

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

<p>CAROLYN ROKOSZ</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DEPUY SYNTHES, INC. and JOHNSON & JOHNSON, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 3:18-cv-00074</p> <p style="text-align: center;">COMPLAINT & JURY TRIAL DEMAND</p>
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COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, Carolyn Rokosz, and files her Complaint against Defendant DePuy Synthes, Inc. DePuy, Inc and Johnson & Johnson, Inc., hereinafter collective referred to "DePuy Synthes" or "Defendants," and states as follows:

1. INTRODUCTION

1. This is an action for damages suffered by Plaintiffs as a direct and proximate result of defendants' defective development, design, testing, manufacturing, distribution, and sale of the DePuy Synthes Proximal femur plate. Carolyn Rokosz suffered substantial pain and suffering as a direct and proximate result of the defective DePuy Synthes proximal femur plate. She has had her left fractured femur plated with a Synthes femur plate.

2. Plaintiff had her left femur fracture plated May 13, 2016 by Michael Hendricks, M.D. at Great River Medical Center, West Burlington, Iowa.

3. Plaintiff had revision surgery on July 22, 2016 at Great River Medical Center, West Burlington, Iowa, by Michael Hendricks, M.D.

II. THE PARTIES

4. Plaintiff Carolyn Rokosz is a citizen and resident of Denmark, Lee County, Iowa.

5. Defendant Depuy Synthes, Inc. is, and at all times relevant to this Complaint was, an Indiana Corporation with its principal place of business at 700 Orthopaedic Drive, Warsaw, Indiana 46582. Defendant DePuy Synthes, Inc. is a subsidiary of Defendant Johnson and Johnson, Inc, New Brunswick, New York and is qualified to do business in Iowa. Defendant DePuy Synthes, Inc. in fact does business in Iowa in Lee County.

6. Defendant Johnson & Johnson, Inc. is a corporation organized and existing under the laws of the State of Delaware and qualified to do business in New Jersey. Defendant DePuy Synthes Inc. is a subsidiary of Defendant Johnson & Johnson, Inc. New Brunswick, New Jersey.

7. At all times relevant, Defendants DePuy Synthes, Inc. and Johnson & Johnson, Inc. developed, manufactured, advertised, promoted, marketed, sold and/or distributed the defective DePuy Synthes proximal femur plate that is the subject of this lawsuit throughout the United States.

8. At all times relevant, Defendants and each of them were the agents, ostensible agents, co-conspirators, servants, employees, partners, joint venturers, franchisees and alter-egos of the remaining defendants and each of them; and each of them

were at all times and place mentioned herein acting within the course and scope of such conspiracy, service, agency, employment, partnership, joint venture and/or franchise.

III. JURISDICTION & VENUE

9. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C §1332 (diversity of citizenship). The matter in controversy in this civil action exceeds the sum or value of \$75,000, exclusive of costs and interests, as to each defendant, and is between citizens of different states.

10. Venue in this action properly lies in the District of Iowa.

IV. CAROLYN ROKOSZ'S INJURIES AND DAMAGES

11. Carolyn Rokosz slipped and fell in the yard and fractured her left femur on May 13, 2016. At Great River Medical Center (GRHS), Dr. Hendricks implanted a Synthes device (proximal femur plate)

12. On July 20, 2016, Ms. Rokosz had some considerable pain in that left leg so she went back to Dr. Hendricks. An x-ray revealed hardware failure of the Synthes Femur plate and fracture.

13. On July 22, 2016 her leg “gave out and she fell on her knee” there was fixation surgery at GRHS by Dr. Hendricks that date, with removal and replacement of the failed femur plate.

14. Then on September 21, 2016, she fell and an x-ray showed that an interval fracture of a long side plate at the site of the previous fracture, i.e. a re-fracture of the femur. At that point, she was transferred to UIHC and there was surgery September 27 for internal fixation of the femur non-union and removal of the second implant hardware.

15. All of the injuries and complications suffered by Ms. Rokosz were caused by the defective design, warnings, construction and unreasonably dangerous character of the DePuy Synthes femur plate in her May 13, 2016.

16. Had defendants not concealed the known defects, the early failure rate, the known complications and the unreasonable risks associated with the use of the Synthes femur plate, Ms. Rokosz would not have allowed any Synthes Femur plate to have been implanted in her body.

(NEGLIGENCE)

17. Plaintiff re-alleges and incorporates paragraphs 1 -16 above.

18. At all relevant times, Defendants had a duty and continue to owe a duty to Plaintiff to provide a safely manufactured product, to notify Plaintiff of the defective nature of the Synthes femur plate system.

19. Defendants breached their duty of reasonable care to Plaintiff by defectively designing, manufacturing, and/or negligently failing to warn of these defects in the Synthes femur plate, thereby casing Plaintiffs' injuries and damages.

20. Defendants breached their duty of reasonable care to Plaintiffs by manufacturing and assembling the Synthes femur plate, in such a manner that it was prone to failure and malfunction and thus exposed Plaintiff to severe and lasting physical trauma and injuries.

21. Defendants breached their duty of reasonable care to Plaintiffs by failing to promptly and adequately notify the FDA and warn and instruct Plaintiff, the medical community, and the public at the earliest possible date of known defects in the Synthes

femur plate.

22. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain physical injuries, severe emotional distress, mental anguish, economic losses and other damages for which they are entitled to compensatory and equitable damage and declaratory relief in an amount to be proven at trial.

(GENERAL DAMAGES)

23. Plaintiffs readopt and re-allege the allegations set forth above as though fully set forth herein.

24. Plaintiff has been injured in many ways as a result of Defendants' actions. Plaintiff Carolyn Rokosz is alleging and can prove serious health problems associated with the use of Defendants' defective Syntheses Femur Plate implant as described above.

25. Plaintiff Carolyn Rokosz suffered in the past, and it is anticipated will suffer in the future, medical testing, invasive exploratory surgeries, treatments, medical monitoring, pain, suffering, mental anguish, physical impairment, disfigurement, loss of enjoyment of life and medical bills and expenses, as well as loss of wage earning capacity.

PRAYER FOR RELIEF

26. WHEREFORE, plaintiff seeks judgment in her favor against each defendant as follows:

a. For economic and non-economic damages, including but not limited to medical expenses, loss of income, pain and suffering, mental anguish, emotional distress, and adverse health consequences associated with metallosis.

- b. For an award of attorneys' fees and costs;
- c. For prejudgement interest and the costs of suit;
- d. For such and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims in this civil action, as provided by Rule 34(b) of the Federal Rules of Civil Procedure.

Dated: July 19, 2018

Respectively Submitted,

LARRY HELVEY LAW FIRM

By: /s/ Larry D. Helvey
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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

CAROLYN ROKOSZ

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Larry Helvey, Larry Helvey Law Firm, 2735 1st Avenue SE, Suite 101, Cedar Rapids, IA 52403

DEFENDANTS

DEPUY SYNTHES, INC. and JOHNSON & JOHNSON, INC.

County of Residence of First Listed Defendant (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)

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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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 (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. Section 1391(c) Brief description of cause:

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 DOCKET NUMBER

DATE 07/19/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Larry D. Helvey, M.D., J.D.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE