UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert Cook,

Plaintiff,

v.

COMPLAINT

Becton, Dickinson and Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Does 1 through 10,

Defendants.

COMES NOW, Plaintiff, Robert Cook, by and through the undersigned counsel, and for his Complaint against Becton, Dickinson and Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Does 1 through 10 (collectively, the "Defendants") states:

1. This is an action for damages relating to Defendants' design, development, testing, assembling, manufacturing, packaging, promoting, marketing, distribution, supplying, and/or selling the defective device sold under the trade name of Bard PowerPort MRI Implantable Port, Model No. 1808000 (hereinafter "PowerPort").

2. Plaintiff Robert Cook is an adult citizen and domiciliary of St. Paul, Minnesota, and claims damages as set forth below.

3. Defendant Becton, Dickinson and Company ("BD") is a New Jersey corporation with a principal place of business at 1 Becton Drive in Franklin Lakes, New Jersey. BD conducts business throughout the United States, including the State of Minnesota. BD is one of the largest global medical technology companies in the world with diverse business units offering products in various healthcare subfields. BD is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and introducing

into interstate commerce, either directly or indirectly through third parties or related entities, its medical devices, including the PowerPort. BD is the parent company of Defendants C.R. Bard, Inc. and Bard Access Systems, Inc.

4. Defendant C.R. Bard, Inc. ("Bard") is a New Jersey corporation with its principal place of business located at 1 Becton Drive in Franklin Lakes, New Jersey. Bard conducts business throughout the United States, including the State of Minnesota, and is a wholly owned subsidiary of BD. Bard, as an agent of BD, is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and introducing into interstate commerce, either directly or indirectly through third parties or related entities, its medical devices, including the PowerPort. Bard, along with its subsidiaries and business units, was acquired by BD in 2017 in a transaction which integrated and subsumed Bard's business units into BD's business units. In said transaction, Bard's product offerings, including the PowerPort, were taken over by and integrated into BD's Interventional segment, one of three of BD's principal business segments. Following the acquisition, Bard's Board of Directors dissolved, with some former Bard directors joining BD's Board of Directors.

5. Defendant Bard Access Systems, Inc. ("BAS") is a Utah corporation with its principal place of business located in Salt Lake City, Utah. BAS conducts business throughout the United States, including the State of Minnesota, and is a wholly owned subsidiary of BD. BAS is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing and introducing into interstate commerce, either directly or indirectly through third parties or related entities, its medical devices, including the PowerPort.

6. BD is the nominal corporate parent of Bard and BAS, but the latter two are alter egos of BD in that BD exercises complete domination and control over Bard and BAS, having

completely integrated the latter's assets, liabilities, and operations into its own such that Bard and BAS have ceased to function as separate corporate entities.

7. BD's control over Bard and BAS has been purposefully used to perpetrate the violation of various legal duties in contravention of Plaintiff's legal rights.

8. The breaches by BD of various legal duties as described herein are the proximate cause of the injuries described herein.

9. In addition to BD's liability for Plaintiff's damages as a result of its abuse of the corporate form, BD is directly liable as a result of its own wrongful conduct as set forth herein.

10. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over the parties pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 by virtue of the facts that (a) a substantial part of the events or omissions giving rise to the claims occurred in this District and (b) Defendants' products are sold to and consumed by individuals in the State of Minnesota, thereby subjecting Defendants to personal jurisdiction in this action and making them all "residents" of this judicial District.

13. Defendants have and continue to conduct substantial business in the State of Minnesota and in this District, distribute vascular access products in this District, receive substantial compensation and profits from sales of vascular access products in this district, and

made material omissions and misrepresentations and breaches of warranties in this District, so as to subject them to *in personam* jurisdiction in this District.

14. Consistent with the Due Process Clause of the Fifth and Fourteenth Amendments, this Court has *in personam* jurisdiction over Defendants, because Defendants are present in the State of Minnesota, such that requiring an appearance does not offend traditional notices of fair and substantial justice.

PRODUCT BACKGROUND

15. The Bard PowerPort MRI Implantable Port, Model No. 1808000 ("PowerPort") is one of several varieties of port/catheter systems that has been designed, manufactured, marketed, and sold by Defendants.

16. According to Defendants, the PowerPort is a totally implantable vascular access device designed to provide repeated access to the vascular system for the delivery of medication, intravenous fluids, parenteral nutrition solutions, and blood products.

17. The intended purpose of the PowerPort is to make it easier to deliver medications directly into the patient's bloodstream. The device is surgically placed completely under the skin and left implanted.

18. The PowerPort is a system consisting of two primary components: an injection port and a catheter.

19. The injection port has a raised center, or "septum," where the needle is inserted for delivery of the medication. The medication is carried from the port into the bloodstream through a small, flexible tube, called a catheter, that is inserted into a blood vessel.

20. The PowerPort is "indicated for patient therapies requiring repeated access to the vascular system. The port system can be used for infusion of medications, I.V. fluids, parenteral nutrition solutions, blood products, and for the withdrawal of blood samples."

21. According to Defendants' marketing materials, the catheter "has less propensity for surface biodegradation, making it more resistant to environmental stress cracking."

22. The polyurethane comprising the catheter in the PowerPort is a formulation called Chronoflex AL, which Defendants obtain from a biomaterials supplier called AdvanSource Biomaterials Corporation (AdvanSource), which is a division of Mitsubishi Chemical America, Inc.

23. Chronoflex AL is one of numerous biomaterials manufactured by AdvanSource, many of which have mechanical properties superior to Chronoflex AL.

24. The Chronoflex catheter included in Defendants' PowerPort is comprised of a polymeric mixture of polyurethane and barium sulfate, a compound which is visible in certain radiologic studies.

25. Barium sulfate is known to reduce the mechanical integrity of polyurethane in vivo as the particles of barium sulfate dissociate from the surface of the catheter over time, altering the polymeric structure and degrading the mechanical properties of the catheter.

26. The mechanical integrity of barium sulfate-impregnated polyurethane is affected by the concentration of barium sulfate as well as the homogeneity of the modified polymer.

27. Defendants' manufacturing process in constructing the Chronoflex Catheter implanted in Plaintiff involved too high a concentration of barium sulfate particles, leading to improperly high viscosity of the raw polyurethane before polymerization and causing improper mixing of barium sulfate particles within the polymer matrix.

28. This improper mixing led to pockets of barium sulfate and entrapped air being distributed through the catheter body and on the inner and outer surfaces of the catheter.

29. This defect in the manufacturing process led to a heterogeneous modified polymer, which led to an irregular catheter surface replete with fissures, pits, and cracks.

30. The roughened catheter surface leads to the collection and proliferation of microbes and development of biofilm, thereby drastically increasing the risk of infection and sepsis.

31. Although the surface degradation and resulting risk of infection can be reduced or avoided with design modifications to encapsulate the radiopaque compound or by using a different polymer formulation, Defendants elected not to incorporate those design elements into the PowerPort.

32. At all times relevant to this action, Defendants misrepresented the safety of the PowerPort system and negligently designed, manufactured, prepared, compounded, assembled, processed, labeled, marketed, distributed, and sold the PowerPort system as a safe and effective device to be surgically implanted to provide repeated access to the vascular system for the delivery of medications, intravenous fluids, parenteral nutrition solutions, and blood products.

33. At all times relevant to this action, Defendants knew and had reason to know that the PowerPort was not safe for the patients for whom they were prescribed and implanted, because once implanted the device was prone to surface degradation and resulting thromboembolism, infection, mechanical failure, and a variety of other complications.

34. At all times relevant to this action, Defendants knew and had reason to know that patients implanted with PowerPorts had an increased risk of suffering life threatening injuries, including but not limited to: death; hemorrhage; thromboembolism; infection; cardiac arrhythmia;

severe and persistent pain; and perforations of tissue, vessels, and organs; or the need for additional surgeries to remove the PowerPort.

35. Soon after the PowerPort was introduced to market, which was years before Plaintiff was implanted with his device, Defendants began receiving large numbers of adverse event reports ("AERs") from healthcare providers reporting that the PowerPort was precipitating infection post-implantation. Defendants also received large numbers of AERs reporting that PowerPort was found to have perforated internal vasculature. These failures were often associated with reports of severe patient injuries such as:

a. hemorrhage;

b. cardiac/pericardial tamponade;

c. cardiac arrhythmia and other symptoms similar to myocardial infarction;

d. severe and persistent pain;

e. perforations of tissue, vessels, and organs; and

f. upon information and belief, even death.

36. Defendants were aware or should have been aware that the PowerPort had a substantially higher failure rate than other similar products on the market, yet Defendants failed to warn consumers of this fact.

37. Defendants also intentionally concealed the severity of complications caused by the PowerPort and the likelihood of these events occurring.

38. Rather than alter the design of the PowerPort to make it safer or adequately warn physicians of the dangers associated with the PowerPort, Defendants continued to actively and aggressively market the PowerPort as safe, despite their knowledge of numerous reports of infections and other serious injuries.

39. The conduct of Defendants, as alleged in this Complaint, constitutes willful, wanton, gross, and outrageous corporate conduct that demonstrates a conscious disregard for the safety of Plaintiff. Defendants had actual knowledge of the dangers presented by the PowerPort System, yet consciously failed to act reasonably to:

a. Adequately inform or warn Plaintiff, his prescribing physicians, or the public at large of these dangers;

b. Establish and maintain an adequate quality and post-market surveillance system; or

c. Recall the PowerPort System from the market.

40. Plaintiff, in the exercise of due diligence, could not have reasonably discovered the cause of his injuries, including but not limited to the defective design and/or manufacturing the PowerPort System, until a date within the applicable statute of limitations.

41. Plaintiff's damages resulting from the wrongful conduct of the Defendants have been ongoing and not capable of ascertainment until a time within the applicable statute of limitations.

42. Defendants have absconded, concealed themselves and material information, and otherwise acted improperly with the intent to prevent the commencement of this and similar actions. As such the statue of limitations is tolled, and the instant petition is timely brought.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF

43. On or about August 24, 2022, Plaintiff was implanted with a single lumen Bard Power Port for administration of chemotherapy in treatment of rectal cancer. This procedure took place at the Mayo Clinic in Rochester, Minnesota, and was performed by Richard G. Frimpong, M.D.

44. On or about September 3, 2022, Plaintiff presented to United Hospital in St. Paul, Minnesota. Plaintiff underwent anesthesia and the port removal procedure. It was determined the PowerPort was infected. A PICC line was inserted to administer IV antibiotics.

45. Due to the PowerPort, Plaintiff suffered damages and continues to suffer damages including, but not limited to, undergoing an unnecessary major surgery, increased risk of future severe and permanent injuries, severe emotional distress, ongoing fear and anxiety from future injuries, including but not limited to, cardiac tamponade.

46. The Defendants concealed—and continue to conceal—their knowledge of the PowerPort's unreasonably dangerous risks from Plaintiff and his physicians.

47. Numerous reports of PowerPort catheter-related infections in the absence of medical provider error were recorded and reported to Defendants prior to the implantation of the PowerPort in Plaintiff.

48. However, Defendants continued to actively and aggressively market the PowerPort as safe, despite knowledge of numerous reports of such injuries. Defendants utilized marketing communications, including the Instruction for Use, and direct communications from sales representatives to Plaintiff's healthcare providers to intentionally mislead his healthcare providers into believing these failures were caused by factors other than catheter design and composition.

49. Defendants did not adequately warn Plaintiff or Plaintiff's physicians of the true quantitative or qualitative risk of infections associated with the PowerPort.

50. Rather than alter the design of their product to make it safer or warn physicians of the dangers associated with the PowerPort, the Defendants chose to continue their efforts to promote their defective product.

51. Plaintiff's physicians relied upon the representations, including the instructions for use distributed with the product implanted in Plaintiff, and advertisements to Plaintiff's detriment.

52. The Defendants knowingly concealed the dangerous propensity of this device to precipitate infections. Defendants further concealed their knowledge that these failures were caused by the catheter design, and that the failures were known to cause serious injuries.

53. As a result of the failure of the Defendants' PowerPort and the Defendants' wrongful conduct in designing, manufacturing, and marketing this defective product, Plaintiff and Plaintiff's physician were unaware, and could not have reasonably known or have learned through reasonable diligence, that Plaintiff had been exposed to the risks identified in this Complaint, and that those risks were the direct and proximate result of the Defendants' acts, omissions, and misrepresentations.

54. The Defendants failed to conduct adequate and sufficient post-marketing surveillance after they began marketing, advertising, distributing, and selling the PowerPort.

55. As a result of the Defendants' actions and inactions, Plaintiff was injured due to the use of the PowerPort, which has caused and will continue to cause Plaintiff's various physical, mental, and emotional injuries and damages. Accordingly, Plaintiff seeks compensatory damages.

COUNT I
NEGLIGENCE
(ALL DEFENDANTS)

56. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

57. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

58. The Defendants owed Plaintiff a duty to exercise reasonable care when designing, manufacturing, marketing, advertising, distributing, selling, and conducting post-market surveillance of the PowerPort.

59. The Defendants failed to exercise due care under the circumstances and therefore breached this duty by:

a. Failing to properly and thoroughly test the PowerPort before releasing the device to market, and/or failing to implement feasible safety improvements;

b. Failing to properly and thoroughly analyze the data resulting from any pre-market testing of the PowerPort;

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

d. Designing, manufacturing, marketing, advertising, distributing, and selling the PowerPort to consumers, including Plaintiff, without an adequate warning of the significant and dangerous risks of the PowerPort and without proper instructions to avoid the harm which could foreseeably occur as a result of using the device;

e. Failing to exercise due care when advertising and promoting the PowerPort; and

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

60. As a direct and proximate result of the Defendants' actions, omissions and misrepresentations, Plaintiff has suffered, and will continue to suffer, severe physical pain and injuries which are permanent and lasting in nature, emotional distress, loss of the capacity for the enjoyment of life, medical expenses, and economic loss as alleged herein. These damages have occurred in the past and will continue into the future.

COUNT II
STRICT PRODUCTS LIABILITY – FAILURE TO WARN
(ALL DEFENDANTS)

61. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

62. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

63. Defendants designed, set specifications, manufactured, prepared, compounded, assembled, processed, marketed, labeled, distributed, and sold the PowerPort, including the one implanted into Plaintiff, into the stream of commerce and in the course of same, directly advertised and marketed the device to consumers or persons responsible for consumers, and therefore had a duty to warn of the risk of harm associated with the use of the device and to provide adequate instructions on the safe and proper use of the device.

64. At the time Defendants designed, manufactured, prepared, compounded, assembled, processed, marketed, labeled, distributed, and sold the device into the stream of commerce, the device was defective and presented a substantial danger to users of the product when put to its intended and reasonably anticipated use, namely as an implanted port/catheter system to administer the medications. Defendants failed to adequately warn of the device's known or reasonably scientifically knowable dangerous propensities, and further failed to adequately provide instructions on the safe and proper use of the device.

65. Defendants knew or should have known at the time they manufactured, labeled, distributed, and sold the PowerPort that was implanted into Plaintiff that the PowerPort posed a significant and higher risk of failure and resulting injury than other similar devices.

66. Defendants further knew that the PowerPort raised the risk of infection by virtue of the catheter design and composition.

67. Defendants failed to timely and reasonably warn of material facts regarding the safety and efficacy of the PowerPort; no reasonable healthcare provider (including Plaintiff's) or patient would have used the device in the manner directed had those facts been made known to the prescribing healthcare providers or the consumers of the device.

68. The warnings, labels, and instructions provided by the Defendants at all times relevant to this action are and were inaccurate, intentionally misleading, and misinformed and misrepresented the risks and benefits and lack of safety and efficacy associated with the device.

69. The health risks associated with the device as described herein are of such a nature that ordinary consumers would not have readily recognized the potential harm.

70. The device, which was designed, manufactured, prepared, compounded, assembled, processed, marketed, labeled, distributed, and sold into the stream of commerce by Defendants, was defective at the time of release into the stream of commerce due to inadequate warnings, labeling, and/or instructions accompanying the product.

71. When Plaintiff was implanted with the device, Defendants failed to provide adequate warnings, instructions, or labels regarding the severity and extent of health risks posed by the device, as discussed herein, rendering the PowerPort unreasonably dangerous to Plaintiff.

