UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Susan Porter

Case No. 3:18-cv-00682

Plaintiff,

v.

Zimmer Biomet, Inc.
f/k/a Zimmer, Inc.;
Zimmer Biomet US, Inc.; and
Zimmer Biomet Holdings, Inc.
f/k/a Zimmer Holdings, Inc.

Defendants.

COMPLAINT

The Plaintiff, Susan Porter, by and through her counsel brings this action against Defendants ZIMMER BIOMET, INC. f/k/a Zimmer Inc., ZIMMER BIOMET US., INC. f/k/a Zimmer US, Inc., and ZIMMER BIOMET HOLDINGS, INC. f/k/a Zimmer Holdings, Inc., DEFENDANTS, and states as follows:

PARTIES

1. Susan Porter was, at all times relevant to this cause of action, a citizen and resident of Madison, Wisconsin.

2. ZIMMER BIOMET, INC., formerly known as Zimmer Inc. is, and at all times material hereto was, a corporation organized under the laws of the State of Delaware, with its principal place of business in Indiana. At all times material hereto, Zimmer Biomet, Inc. engaged in business in Wisconsin and derives substantial revenue from goods sold and used in the State of Wisconsin.

3. ZIMMER BIOMET US, INC., formerly known as Zimmer US, Inc. is, and at all times material hereto was, a corporation organized under the laws of the State of Delaware, with its principal place of business in Warsaw, IN, registered to do business in Wisconsin.

4. ZIMMER BIOMET HOLDINGS, INC., formerly known as Zimmer Holdings, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Indiana. At all times material hereto, Zimmer Biomet Holdings, Inc. engaged in business in Wisconsin.

5. Defendants Zimmer Biomet, Inc., Zimmer Biomet US, Inc., and Zimmer Biomet Holdings, Inc., shall also hereinafter be collectively referred to as "Defendants," "Zimmer," and/or "Defendants Zimmer."

JURISDICTION

6. This Court has Federal Diversity Jurisdiction under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between citizens of different states.

VENUE

7. Venue of this case is appropriate in the United States District Court for the Western District of Wisconsin because jurisdiction of this civil action is founded in diversity and a substantial part of the events or omissions giving rise to the claim occurred in this district.

NATURE OF ACTION

8. This is an action for a strict products liability, failure to warn, defective design, defective manufacturing, negligence, breach of express and implied warranties, negligent misrepresentation violations of state law brought by Susan Porter for injuries arising out of the ZMR® Hip System (hereinafter "Defective Product").

9. Defendants Zimmer manufactured and supplied to doctors a femoral known as the ZMR® Hip System femoral stem, which is designed with a porous plasma-sprayed Tivanium TI-6AL-4V alloy.

10. Defendants Zimmer manufactured and supplied to doctors a femoral head known as the Versys® femoral head, which is manufactured with Zimaloy® Cobalt Chromium Alloy.

11. The Zimmer ZMR® femoral stem used with the Zimmer Versys® femoral head created an unreasonable risk of harm to Plaintiff.

12. The unreasonable risk of pain, swelling, metallosis, trunnionosis, adverse local tissue reaction, and/or the need for early revision surgical intervention, whether from corrosion, micromotion, fretting or some other mechanism, renders the femoral stem and head of the ZMR® Hip System a defective product

FACTS

13. On or about July 8, 2008, Plaintiff underwent a revision total left hip arthroplasty at St. Mary's Hospital in Madison, Wisconsin and was implanted with a ZMR® Hip System femoral stem and Versys® femoral head. The ZMR is specifically marketed and intended to be used as a revision stem.

14. Following Plaintiff's surgery, Plaintiff experienced increasing pain and loss of function in her hip. The problems gradually developed until they became more and more painful.

15. Diagnostic workup revealed elevated levels of cobalt and chromium in Plaintiff's blood.

16. On or around August 18, 2015, Plaintiff underwent a second revision surgery to her left hip at Mayo Clinic Hospital in Rochester, Minnesota. Plaintiff's surgeon, Dr. Rafael J. Sierra, who performed the revision remarked that "this was the largest cavity filled with metal that I had encountered during my career."

17. Following this revision surgery, Plaintiff has suffered and continues to suffer damages, including but not limited to, disfigurement, pain, suffering, mental anguish, lost earning capacity, lost wages, and medical expenses.

18. Defendants Zimmer were in the business of designing, manufacturing, marketing and selling hip prostheses, the Defective Product, implanted into Plaintiff on July 8, 2008.

19. Defendants Zimmer sold the Defective Product to Plaintiff, or to her physician and/or healthcare provider, on her behalf.

20. The Defective Product was cleared by the United States Food & Drug Administration ("FDA") under the substantially equivalent 510 (k) method of obtaining clearance to market the medical device.

21. Defendants, by their actions or inactions, proximately caused Plaintiff's injuries.

22. Plaintiff could not have known that the injuries she suffered were as a result of a defect in the Defective Product, as there was and has been no public recall of the implant system by Defendants Zimmer.

23. As a result of the injuries Plaintiff sustained, she is entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

CLAIMS FOR RELIEF

COUNT I - NEGLIGENCE

24. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

25. Defendants negligently designed, manufactured, marketed, detailed, labeled and advertised, both to physicians and consumers, the Defective Product.

26. As a result, Defendants had a duty to perform each of these functions reasonably and with reasonable and due care for the safety and well-being of patients in whom the Defective Product would be implanted, including Plaintiff. Defendants failed to reasonably execute these duties.

27. Defendants failed to use reasonable and due care for the safety and well-being of those in whom the Defective Product would be implanted, including Plaintiff, and are therefore negligent in the following respects:

a. Defendants failed to adequately design and manufacture the Defective Product to insure that neither would corrode, erode, deteriorate, fret, and induce severe metal toxicity in the patient. The flaws include, but are not limited to, the following:

i. The incompatibility of the femoral heads with the ZMR Tivanium femoral stems, and other mixed metal alloy components;

ii. Poor design of the femoral head such that micro motion was unavoidable:

iii. Poor manufacturing practices such that the femoral head bore and neck trunnion did not "fit" the way in which they were intended to fit, resulting in taper lock failure, micro-motion, corrosion and fretting; failing to establish and maintain adequate procedures to ensure that the specified

design requirements for femoral heads were met during the manufacturing process;

iv. Allowing and promoting the use of large metal heads on Defendant's small and insufficient trunnion which would predictably lead to excessive motion, fretting, mechanically assisted crevice corrosion and ultimately device failure;

v. A combination of the above factors led to rapid, severe heavy metal cast off causing soft tissue and bony necrosis, pain and premature failure of the Defective Device.

b. Defendants failed to adequately test the Defective Device to insure that it would not corrode, erode, deteriorate and/or induce severe metal toxicity in the patient;

c. Defendants failed to conduct anything other than bench testing so that when manufactured and marketed, patients became in essence Defendants' first clinical trial;

d. Defendants made affirmative representations that the Defective Device would not fret or corrode in the human body. These

representations were false and misleading to both physicians and the consumer, including Plaintiff;

e. Defendants trained its sales force to "detail" the Defective Device utilizing representations that the Defendants knew or should have known were false, creating in the minds of both surgeons and consumers that the device would not cause metal toxicity;

f. Defendants failed to adequately test the femoral heads compatibility with titanium components and other alloy components in an effort to prevent corrosion and fretting at the taper lock junction of this hip replacement device;

g. Defendants failed to promptly act upon reports of early failure such that the Defective Product continued to be implanted in unknowing patients by surgeons well after it should have been recalled or sales suspended;

h. Defendants failed to adequately warn physicians and patients of the risks of these products and further failed to advise physicians of the appropriate monitoring protocol for patients to timely diagnose fretting, corrosion and metallosis related injuries.

i. A combination of the above factors leads to rapid, severe heavy metal cast off causing soft tissue and bony necrosis, pain and premature failure of the device.

28. Defendants, as manufacturers, suppliers and sellers of the Defective Products had superior knowledge and owed a duty of care to their customers and to the patients themselves, in whom this Defective Product was implanted.

29. Defendants breached their duty of care. The above conduct demonstrates Defendants' failure to exercise reasonable and appropriate care in the testing, designing, manufacturing, marketing, labelling, instructing and safety evaluations resulting in the products entering the market in a dangerous condition, and remaining on the market with improper warnings.

30. It was foreseeable that this wrongful conduct and these omissions would lead to premature device failure as well as severe, permanent, debilitating injuries to patients, including Plaintiff.

31. As a direct and proximate result of Defendants' negligence, Plaintiff suffered all or some of the following: bodily injury; severe physical pain and suffering; emotional distress; disability; physical impairment; disfigurement; mental anguish; inconvenience; aggravation of a pre-existing condition; loss of

the capacity for the enjoyment of life; the costs of medical care and expenses; loss of earnings; and loss of the ability to earn money, all of which damages and losses will continue in the future.

WHEREFORE, Plaintiff respectfully request that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT II – NEGLIGENCE PER SE

32. Plaintiff realleges and incorporates by reference the allegations set above as if set forth herein.

33. Defendants had an obligation to not violate the law in the manufacture, design, testing, assembly, inspection, labeling, packaging, supplying marketing, selling, advertising, preparing for use, and warning of the risks and dangers of the Defective Product.

34. Defendants failed to comply with federal requirements. Specifically, it is believed that with respect to the Defective Product, Defendants failed to timely report adverse events; failed to timely conduct failure investigations and analyses; failed to timely report any and all information concerning product failures and corrections; failed to timely and fully inform FDA of unanticipated adverse effects, increases in the incidence of adverse effects, or Device failures

necessitating a labeling, manufacturing or device modification; failed to conduct necessary design validation; and sold a misbranded and adulterated product.

WHEREFORE, Plaintiff respectfully request that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT III

STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN

35. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

36. This is an action for strict liability based upon design defect against Defendants.

37. Defendants' Defective Product were designed in such a way that, when used as intended, the Defective Device causes serious, permanent, and devastating damage to patients in whom the Defective Products are implanted. The damage and mechanism of injury have been previously described herein. Defendants acted unreasonably in its design of the Defective Product in that Defendants failed to adopt a safer design for the Defective Product that was practical, feasible, and otherwise a reasonable alternative design or formulation that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

38. Defendants' Defective Products do not perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable to Defendants.

39. The risks of using Defendants' Defective Product outweigh the benefits of using the Defective Product.

40. There were numerous safer alternative designs to the Defective Product which in reasonable probability would have prevented or significantly reduced the risk of the personal injuries suffered by Plaintiff without substantially impairing the product's utility, and such safer alternative designs were economically and technologically feasible at the time the Defective Product left the control of Defendants by the application of existing or reasonably-achievable scientific knowledge.

41. The design defects in Defendants' Defective Product caused serious damage to Plaintiff, including all or some of the following: bodily injury; severe physical pain and suffering; emotional distress; disability; physical impairment; disfigurement; mental anguish; inconvenience; aggravation of a pre-existing condition; loss of the capacity for the enjoyment of life; the costs of medical care

and expenses; loss of earnings; and loss of the ability to earn money, all of which damages and losses will continue in the future.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer for Relief.

COUNT IV

STRICT PRODUCTS LIABILITY- MANUFACTURING DEFECT

42. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

43. This is an action for strict liability based on a manufacturing defect.

44. The Defective Product was designed for implantation into the human body and to last for fifteen or more years. The Defective Product was also designed to be compatible with human tissue and bone.

45. The Defective Product implanted in Plaintiff failed and was removed prematurely.

46. The Defective Product installed in the hip of Plaintiff was not compatible with human tissue and bone. Through a process of fretting and corrosion, the Defective Product released heavy metals into Plaintiffs body causing severe and permanent destruction of bone and tissue. Defendants failed to manufacture the Defective Product in a manner that prevented fretting and

corrosion, and, in fact, manufactured the product such that it caused fretting and corrosion.

47. The Defective Product implanted in the hip of Plaintiff contained manufacturing defects, such that:

a. The bore within the femoral head was poorly machined or fashioned so that it could not achieve the desired taper lock or coldweld with the trunnion of the femoral stem;

b. The bore within the femoral head was fashioned in such a manner that it did not maintain structural integrity when implanted in a biologic environment;

c. The bore within the femoral head was fashioned in such a manner that it did not maintain structural integrity when mated with an alloy trunnion; and/or

d. The specified design requirements for femoral head were not met during the manufacturing process.

48. The manufacturing defects in the Defective Product implanted into Plaintiff's hip caused serious damage to Plaintiff including all or some of the following: bodily injury; severe physical pain and suffering; emotional distress;

disability; physical impairment; disfigurement; mental anguish; inconvenience; aggravation of a pre-existing condition; loss of the capacity for the enjoyment of life; the costs of medical care and expenses; loss of earnings; and loss of the ability to earn money, all of which damages and losses will continue in the future.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT V

STRICT PRODUCTS LIABILITY - FAILURE TO WARN

49. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

50. The Defective Product implanted into Plaintiff contained no warnings or, in the alternative, inadequate warnings as to the risks that the product could cause fretting, corrosion, and significant heavy metal toxicity. Defendants acted unreasonably in failing to provide such warning or instruction.

51. The warnings that accompanied the Defective Product failed to provide that level of information that an ordinary consumer, including Plaintiff, would expect when using the implants in a manner reasonably foreseeable to the Defendants.

52. Moreover, the Defective Product left the Defendants' control without an adequate warning or instruction, and created an unreasonably dangerous condition in that Defendants, as the seller and manufacturer, knew or in the exercise of ordinary care should have known that the Defective Device posed a substantial risk of harm. Alternatively, after the Defective Product left the Defendants' control, Defendants became aware of, or in the exercise of ordinary care should have known, that the Defective Product posed a substantial risk of harm to patients, including Plaintiff, yet Defendants failed to take reasonable steps to give adequate warning or instruction or to take other reasonable action under the circumstances.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT VI

BREACH OF EXPRESS WARRANTY

53. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

54. Through Defendants' public statements, descriptions of the Defective Product, and promises relating to the Defective Product, Defendants expressly warranted, among other things, that the Defective Product was

efficacious and safe for their intended use; was designed and constructed of materials that would prevent fretting and corrosion; would last longer than competing hip implants; and were effective in reducing the risk of dislocation.

55. These warranties came in the form of (i) publicly-made written and verbal assurances of safety; (ii) press releases and dissemination via the media of uniform promotional information that was intended to create demand for the Defective Product (but which contained material misrepresentations and utterly failed to warn of the risks of the Defective Product); (iii) verbal assurances made by Defendants' consumer relations personnel to the public about the safety of the Defective Product that also downplayed the risks associated with implantation of the Defective Product; and (iv) false and misleading written information supplied by Defendants.

56. All of these representations were untrue at the time Defendant made them and Defendant knew or should have known that they were untrue.

57. Plaintiff further alleges that all of the aforementioned materials are known to Defendants and in their possession, and it is Plaintiff' reasonable belief that these materials shall be produced by Defendants and be made of record once Plaintiff is afforded the opportunity to conduct discovery.

58. When Defendants made these express warranties, Defendants knew the purposes for which Defective Product were to be used and warranted the Defective Product to be in all respects safe and proper for such purposes.

59. Defendants drafted the documents and/or made the statements upon which these warranty claims are based and, in so doing, defined the terms of those warranties.

60. Defendants' representations and promises regarding the Defective Product had the natural tendency to induce those in need of prosthetic hip implants, including Plaintiff, to purchase the Defective Product in reliance thereon.

61. The Defective Product does not conform to Defendants' representations in that the Defective Product is not safe and produces serious side effects.

62. As such, the Defective Product did not conform to Defendants' promises, descriptions, or affirmations of fact and was not adequately packaged, labeled, promoted, or fit for the ordinary purposes for which such Defective Product is used.

63. Defendants therefore breached their express warranties to Plaintiff in violation of applicable state statutes and common law, by manufacturing, marketing, and selling the Defective Product to Plaintiff and causing damages as will be established at trial.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer for Relief.

COUNT VII

BREACH OF WARRANTY AS TO MERCHANTABILITY

64. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

65. At all times material, Defendants were merchants with respect to the Defective Product.

66. The Defective Product was defectively designed and manufactured, and was distributed and sold without the provision of reasonable instructions or warnings regarding the foreseeable risk of harm posed by the Defective Product to patients, including Plaintiff.

67. The Defective Product was not fit for its ordinary purposes.

68. Plaintiff was a foreseeable user of the Defective Product.

69. The Defective Product was being used in the intended manner at the time of the injuries sustained by Plaintiff.

70. Plaintiff suffered harm as a direct and proximate result of the above said defects in the Defective Product.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT VIII

BREACH OF IMPLIED WARRANTIES

71. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

72. At all relevant and material times, Defendants manufactured, distributed, advertised, promoted, and sold the Defective Product.

73. At all relevant times, Defendants intended that the Defective Product be used in the manner that Plaintiff in fact used the Defective Product, and Defendants impliedly warranted the Defective Product to be of merchantable quality; safe and fit for such use; and warranted that each of the Defective Product was adequately tested.

74. Defendants were aware that consumers, including Plaintiff, would use the Defective Product as hip implants; which is to say that Plaintiff was foreseeable user.

75. Plaintiff was at all relevant times in privity with Defendants.

76. The Defective Product was expected to reach and did in fact reach consumers, including Plaintiff, without substantial changes in the condition in which the Defective Product was manufactured and sold by Defendants.

77. Defendants breached various implied warranties with respect to the Defective Product in the following manner:

a. Defendants represented through their labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that the Defective Product was safe and fraudulently withheld and concealed information about the substantial risks of serious injury and/or death associated with using the Defective Product ;

b. Defendants represented that the Defective Product was safe, and/or safer than other alternative hip implants and fraudulently concealed information which demonstrated that the Defective

Product was not safer than alternatives available on the market; and

c. Defendants represented that the Defective Product was more efficacious than other alternative Defective Products, and fraudulently concealed information, regarding the true efficacy of the Defective Product.

78. In reliance upon Defendants' implied warranties, Plaintiff used the Defective Product as prescribed and in the foreseeable manner normally intended, recommended, promoted, and marketed by Defendants.

79. Defendants breached their implied warranty to Plaintiff in that the Defective Product was not of merchantable quality, safe and fit for its intended use, or adequately tested, in violation of the Wis. Stat. § 402.314, et seq.

80. As a result of Defendants' foregoing acts and omissions, Plaintiff was caused to suffer serious and dangerous side effects.

81. As a direct and proximate result of the foregoing acts and omissions, Plaintiff has required and will require health care and services, and has incurred medical, health care, incidental, and related expenses. Plaintiff is informed and

believes and further alleges that Plaintiff will in the future be required to obtain further medical care and/or hospital care and medical services.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT IX

CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW

82. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

83. Plaintiff purchased and used the Defective Product for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

84. Had Defendants not engaged in the deceptive conduct described herein, Plaintiff, his physicians and hospitals and medical centers would not have purchased and/or paid for the Defective Device, and would not have incurred related medical costs and injuries.

85. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, moneys from Plaintiff, their physicians and

hospitals for the Defective Product that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

86. Unfair methods of competition or deceptive acts or practices that were proscribed by law, including the following:

a. Representing that goods or services have characteristics, ingredients, uses benefits or quantities that they do not have;

b. Advertising goods or services with the intent not to sell them as advertised; and,

c. Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

87. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at patients, physicians and consumers was to create demand for and sell the Defective Product. Each aspect of Defendants' conduct combined to artificially create sales of the Defective Product.

88. Defendants have a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, development, manufacture, promotion, and sale of the Defective Product.

89. Had Defendants not engaged in the deceptive conduct described above, Plaintiff would not have purchased and/or paid for the Defective Product, and would not have incurred related medical costs.

90. Defendants' deceptive, unconscionable, or fraudulent representations and material omissions to patients, physicians and consumers, including Plaintiff, constituted unfair and deceptive acts and trade practices in violation of the state consumer protection statutes listed.

91. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of state consumer protection statutes, as listed below.

92. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices or have made false representations in violation of: Wis. Stat. § 100.18, et seq.

93. Under the statutes listed above to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, Defendants are the suppliers, manufacturers, advertisers, and sellers, who are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

94. Defendants violated the statutes that were enacted in these states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, by knowingly and falsely representing that the Defective Product were fit to be used for the purpose for which they were intended, when in fact the Defective Product was defective and dangerous, and by other acts alleged herein. These representations were made in uniform promotional materials.

95. The actions and omissions of Defendants alleged herein are uncured or incurable deceptive acts under the statutes enacted in the states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising.

96. Defendants had actual knowledge of the defective and dangerous condition of the Products and failed to take any action to cure such defective and dangerous conditions.

97. Plaintiff and the medical community relied upon Defendants' misrepresentations and omissions in determining which femoral head to use.

98. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to patients, physicians and consumers, constituted unfair and deceptive acts and practices.

99. By reason of the unlawful acts engaged in by Defendants, and as a direct and proximate result thereof, Plaintiff has suffered ascertainable losses and damages.

100. As a direct and proximate result of Defendants' violations of the states' consumer protection laws, Plaintiff has sustained economic losses and other damages and is entitled to statutory and compensatory damages in an amount to be proven at trial.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief and as permitted by the applicable state laws.

COUNT X

NEGLIGENT MISREPRESENTATION

101. Plaintiff incorporates by reference all previous and subsequent paragraphs of this Complaint as if fully set forth here and further allege as follows:

102. Specific defects in the Defective Product as specified above in this Complaint rendered it defective and unreasonably dangerous.

103. At all relevant times, Defendants were engaged in the business of selling Defective Product for resale or use, and in fact did sell the Defective Product used by Plaintiff's implanting surgeons. In the course of marketing the Defective Product, Defendants made untrue representations of material facts and omitted material information to Plaintiff, Plaintiff's physicians, and the public at large. Defendants made these misrepresentations and omissions to guide physicians in their purchase and use of Defective Product.

104. Plaintiff and Plaintiff's physicians would not have purchased and implanted the Device or Defective Product in the hip implant surgery had they known of the true safety risks related to Defective Product.

105. Defendants were negligent in making the untrue misrepresentations and omitting material information because Defendants knew, or had reason to know, of the actual, unreasonable dangers and defects in their Defective Product.

106. Plaintiff and Plaintiff's physicians would reasonably be expected to use Defective Product. Defendants intended to induce Plaintiff and Plaintiff's physicians to rely on their misrepresentations and omissions to use this Defective

Product in hip implant operations in lieu of using safer, alternative hip stems and hip systems.

107. Plaintiff and Plaintiff's physicians were justified in relying, and did rely, on the misrepresentations and omissions about the safety risks related to Defective Product in deciding to implant this Defective Product.

108. As the direct, proximate and legal result of the Defendants' misrepresentations, Plaintiff has suffered severe physical pain, medical and hospital expenses, lost wages, pain and suffering, and pecuniary loss.

109. Plaintiff has been injured and suffers injuries to his body and mind, the exact nature of which are not completely known to date.

110. Plaintiff has sustained economic losses, including loss of earnings and diminution of the loss of earning capacity, the exact amount of which is presently unknown.

111. Plaintiff will be required to incur additional medical expenses in the future to care for herself as a result of the injury and damages she has suffered.

112. Plaintiff is therefore entitled to damages in an amount to be proven at trial, together with interest thereon and costs.

WHEREFORE, Plaintiff respectfully request that Plaintiff be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT XII

UNJUST ENRICHMENT

113. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs.

114. Defendants enjoy enormous revenues from sales of the Defective Product during the period the Defective Product was on the market in the U.S.

115. It is unjust to allow Defendant to earn revenues and retain the benefits and profits from this Defective Product while Plaintiff suffered injuries and damages as specified herein.

WHEREFORE, Plaintiff respectfully requests that Plaintiff be granted relief against Defendants, as contained in the Prayer for Relief.

COUNT XV

PUNITIVE DAMAGES

116. Plaintiff incorporates by reference the paragraphs above, as though fully set forth herein.

117. At all times material hereto, Defendants knew or should have known that the Defective Product was inherently more dangerous than the alternative hip replacement stems on the market with respect to the risk of fretting and corrosion, shorter life span, and an increased need for additional surgeries.

118. At all times material hereto, Defendants attempted to misrepresent, and did misrepresent, facts concerning the safety of, the Defective Product.

119. Defendants' misrepresentations included knowingly withholding material information from the medical community and the public, including the Plaintiff, concerning the safety and efficacy of the subject Defective Product.

120. At all times material hereto, the Defendants knew and recklessly disregarded the fact that the Defective Product was subject to causing fretting and corrosion in persons implanted with the Defective Product with far greater frequency than alternative hip replacement stems.

