IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JUDY STILES, and husband MIKE STILES	§	
	§	
Plaintiffs	§	
	§	
VS.	§	**CIVIL ACTION NO. _____**
	§	
DEPUY ORTHOPAEDICS, INC.; DEPUY SYNTHES, INC., DEPUY SYNTHES PRODUCTS, INC.; SYNTHES USA PRODUCTS, LLC; MEDICAL DEVICE BUSINESS SERVICES, INC., f/k/a DEPUY ORTHOPAEDICS, INC.; JOHNSON & JOHNSON; and JOHNSON & JOHNSON SERVICES, INC.	§	**JURY TRIAL DEMANDED**
	§	
Defendants	§	

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW, JUDY STILES and MIKE STILES, Plaintiffs, complaining of DEPUY ORTHOPAEDICS, INC.; DEPUY SYNTHES, INC.; DEPUY SYNTHES PRODUCTS, INC.; SYNTHES USA PRODUCTS, LLC; MEDICAL DEVICE BUSINESS SERVICES, INC. f/k/a DEPUY ORTHOPAEDICS, INC.; JOHNSON & JOHNSON; and JOHNSON & JOHNSON SERVICES, INC., Defendants, and for causes of action allege as follows:

I.

PARTIES

1. Plaintiff JUDY STILES is, and at all times relevant to this cause of action was, a citizen and resident of Longview, Gregg County, Texas.

2. Plaintiff MIKE STILES is, and at all times relevant to this cause of action was, a citizen and resident of Longview, Gregg County, Texas.

3. DEPUY ORTHOPAEDICS, INC. (hereinafter also referred to as "DePuy Orthopaedics") is, and at all times material hereto was, a corporation organized under the laws of the State of Indiana with its principal place of business in Indiana. At all times material hereto, DePuy Orthopaedics, Inc. did business in the State of Texas and derived substantial revenue from goods sold and used in the State of Texas. Defendant DePuy may be served with process by serving its registered agent, C T Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

4. DEPUY SYNTHES, INC. (hereinafter also referred to as "DePuy Synthes") 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. Defendant DePuy Synthes does not maintain a registered place of business or designated agent for service in Texas. However, at all material times hereto, Defendant DePuy Synthes engaged in business in the State of Texas and derives substantial revenue from goods sold and used in the State of Texas, who may be served with process by serving its registered agent, CT Corporation System at 150 W. Market St., Ste. 800, Indianapolis, Indiana 46204-2814.

5. DEPUY SYNTHES PRODUCTS, INC. (hereinafter also referred to as "DePuy Synthes Products") is, and at all times material hereto was, a corporation organized under the laws of the State of Indiana with its principal place of business in Massachusetts. Defendant DePuy Synthes Products does not maintain a registered place of business or designated agent for service in Texas. However, at all material times hereto, Defendant DePuy Synthes Products engaged in business in the State of Texas and derives substantial revenue from goods sold and used in the State of Texas, who may be served with process by serving its registered agent, CT Corporation System at 150 W. Market St., Ste. 800, Indianapolis, Indiana 46204-2814.

6. SYNTHES USA PRODUCTS, LLC (hereinafter also referred to as "Synthes USA") is,

and at all times material hereto was, a company organized under the laws of the State of Delaware with its principal place of business in Massachusetts. Defendant Synthes USA does not maintain a registered place of business or designated agent for service in Texas. However, at all material times hereto, Defendant Synthes USA engaged in business in the State of Texas and derives substantial revenue from goods sold and used in the State of Texas, who may be served with process by serving its registered agent, C T Corporation System at 155 Federal St., Suite 700, Boston, MA. 02110-1727.

7. MEDICAL DEVICE BUSINESS SERVICES, INC. f/k/a DEPUY ORTHOPAEDICS, INC. (hereinafter also referred to as "DePuy Ortho Medical") is, and at all times material hereto was, a corporation organized under the laws of the State of Indiana with its principal place of business in Indiana, registered to do business in Texas, who may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201-3140.

