Designing, manufacturing, marketing, advertising, distributing, and selling the Product to consumers and/or patients, including Plaintiff, without an adequate warning of the significant and dangerous risks of the Product and without proper instructions to avoid foreseeable harm;

e. Failing to accompany their Product with proper or adequate warnings or labeling regarding adverse side effects and health risks associated with the use of the Product and the comparative severity of such adverse effects;

f. Failing to provide warnings, instructions or other information that accurately reflected the symptoms, scope, and severity of the side effects and health risks of the Product, including but not limited to the fact that the material in the Product abrades tissues adversely affecting patient health and regularly fail to perform the purpose of its implantation such that the patient requires repair and/or removal of the Product and repeated treatment and surgery;

g. Failing to exercise due care when advertising and promoting the Product; and

h. Negligently continuing to manufacture, market, advertise, and distribute the Product after the Defendants knew or should have known of its adverse effects.

29. Defendants' negligence was the proximate cause of the injuries, harm, and economic losses that Plaintiff suffered, and will continue to suffer, as described herein.

30. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiff has suffered and will continue to suffer serious injuries as described herein.

31. Defendants knew and/or should have known that it was foreseeable that consumers such as Plaintiff would suffer injuries as a result of Defendants' failure to exercise ordinary care in the manufacturing, marketing, labeling, distribution and sale of the Product.

32. Before Plaintiff suffered the injuries complained of herein, Defendants were on notice of numerous bodily injuries caused by the Product, and based thereon, Defendants knew or should have known that the Product caused an unreasonably high rate of infection, extrusion, perforation, chronic pain and/or abscess in people implanted with the Product.

33. Even through Defendants had known or should have known that the Product created a foreseeable, unreasonable risk of harm to those patients into whom they were implanted, Defendants continued to market the Product in the United States. Defendants have sold thousands of Product in the United States.

34. Defendants have never provided adequate warning or information to physicians who implanted the Product, to patients, or to people who may be implanted with the

device, of the risks that the Product causes an unreasonably high rate of infection, extrusion, perforation, chronic pain and/or abscess.

35. The Defendants' Product used by and implanted in Plaintiff was provided to him and his doctor in a condition substantially the same as the condition in which it was manufactured and sold.

36. Plaintiff and Plaintiff's treating/implanting physicians relied on claims made by Defendants that the Product were safe and effective for their intended purpose.

37. The development of Plaintiff's injuries at issue herein were preventable and resulted directly from Defendants' failure and refusal to conduct proper safety studies, failure to properly assess and publicize alarming safety signals, suppression of information revealing serious and life- threatening risks, willful and wanton failure to provide adequate warnings and/or instructions, and willful misrepresentations concerning the nature and safety of their Product at issue. This conduct and the product defects complained of herein were substantial factors in bringing about and exacerbating Plaintiff's injuries.

38. Plaintiff's injuries and/or his resulting damages were a reasonably foreseeable consequence of Defendants' conduct and the defects of their Product at issue herein.

39. Plaintiff would not have used the Product at issue herein and Plaintiff's treating/implanting physicians would not have implanted and/or used the Product at issue herein had Defendants properly disclosed and/or warned about the risks associated with the Product and/or had Defendants conformed the Product to their express warranties. Thus, had Defendants properly disclosed the risks associated

with the Product at issue, Plaintiff would have avoided the risk of developing the injuries complained of herein.

40. As a result of Defendants' actions, Plaintiff and his treating/implanting physicians were unaware, and could not reasonably have known or learned through reasonable diligence, that Plaintiff would be and/or had been exposed to the risks identified herein, and that those risks were the direct and proximate result of Defendants' acts, negligence, omissions, and/or misrepresentations.

41. Had Defendants provided the proper warnings to Plaintiff and his treating/implanting physicians, Plaintiff's treating/prescribing physicians would not have used, prescribed or implanted the Product at issue, and Plaintiff would not have been injured. Moreover, had Defendants provided the proper warnings to Plaintiff and his treating/implanting physicians, Plaintiff would not have sustained the injuries at issue herein.

42. As a direct and proximate result of Defendants' negligence, wrongful conduct, as well as the improper warnings and unreasonably dangerous and defective characteristics of the Product: Plaintiff, **RICHARD STIPELCOVICH**, suffered serious physical injuries, loss of enjoyment of life, inconvenience and mental anguish, as well as incurred past medical expenses and lost wages, and will incur/sustain future medical expenses and lost wages.

COUNT I:
CONSTRUCTION OR COMPOSITION DEFECT UNDER LA. R.S. 9:2800.55

43. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

44. At all relevant times, Defendants designed, manufactured, tested, packaged, labeled, promoted, distributed and sold the Product and Plaintiff was recipient of their product.

45. The Product was expected to and did reach the usual consumers, handlers, and persons coming into contact with the Product without substantial change in the condition in which it was produced, manufactured, sold, and distributed by the Defendants.

46. At those times, the Product was in an unsafe, defective, and inherently dangerous condition, which was dangerous to users, and in particular, Plaintiff. Plaintiff contends that the defective condition of the Product and the lack of ordinary care in manufacturing the Product is obvious and within the range of comprehension of the average juror without speculation.

47. The Product manufactured, sold, and distributed by the Defendants were defective in manufacture in that, when it left the hands of the manufacturer and/or suppliers, the foreseeable risk exceeded the benefits associated with the use of the Product.

48. The Product implanted into Plaintiff was being used in a manner reasonably anticipated at the time it was implanted in him.

49. At all times material to this action, the Product implanted into Plaintiff was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition (which presented and constituted an unreasonable risk of danger and injury to Plaintiff) at the time it was placed in the stream of commerce in ways which include, but were not limited to, one or more of the following:

a. The Product's manufacturing defects occurred while the product was in the possession and control of Defendants, the Product was sold in a defective condition by manufacture, and contained manufacturing defects which rendered the Product unreasonably dangerous;

b. The Product as manufactured was unsafe for Plaintiff;

c. The Product as manufactured was unreasonably dangerous to Plaintiff;

d. The Product did not perform safely as an ordinary consumer/patient, like Plaintiff, would expect;

e. The Product as manufactured was unsafe for its intended use;

f. Defendants knew the component parts of the Product as implemented through manufacture could cause injury to the end user;

g. The Product was not made in accordance with Defendants' specifications or performance standards; and

h. The Product's manufacturing defects existed before it left the control of Defendants.

50. The Product manufactured and/or supplied by Defendants was defective in construction or composition in that, when it left Defendants' hands, it deviated in a material way from Defendants' manufacturing performance standards and/or it differed from otherwise identical products manufactured to the same design formula. In particular, the product is not safe, has numerous and serious side effects as outlined herein -– which Plaintiff suffered and suffers from herein. The Product was unreasonably dangerous in construction or composition as provided by La. R.S. 9:2800.55.

51. The defects in the Product were substantial factor in causing Plaintiff's injuries.

52. Defendants acted recklessly, willfully, wantonly and with a significant indifference to, and conscious disregard for the safety of others, including Plaintiff, by manufacturing and selling the dangerous and defective Product to Plaintiff. Defendants' reckless disregard for Plaintiff's safety by deliberately exposing him to the dangerous and defective Product warrant the imposition of punitive damages.

53. As a direct and proximate result of manufacturing defects in Defendants' Product, Plaintiff suffered and will continue to suffer injuries and damages.

54. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for all possible damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems

just and proper. Plaintiff also demands that the issues contained herein be tried by a jury.

COUNT II:
INADEQUATE WARNING UNDER LA. R.S. 9:2800.57

55. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

56. The Product at issue was defective and unreasonably dangerous when it left the possession of Defendants in that it contained warnings insufficient to alert consumers, users and physicians/prescribers, including Plaintiff and Plaintiff's treating/prescribing physicians, of the dangerous risks and reactions associated with the Product, including but not limited to its propensity to cause permanent and/or severe injuries, notwithstanding Defendants' knowledge of an increased risk of these injuries and side effects over other forms of treatment. Thus, the subject product was unreasonably dangerous because an adequate warning was not provided as required pursuant to La. R.S. 9:2800.57.

57. The Product developed, manufactured, marketed, distributed and/or supplied by Defendants was defective due to inadequate post-marketing warnings or instructions because, after Defendants knew or should have known of the risk of serious bodily harm from the use of the Product, Defendants failed to provide an adequate warning to consumers and/or their health care providers of the defects of the Product, and/or alternatively failed to conform to federal and/or state requirements for labeling, warnings and instructions, or recall, while knowing that the Product could cause serious injury.

58. Plaintiff, was prescribed, implanted with and/or used the Product for its intended purpose, and neither he nor his treating/implanting physicians could have discovered the relevant defects in the subject product through the exercise of reasonable care.

59. Defendants, as manufacturers and/or distributors of the subject Product, are held to the level of knowledge of an expert in the field.

60. Defendants had a continuing duty to warn users (including **RICHARD STIPELCOVICH**) and physicians/prescribers (including **RICHARD STIPELCOVICH's** treating/implanting physicians) of all of the known dangers associated with the subject product, including but not limited to the serous and permanent injuries outlined herein.

61. Plaintiff, **RICHARD STIPELCOVICH**, individually and through his treating/implanting physicians, reasonably relied upon the skill, superior knowledge, and judgment of Defendants, particularly as same related to the warnings regarding Defendants' Product at issue herein.

62. The warnings that were given by Defendants regarding the Product at issue were not accurate, clear, and/or were ambiguous. The warnings that were given by Defendants failed to properly warn users (including **RICHARD STIPELCOVICH**) and physicians/implanters (including **RICHARD STIPELCOVICH**'s treating/implanting physicians) of the increased risks of permanent physical injuries as outlined herein.

63. Defendants failed to adequately warn consumers of the dangers associated with the Product and said failure caused Plaintiff's injury. If Defendants had issued a proper

warning to consumers, Plaintiff would not have had the Product implanted, Plaintiff's treating/implanting physicians would not have allowed the Product to be used or implanted into Plaintiff, and Plaintiff's injuries would have been avoided.

64. The Product has numerous defects that create a high risk of unreasonable and dangerous injuries and side effects with severe permanent adverse health and consequences including that the material in the Product abrades tissues adversely affecting patient health and regularly fail to perform the purpose of its implantation such that the patient requires repair and/or removal of the Product and repeated treatment and surgery.

65. The warnings provided to Plaintiff's healthcare providers in their capacities as learned intermediaries were improper because they did not reflect the full extent of the potential health complications associated with using the Product.

66. Had Defendants adequately warned Plaintiff's healthcare providers of the risks associated with the Product, the healthcare providers, acting as reasonably prudent healthcare providers, would have elected not to use the Product to repair Plaintiff's inguinal hernias and/or umbilical hernia.

67. Defendants acted recklessly, willfully, wantonly and with a significant indifference to, and conscious disregard for the safety of others, including Plaintiff, through their negligent failure to adequately warn Plaintiff to the dangerous and defective nature of the Product. Defendants' reckless disregard for Plaintiff's safety through their inadequate warnings and/or negligent failure to adequately warn her of the dangerous and defective nature of the Product warrants the imposition of punitive damages.

68. As a direct and proximate result of the Defendants' inadequate warnings and/or negligent failure to warn, Plaintiff suffered and will continue to suffer injuries and damages.

69. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for all possible damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands that the issues contained herein be tried by a jury.

COUNT III:
DESIGN DEFECT UNDER LA. R.S. 9:2800.56

70. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

71. The Product is defective in its design or formulation in that it is not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation. The Product was unreasonably dangerous in design as provided by La. R.S. 9:2800.56.

72. At all times material to this action, the Product was expected to reach, and did reach, consumers in the State of Louisiana and throughout the United States, including Plaintiff, without substantial change in the condition in which it was sold.

73. Defendants had a duty to individuals, including Plaintiff, to use reasonable care in the preparation of the Product for use in repairing inguinal hernias.

74. The Product has numerous defects that create a high risk of unreasonable and dangerous injuries and side effects with severe permanent adverse health

consequences including that the material in the Product abrades tissues adversely affecting patient health and regularly fail to perform the purpose of its implantation such as the patient requires repair and/or removal of the Product and repeated treatment and surgery.

75. At all times material to this action, the Product was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways which include, but are not limited to, one or more of the following:

a. When placed in the stream of commerce, the Product contained unreasonably dangerous design defects and was not reasonably safe as intended to be used, subjecting Plaintiff, to risks that exceeded the benefits of the subject product, including, but not limited to, permanent personal injuries and adverse side effects as outlined herein;

b. When placed in the stream of commerce, the Product was defective in design and formulation, making the use of the Product more dangerous than an ordinary consumer would expect, and more dangerous than other risks associated with the other similar products on the market;

c. The design defects of the Product existed before it left the control of Defendants;

d. The Product was insufficiently and inadequately tested;

e. The Product caused harmful side effects that outweighed any potential utility; and

f. The Product was not accompanied by adequate instructions and/or warnings to fully apprise users, consumers, physicians and/or implanters, including Plaintiff and Plaintiff's treating/implanting physicians, of the full

nature and extent of the risks and side effects associated with its use, thereby rendering Defendants liable to Plaintiff.