121. Notwithstanding the foregoing, Defendants continued to aggressively market the Defective Product without disclosing the aforesaid side effects when there were safer alternative methods available.

122. The Defendants knew of the subject products' defective and unreasonably dangerous nature, as set forth herein, but continued to design, develop, manufacture, market, distribute and sell the Defective Product so as to maximize sales and profits at the expense of the health and safety of the public, including Plaintiff, in conscious and/or negligent disregard of the foreseeable harm.

123. The Defendants' intentional and/or reckless, fraudulent and malicious failure to disclose information deprived the Plaintiff and his surgeon of necessary information to enable them to weigh the true risks of using the Defective Product against its benefits.

124. Defendants knew or ought to have known that this conduct would result in injury or damage, but continued to mislead both the medical community and the public at large, including Plaintiff, by making false representations about the safety and efficacy of the Defective Product.

125. As a direct and proximate result of the Defendants' conscious and deliberate disregard for the rights and safety of consumers, including Plaintiff, the Plaintiff suffered severe and permanent physical injuries as set forth above.

126. The aforesaid conduct of Defendants was committed with knowing, conscious, and deliberate disregard for the rights and safety of consumers, including Plaintiff, thereby entitling the Plaintiff to punitive damages in an amount appropriate to punish the Defendants and deter them from similar conduct in the future.

127. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, or that the entire want of care raises the presumption of conscious indifference to the consequences.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, individually, jointly and severally, and requests:

1. Awarding compensatory damages;

2. Awarding pre-judgment and post-judgment interest to Plaintiff;

3. Awarding all statutory damages and relief;

4. Awarding the costs and the expenses of this litigation to Plaintiff;

5. Awarding reasonable attorneys' fees and costs to Plaintiff as provided by law;

6. Awarding punitive damages, where appropriate, to the Plaintiff;

7. Granting Plaintiff equitable relief in the nature of disgorgement; Restitution to remedy Zimmer's unjust enrichment; and,

8. Granting all such other relief as the Court deems necessary, just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: August 16, 2018

Respectfully submitted,

By: /s/ Genevieve M. Zimmerman

Genevieve M. Zimmerman (MN# 330292)
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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

Susan Porter

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Genevieve Zimmerman
Meshbesher & Spence Ltd.,
1616 Park Avenue South, Minneapolis, MN 55404 (612) 339-9121

DEFENDANTS

Zimmer Biomet, Inc. f/k/a Zimmer, Inc.; Zimmer Biomet US, Inc.; and Zimmer Biomet Holdings, Inc. f/k/a Zimmer Holdings, Inc.

County of Residence of First Listed Defendant Kosciusko
(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
- ❒ 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

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

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

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

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

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

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

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

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

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 USC sec. 1332

Brief description of cause:
Product Liability - Metal Hip Implant

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 08/16/2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Genevieve Zimmerman

FOR OFFICE USE ONLY

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

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

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

Susan Porter *Plaintiff(s)*	)	
v.	)	Civil Action No. 3:18-cv-00682
Zimmer Biomet, Inc. f/k/a Zimmer, Inc.; Zimmer Biomet US, Inc.; and Zimmer Biomet Holdings, Inc. f/k/a Zimmer Holdings, Inc. *Defendant(s)*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Zimmer Biomet, Inc. f/k/a Zimmer, Inc.
345 East Main Street
Warsaw, IN 46580

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: Genevieve M. Zimmerman
Meshbesher & Spence, Ltd.
1616 Park Avenue
Minneapolis, MN 55404
(612) 339-9121

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. 3:18-cv-00682

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:

Print Save As... Reset

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

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

Susan Porter *Plaintiff(s)*	)	
v.	)	Civil Action No. 3:18-cv-00682
Zimmer Biomet, Inc. f/k/a Zimmer, Inc.; Zimmer Biomet US, Inc.; and Zimmer Biomet Holdings, Inc. f/k/a Zimmer Holdings, Inc. *Defendant(s)*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Zimmer Biomet US, Inc.
345 East Main Street
Warsaw, IN 46580

A lawsuit has been filed against you.

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To: *(Defendant's name and address)* Zimmer Biomet Holdings, Inc. f/k/a Zimmer Holdings, Inc
345 East Main Street
Warsaw, IN 46580

A lawsuit has been filed against you.

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