8. JOHNSON & JOHNSON (hereinafter also referred to as "Johnson & Johnson") is, and at all material times hereto was, a corporation organized under the laws of the state of New Jersey with its principle place of business in New Jersey. Defendant Johnson & Johnson does not maintain a registered place of business or designated agent for service in Texas. However, at all material times hereto, Defendant Johnson and Johnson engaged in business in the State of Texas and derives substantial revenue from goods sold and used in the State of Texas, who may be served with process by serving its Chief Executive Officer, Alex Gorsky, at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-0002.

9. JOHNSON & JOHNSON SERVICES, INC. (hereinafter also referred to as "Johnson & Johnson Services") is, and at all times material hereto was, a corporation organized under the laws

of the State of New Jersey with its principal place of business in New Jersey, registered to do business in Texas, who may be served with process by serving its registered agent, C T Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201- 3140.

10. Defendants DePuy, DePuy Synthes, DePuy Synthes Products, Synthes USA, DePuy Ortho Medical, Johnson & Johnson, and Johnson & Johnson Services shall hereinafter, jointly and severally, be referred to as "Defendants," "DePuy," and/or "Defendant DePuy."

II.

JURISDICTION AND VENUE

11. Plaintiffs are residents of the State of Texas, and more particularly the Eastern District of Texas Marshall Division. Defendants are foreign corporations with their principal places of business in some state other than Texas, thereby creating a diversity of citizenship between Plaintiffs and all Defendants. The amount in controversy, exclusive of interest and costs, exceeds the sum of $75,000.00. This Court has jurisdiction of this action under 28 U.S.C., § 1332, and venue is proper herein under 28 U.S.C., § 1391 because the cause of action accrued within the Eastern District of Texas, and furthermore Defendants have a significant presence in the Eastern District of Texas and more particularly the Marshall Division inasmuch as Defendants sell a multitude of products, including the DePuy LPS™ (Limb Preservation System) products in the Marshall Division of the Eastern District of Texas.

III.

FACTS

12. In November of 2015, Judy Stiles ("Judy") underwent a procedure for a right total hip replacement, and the hip implant products used to replace her hip were the DePuy LPS™ (Limb Preservation System) proximal femoral body replacement components, segmental components, and

the stem extension components (the "LPS Components"). On the afternoon on November 6, 2017, Judy Stiles ("Judy") tried to stand up and felt a "pop" in her right leg and fell to the ground. Her husband, Mike Stiles ("Mike"), called 911 and the Longview Fire Department transported Judy to Christus Good Shepherd Medical Center in Longview, Texas. In the emergency room at Christus-GSMC, Judy told the doctors that her leg felt "not connected." On examination, Judy's right leg looked deformed and was swollen. The x-rays taken at Christus-GSMC showed that the stem extension component part of the LPS Components had fractured at the "level of the proximal femoral shaft" that resulted in "moderate angulation and foreshortening."

13. The orthopedic surgeons at Christus-GSMC called Dr. Jorge Casas, Judy's orthopedic surgeon in Dallas who performed the original hip replacement surgery, and Dr. Casas arranged for Judy to be admitted to Medical City Dallas Hospital. At Medical City, Judy was diagnosed with a periprosthetic fracture of the femur component part of the LPS Components, and Dr. Casas performed a revision hip replacement surgery to remove the broken femoral component.

14. As a result of the injuries caused by the broken DePuy LPS™ femoral component, Judy suffered, and continues to suffer, damages including but not limited to: disfigurement, pain, suffering, mental anguish, lost earning capacity and medical expenses.

15. At all relevant times hereto, Defendant DePuy was in the business of designing, manufacturing, marketing and selling hip prostheses, including the DePuy LPS™ femoral component implanted in Judy's right femur during her hip replacement surgery in November of 2015, which broke on November 6, 2017.

16. Defendant DePuy sold the subject DePuy LPS™ femoral component to Judy, or to her physician and/or healthcare provider, on her behalf.