72. The PowerPort was in a defective condition at the time that it left the possession or control of Defendants.

73. The PowerPort was expected to and did reach the consumer without substantial change in its condition.

74. Plaintiff and his healthcare providers used the PowerPort in a way that was reasonably foreseeable to Defendants.

75. Defendants intentionally underreported the number and nature of adverse events to Plaintiff's healthcare providers.

76. Neither Plaintiff nor his healthcare providers knew or should have known of the substantial danger associated with the intended and foreseeable use of the device as described herein.

77. Plaintiff and his healthcare providers used PowerPort in a normal, customary, intended, and foreseeable manner, namely as a surgically-placed device used to make it easier to deliver medications directly into the patient's bloodstream. Moreover, Plaintiff's healthcare providers did not place or maintain the device incorrectly such that it increased the risk of malfunction.

78. Upon information and belief, the defective and unreasonably dangerous condition of the device, including the one implanted into Plaintiff, existed at the time they were manufactured, prepared, compounded, assembled, processed, marketed, labeled, distributed, and sold by Defendants to distributors and/or healthcare professionals or organizations. Upon information and belief, the device implanted in Plaintiff was in the same condition as when it was manufactured, inspected, marketed, labeled, promoted, distributed, and sold by Defendants.

79. Defendants' lack of sufficient warnings and/or instructions was the direct and proximate cause of Plaintiff's serious physical injuries and economic damages in an amount to

be determined at trial. In other words, had Defendants provided adequate warnings, Plaintiff and his physicians would not have used the device.

COUNT III
STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT
(ALL DEFENDANTS)

80. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

81. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

82. Defendants designed, set specifications, manufactured, prepared, compounded, assembled, processed, marketed, labeled, distributed, and sold the PowerPort that was implanted into Plaintiff.

83. The PowerPort implanted in Plaintiff contained a manufacturing defect when it left Defendants' possession. The device differed from Defendants' intended result and/or from other ostensibly identical units of the same product line.

84. Upon information and belief, the PowerPort implanted in Plaintiff varied from its intended specifications, rendering the PowerPort unreasonably dangerous to Plaintiff.

85. The PowerPort was in a defective condition at the time that it left the possession or control of Defendants.

86. The PowerPort was expected to and did reach the consumer without substantial change in its condition.

87. Plaintiff and his healthcare providers used the PowerPort in a way that was reasonably foreseeable to Defendants.

88. The device's manufacturing defect was the direct and proximate cause of Plaintiff's serious physical injuries and economic damages in an amount to be determined at trial.

COUNT IV
STRICT PRODUCTS LIABILITY – DESIGN DEFECT
(ALL DEFENDANTS)

89. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

90. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

91. The PowerPort implanted in Plaintiff was not reasonably safe for its intended use and was defective with respect to its design.

92. The PowerPort was in a defective condition at the time that it left the possession or control of Defendants.

93. The PowerPort was expected to and did reach the consumer without substantial change in its condition.

94. Plaintiff and his healthcare providers used the PowerPort in a way that was reasonably foreseeable to Defendants.

95. The PowerPort was unreasonably dangerous to the user or consumer.

96. Defendants are strictly liable to Plaintiff for designing, manufacturing, marketing, labeling, packaging, and selling a defective product.

97. As a direct and proximate result of the PowerPort's aforementioned defects, Plaintiff was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including, but not limited to, obligations for medical services and expenses, and other damages.

COUNT V
BREACH OF IMPLIED WARRANTY
(ALL DEFENDANTS)

98. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

99. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

100. Defendants impliedly warranted that the PowerPort was merchantable and fit for the ordinary purposes for which it was intended, as well as fit for a particular purpose.

101. When the PowerPort was implanted in Plaintiff, it was being used for the ordinary and particular purposes for which it was intended.

102. Plaintiff, individually and/or by and through his physician, relied upon Defendants' implied warranties of merchantability and fitness for a particular purpose in consenting to have the PowerPort implanted in him.

103. Defendants breached these implied warranties of merchantability because the PowerPort implanted in Plaintiff was neither merchantable nor suited for its ordinary, intended uses as warranted.