76. Defendants were negligent in designing and/or preparing the Product for use in repairing inguinal and/or umbilical hernias. The Product was designed and manufactured improperly. The Defendants have breached their duty to design and manufacture the Product line without any defects.

77. In addition, at the time the subject product left the control of Defendants, there were practical and feasible alternative designs that would have prevented and/or significantly reduced the risk of Plaintiff's injuries without impairing the reasonably anticipated or intended function of the product. These safer alternative designs were economically and technologically feasible and would have prevented Plaintiff's injuries without substantially impairing the product's utility.

78. Defendants acted recklessly, willfully, and wantonly and with significant indifference to, and conscious disregard for the safety of others, including Plaintiff, through their negligent design and manufacture of the Product, a dangerous and defective product. Defendant's reckless disregard for Plaintiff's safety through their defective design and manufacture of the Product warrants the imposition of punitive damages.

79. As a direct and proximate result of the Defendants' defective design of their Product, Plaintiff suffered and will continue to suffer injuries and damages as outlined herein.

80. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for all possible damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands that the issues contained herein be tried by a jury.

COUNT IV:
BREACH OF EXPRESS WARRANTY UNDER LA. R.S. 9:2800.58

81. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

82. Defendants expressly represented to Plaintiff, Plaintiff's treating/implanting physicians, other consumers, and the medical community that the Product was safe and fit for its intended purposes, was of merchantable quality, had been adequately tested, and did not produce dangerous side effects which it actually does produce (e.g., the Product abrades tissues adversely affecting patient health and regularly fails to perform the purpose of its implantation such that the patient requires repair and/or removal of the Product and repeated treatment and surgery).

83. The Product at issue does not conform to its/Defendants' express representations because it is not safe, has numerous and serious side effects, and causes severe and

permanent injuries, including, but not limited to: the Product abrades tissues adversely affecting patient health and regularly fails to perform the purpose of its implantation such that the patient requires repair and/or removal of the Product and repeated treatment and surgery, as well as other serious injuries and side effects.

84. At the time of the making of the express warranties regarding the Product, Defendants knew, or in the exercise of reasonable care should have known, of the purpose for which the Product was to be used and warranted the same to be, in all respects, fit, safe, and effective and proper for such purpose. The subject product was unreasonably dangerous because it failed to conform to an express warranty of Defendants as provided by La. R.S. 9:2800.58.

85. At the time of the making of the express warranties regarding the Product, Defendants knew or should have known that, in fact, said representations and warranties were false, misleading, and untrue in that the Product was not safe and fit for its intended use and, in fact, produces serious injuries to the user.

86. At all relevant times the Product did not perform as safely as an ordinary consumer (including Plaintiff and Plaintiff's treating physicians) would expect, when used as intended or in a reasonably foreseeable manner.

87. Plaintiff and Plaintiff's treating/implanting physicians, other consumers, and the medical community relied upon the Product's/Defendants' express warranties and/or representations. Plaintiff purchased and/or allowed the Product to be used/implanted as a result of its/Defendants' express warranties and/or representations, and Plaintiff's treating/implanting physicians used, prescribed

and/or implanted the Product (relative to Plaintiff) as a result of its/Defendants' express warranties and/or representations. Moreover, because the Product did not conform to its/Defendants' express warranties and/or representations, Plaintiff sustained significant injuries and damages as outlined herein.

88. As a direct and proximate result of the Defendants' breach of express warranty relative to the Product, Plaintiff suffered and will continue to suffer injuries and damages as outlined herein.

89. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for all possible damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands that the issues contained herein be tried by a jury.

COUNT V:
REDHIBITION

90. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

91. The Product contains a vice or defect which renders it useless or its use so dangerous that buyers, including Plaintiff, would not have purchased it had he been aware of same.