17. The DePuy LPS™ femoral component reached Judy without substantial change from the

time it left Defendant DePuy's possession and control.

18. The DePuy LPS™ femoral component was cleared by the United States Food & Drug Administration ("FDA") under the substantially equivalent §510(k) method of obtaining approval to market a medical device.

19. DePuy, by their actions or inactions, proximately caused Plaintiffs' injuries.

IV.

CAUSES OF ACTION

A. STRICT LIABILITY

20. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

21. Defendants are the designers, manufacturers, marketers, advertiser, distributors, sellers and/or suppliers of orthopedic hip devices, including the DePuy LPS™ femoral component implanted in Judy's right hip in November of 2015.

22. Defendants are engaged in the business of manufacturing, designing, marketing, advertising, distributing and supplying orthopedic devices, including the DePuy LPS™ femoral component, and placed the device into the stream of commerce containing an unreasonably dangerous condition such that the foreseeable risks exceeded the benefits associated with the design and/or manufacture of the device.

1. Manufacturing Defect

23. The femoral component of the hip implant may have contained a manufacturing defect.

24. The components of the hip implant may have deviated, in its construction or quality, from the specifications or planned output.

25. As more particularly set forth below, Plaintiffs invoke the doctrine of res ipsa loquitur as to whether the components of the hip implant contained a manufacturing defect.

2. Design Defects

26. The components of the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, contained one or more of the following design defects:

a. The DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, is unreasonably dangerous for its intended purpose because the femoral stem component has a high propensity to fracture following implantation;

b. The DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, is defective in that the femoral stem component has a high propensity to fracture following implantation;

c. The DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, was designed in such a manner that allows the femoral component to fracture;

d. The DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, was marketed in such a way as to mislead consumers regarding its safety and efficacy; and

e. The DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, was inadequately tested.

27. At the time Defendants designed, manufactured, distributed, promoted and sold the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, a safer, more practical, alternative design for the components of the hip implant existed that would have prevented or significantly reduced the risk of Plaintiffs' injuries and damages without substantially impairing the product's utility, and that was economically and technologically feasible at the time

the components of the hip implant left Defendants' control by the application of existing or reasonably achievable scientific knowledge.

3. Marketing Defects

28. The components of the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, contained one or more marketing defects:

a. There was an inherent risk in the intended or reasonably foreseeable use of the component due its propensity break and/or fracture;

b. There was an inherent risk in the intended and/or reasonably foreseeable use of component due to its high propensity for to break and/or fracture;

c. There were inadequate warnings in that, among other things:

1. The warnings were not placed in a location to reasonably be expected to catch the attention of the user (surgeon);

2. The warnings failed to inform the user (surgeon) of the nature of the dangers, including high propensity of breaking and/or fracturing during ordinary and foreseeable use;

d. Defendants knew or reasonably foresaw (or should have known or reasonably foreseen) the above risks; and

e. Defendants failed to warn the surgeon (or to adequately warn the surgeon of the above risk), failed to instruct the surgeon (or failed to adequately instruct the surgeon) how to safely use the components of the hip implant, or both.

29. Defendants failed to timely and reasonably warn of material facts regarding the safety and efficacy of the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system. Had they done so, proper warnings would have been heeded and no health care

professional, including Judy's physician, would have used the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system, and no consumer, including Judy, would have purchased and/or used the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system.

30. Among other things, Defendants should have truthfully represented that the components of the hip implant had a higher than normal risk of breaking and/or fracturing, and that the components, when put to ordinary and foreseeable use, would break and/or fracture.

4. Unreasonable Dangerousness

31. The manufacturing and marketing defects, or any of them, rendered the components of the hip implant unreasonably dangerous by making them dangerous to an extent beyond that which would be contemplated by the ordinary consumer with the knowledge common to the community as to its characteristics.

32. The design defect or defects rendered the components of the hip implant unreasonably dangerous as designed considering their utility and the risks involved in their use.

5. Producing Cause

33. The above defects, or any of them, were the proximate and/or producing cause of Plaintiffs' injuries and damages, as more particularly set forth below.

B. NEGLIGENCE

34. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

35. At all relevant times, Defendants owed Plaintiffs a duty to exercise reasonable care in the design, formulation, testing, manufacture, marketing, sale, and distribution of the the DePuy LPS™ hip implant system, and primarily the femoral component of the hip implant system,

including a duty to ensure that the DePuy LPS™ hip implant system did not pose a significant risk of bodily injury to Judy.

36. Defendants breached the duties they owed to Judy, failed to exercise ordinary care, and were negligent in the following particulars, among others:

a. Designing, manufacturing and marketing the DePuy LPS™ hip implant system as defective when the femoral stem component has a high propensity of breaking and/or fracturing;

b. Designing, manufacturing and marketing the DePuy LPS™ hip implant system that is defective when the femoral component has high propensity to break and/or fracture;

c. Failing to adequately warn consumers in general, and Judy or her physicians specifically,of the risk that the femoral component of the DePuy LPS™ hip implant system could fracture and/or break;

d. Failing to instruct consumers in general, and Judy or her physicians specifically, of how to safely use the DePuy LPS™ hip implant system;

e. Placing the DePuy LPS™ hip implant system into the stream of commerce when it had not been adequately tested;

f. Failing to properly test the DePuy LPS™ hip implant system before marketing it as safe for implantation in the human body; and

g. As more particularly set forth below, Plaintiffs invoke the doctrine of res ipsa loquitur.

37. Each and every one of the foregoing acts or omissions, taken singularly or in any combination, proximately caused Plaintiffs' injuries and damages, more particularly set forth below.

C. BREACH OF EXPRESS WARRANTY

38. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

39. Defendants advertised, labeled, marketed and promoted the DePuy LPS™ hip implant system, representing the quality to health care professionals, the FDA, Judy, and the public in such a way as to induce its purchase or use, thereby making an express warranty that the DePuy LPS™ hip implant system would conform to the representations. More specifically, Defendants represented one or more of the following affirmations of fact or promise:

a. That the DePuy LPS™ hip implant system was safe and effective for use by individuals such as Judy, and/or that it was safe and effective to replace Judy's hip;

b. that the DePuy LPS™ hip implant system would provide durability and/or long-term fixation; and

c. That the DePuy LPS™ hip implant system would not break or fracture after implantation.

40. Defendants, with the DePuy LPS™ hip implant system, breached the above express warranties in the following particulars, among others:

a. the DePuy LPS™ hip implant system was not safe or effective for use by individuals such as Judy, nor was it safe or effective to replace Judy's hip;

b. the DePuy LPS™ hip implant system did not provide durability or long-term fixation; and

c. the DePuy LPS™ hip implant system broke into two pieces after implantation.

41. The representations, as set forth above, contained or constituted affirmations of fact or promises made by the seller to the buyer which related to the goods and became part of the basis

of the bargain creating an express warranty that the goods shall conform to the affirmations of fact or promises.

42. The representations made by DePuy, with regards to the DePuy LPS™ hip implant system, were of material fact concerning the quality and/or character of the product.

43. The DePuy LPS™ hip implant system did not conform to the representations made by Defendants in that the DePuy LPS™ hip implant system was not safe or effective for use by individuals such as Judy, nor was it safe or effective to treat in individuals, such as Judy.

44. At all relevant times, Judy used the DePuy LPS™ hip implant system for the purpose and in the manner intended by Defendants.

45. The foregoing breaches of warranties proximately caused Plaintiffs' injuries and damages as more particularly set forth below.

D. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

46. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

47. Defendant DePuy is a merchant with respect to hip implant prostheses.

48. The DePuy LPS™ hip implant system was not fit for the ordinary purposes for which the prostheses are used because the femoral stem component broke and/or fractured under normal use of Judy's right leg.

49. Judy and Judy's physicians, by the use of reasonable care, could not have discovered the breached warranty and realized its danger.

50. Judy notified Defendants of the above breach of the implied warranty of merchantability within a reasonable time after Judy discovered, or should have discovered such breach.

51. The foregoing breach of warranty proximately caused Plaintiffs' injuries and damages, as

more particularly set forth below.

E. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

52. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

53. At all relevant times, Defendants, at the time of sale of the hip replacement prosthesis, had reason to know the particular purpose for which the hip replacement prosthesis was required.

54. Defendants also knew at such time that Judy was relying on Defendants' skill, judgment or knowledge to select or furnish a suitable hip replacement prosthesis.

55. The DePuy LPS™ hip implant system was not reasonably fit for the particular purpose for which Judy required it.

56. Judy used the DePuy LPS™ hip implant system for the purpose and in the manner intended by Defendants.

57. Judy and Judy's physicians, by the use of reasonable care could not have discovered the breached warranty and realized its danger.

58. Judy notified Defendants of the above breach of the implied warranty of fitness for a particular purpose within a reasonable time after Judy discovered, or should have discovered, such breach.

59. The foregoing breach of warranty proximately caused Plaintiffs' injuries and damages, as more particularly set forth below.

F. RES IPSA LOQUITUR

60. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

61. The character of the incident that made the basis of this lawsuit was such that it would not

ordinarily occur without negligence.

62. The components of the hip replacement implant were under the management and control of Defendants. Defendants were in control of the components of the hip replacement implant at the time that the negligence (inferable from the incident made the basis of this lawsuit) occurred, so that the reasonable probabilities point to Defendants and support a reasonable inference that Defendants were the negligent parties.

63. Defendants have superior knowledge or means of information to determine the cause of the incident made the basis of this lawsuit.

64. By reason of the above and foregoing circumstances, among others, the jury is permitted to infer Defendants' negligence.

V.

DAMAGES

65. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein and further allege as follows:

66. Plaintiff Judy Stiles suffered, sustained and incurred, and in reasonable medical probability, will continue to suffer, sustain and incur, the following injuries and damages as a producing or proximate result (or both) of Defendants' conduct, the defective hip prosthesis, or both, among others:

a. Physical pain, past and future;

b. Mental anguish, past and future;

c. Physical impairment, past and future;

d. Physical disfigurement, past and future;

e. Reasonable and necessary medical bills, past and future; and

f. Costs of court.

67. Plaintiff Mike Stiles suffered, sustained, and incurred, and in reasonable medical probability, will continue to suffer, sustain, and incur, the following injuries and damages as producing or proximate results (or both) of Defendants' conduct, the defective hip prosthesis, or both, among others:

a. Loss of consortium, past and future;

b. Loss of household services, past and future; and

c. Costs of court.

VI.

DEMAND FOR JURY TRIAL

68. Plaintiffs request a trial by jury and have tendered the required fee.

VII.

PRAYER

69. Plaintiffs Judy and Mike Stiles pray that Defendants be cited to appear herein, and that upon final trial, Plaintiffs have judgment against Defendants, jointly and severally, for the following, among other things:

a. Compensatory damages in excess of the jurisdictional limits of this Court;

b. Pre-judgment interest according to Texas law;

c. Post-judgment interest according to Texas law;

d. Costs of Court; and

e. Such other and further relief to which Plaintiffs may show themselves entitled to receive.

Dated: November 5, 2019

Respectfully submitted,

By: */s/ Kenneth C. Goolsby*
Kenneth C. Goolsby
State Bar No. 24003668

BOON CALK ECHOLS
COLEMAN & GOOLSBY, PLLC
1800 N.W. Loop 281, Suite 303
Longview, TX 75604
Telephone: (903) 759-2200
Facsimile: (903) 759-3306
Email: casey.goolsby@boonlaw.com

ATTORNEYS FOR PLAINTIFFS
JUDY STILES and MIKE STILES