92. Defendants sold and promoted the Product, which Defendants placed into the stream of commerce. Under Louisiana law, the seller warrants the buyer against redhibitory defects, or vices, in the thing sold. La. C.C. art. 2520. The Product sold and promoted by Defendants possesses a redhibitory defect because it was not

manufactured and marketed in accordance with industry standards and/or is unreasonably dangerous, as described above, which renders the Product useless or so inconvenient that it must be presumed that a buyer would not have bought the Product had he known of the defect. Pursuant to La. C.C. art. 2520, Plaintiff is entitled to obtain a rescission of the sale of the Product.

93. The Product alternatively possesses a redhibitory defect because the Product was not manufactured and marketed in accordance with industry standards and/or is unreasonably dangerous, as described above, which diminishes the value of the Product so that it must be presumed that a buyer would still have bought it but for a lesser price. In this instance, Plaintiff is entitled to a reduction of the purchase price.

94. Defendants are liable as a bad faith seller for selling a defective product with knowledge of the defect, and thus, are liable to Plaintiff for the price of the Product, with interest from the purchase date, as well as reasonable expenses occasioned by the sale of the Product and attorneys' fees. As the manufacturer of the Product, under Louisiana law, Defendants are deemed to know that Product possessed a redhibitory defect. La. C.C. art. 2545.

95. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor for all possible damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff also demands that the issues contained herein be tried by a jury.

OTHER/ALTERNATIVE COUNTS

96. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

97. In the instance that Louisiana's Product Liability Law is deemed inapplicable to the instance matter and/or if another State's law is deemed applicable, Plaintiff makes the following common law and/or other claims against all defendants– using the same operative facts as outlined herein.

98. Breach of Warranty of Fitness for Ordinary Use.

99. Negligence.

100. Breach of Implied Warranty.

101. Negligent Misrepresentation.

102. Negligent Design.

103. Attorney Fees. As a result of Defendants wrongful acts as set forth above, Plaintiff has been compelled to retain Michael Hingle & Associates Law Firm to pursue this action. Plaintiff should be awarded attorney fees and costs pursuant to applicable law.

DAMAGES

104. Plaintiff, **RICHARD STIPELCOVICH**, was seriously injured as a result of the actions/inactions of the Defendants and/or as a result of using the Product of Defendants.

105. Plaintiff, **RICHARD STIPELCOVICH**, suffered unnecessarily as a result of the actions/inactions of the Defendants and/or as a result of using the Product of Defendant.

106. As a result of the actions/inactions of the Defendants and/or as a result of using the Product of Defendants, Plaintiff, **RICHARD STIPELCOVICH**, has suffered and/or incurred and will suffer and/or incur damages, including but not limited to: past and future physical pain and suffering, past and future mental anguish, past and future loss of enjoyment of life, past and future inconvenience, past and future medical expenses, past and future lost wages, permanent injury, permanent scarring and/or disfigurement, and other damages which will be proven at the trial of this matter.

WHEREFORE, Plaintiff requests that the Court grant the following relief against the Defendants:

a. Compensatory damages in excess of the jurisdictional amount, including but not limited to, non-economic damages in excess of $75,000;

b. Medical expenses and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages pursuant to applicable state law;

d. Disgorgement of profits and restitution of all costs;

e. Attorney fees and costs of suit pursuant

f. Pre-judgment and post-judgment interest as authorized by state law on the judgments which will enter on Plaintiff's behalf;

g. Such other relief the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted this 26th day of September, 2017.

MICHAEL HINGLE & ASSOCIATES, LLC

/s/ Michael Hingle _____
Michael Hingle, T.A. (LA Bar #6943)
Bryan Pfleeger, (LA Bar #23896)
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Slidell, LA 70458
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Facsimile: (985) 646-1471
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Attorney for Plaintiff

JS 44 (Rev 06/17)

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
Richard Stipelcovich

DEFENDANTS
C.R. Bard & Davol, Inc

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

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michael Hingle & Associates
220 Gause Blvd.
Slidell, LA 70458

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)*
Click here for: Nature of Suit Code Descriptions

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 (Excludes 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
- ☐ 362 Personal Injury - Medical 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

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

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

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

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

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

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 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
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 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

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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

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:
Products Liability

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 75,000.00

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

VIII. RELATED CASE(S) IF ANY
(See instructions)

JUDGE DOCKET NUMBER

DATE 09/26/2017

SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Hingle

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44 Reverse (Rev. 06/17)

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

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 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

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