104. Defendants' breaches of their implied warranties resulted in the implantation of unreasonably dangerous and defective PowerPort in Plaintiff's body, placing Plaintiff's health and safety in jeopardy.

105. The PowerPort was sold to Plaintiff's healthcare providers for implantation in patients, such as Plaintiff.

106. As a direct and proximate result of Defendants' breaches of the aforementioned implied warranties, Plaintiff was caused and/or in the future will be caused to suffer severe

personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including, but not limited to, obligations for medical services and expenses, and other damages.

COUNT VI
BREACH OF EXPRESS WARRANTY
(ALL DEFENDANTS)

107. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

108. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

109. Defendants, through their officers, directors, agents, representatives, and written literature and packaging, and written and media advertisement, expressly warranted that the PowerPort was safe and fit for use by consumers, was of merchantable quality, did not produce dangerous side effects, and was adequately tested and fit for its intended use.

110. The PowerPort does not conform to the Defendants' express representations because it is unreasonably dangerous, has numerous serious side effects, and causes severe and permanent injury.

111. At all relevant times, the PowerPort did not perform as safely as an ordinary consumer would expect when used as intended or in a reasonably foreseeable manner.

112. Plaintiff, his physicians, and the medical community reasonably relied upon the Defendants' express warranties for the PowerPort.

113. At all relevant times, the PowerPort was used on Plaintiff by Plaintiff's physicians for the purpose and in the manner intended by Defendants.

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

115. As a direct and proximate result of the breach of Defendants' express warranties, Plaintiff has suffered, and will continue to suffer, severe physical pain and injuries which are permanent and lasting in nature, emotional distress, loss of the capacity for the enjoyment of life, medical and nursing expenses, surgical expenses, and economic loss as alleged herein. These damages have occurred in the past and will continue into the future.

COUNT VII
FRAUDULENT CONCEALMENT
(ALL DEFENDANTS)

116. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

117. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

118. Defendants fraudulently concealed information with respect to the PowerPort in the following ways:

a. Defendants represented through, *inter alia*, the labeling, advertising, marketing materials, seminar presentations, and publications that the PowerPort was safe and fraudulently withheld and concealed information about the substantial risks of using the PowerPort;

b. Defendants represented that the PowerPort was safer than other alternative systems and fraudulently concealed information that the PowerPort was not safer than alternatives available on the market;

c. Defendants concealed that they knew these devices were fracturing and migrating from causes other than the manner in which the implanting physician implanted the device; and

d. Defendants underreported the frequency of these failures and downplayed the severity of related injuries.

119. Defendants had sole access to and special knowledge of material facts concerning the dangers and unreasonable risks of the PowerPort, which Plaintiff and his healthcare providers did not have.

120. Defendants advertised the PowerPort and represented its qualities, creating a duty to say enough to prevent its communications from misleading Plaintiff and his healthcare providers.

121. The concealment of information by Defendants about the risks of the PowerPort was intentional, and the representations made by Defendants were known by Defendants to be false.

122. The concealment of information and the misrepresentations about the PowerPort was made by Defendants with the intent that Plaintiff's healthcare providers and Plaintiff rely upon them.

123. Plaintiff and his physicians relied upon the representations and were unaware of the substantial risks of the PowerPort that Defendants concealed from the public, including Plaintiff and his physicians.

124. As a direct and proximate result of Defendants' actions, omissions, and misrepresentations, Plaintiff has suffered, and will continue to suffer, severe physical pain and injuries which are permanent and lasting in nature, emotional distress, loss of the capacity for the enjoyment of life, medical and nursing expenses, surgical expenses, and economic loss as alleged herein. These damages have occurred in the past and will continue into the future.

125. Had Defendants not concealed this information, neither Plaintiff nor his healthcare providers would have consented to using the device in Plaintiff.

126. Plaintiff, in the exercise of due diligence, could not have reasonably discovered the cause of his injuries, including but not limited to the defective design and/or manufacturing the PowerPort System, until a date within the applicable statute of limitations.

127. Plaintiff's damages resulting from the wrongful conduct of Defendants have been ongoing and not capable of ascertainment until a time within the applicable statute of limitations.

COUNT VIII
VIOLATION OF MINNESOTA UNLAWFUL TRADE PRACTICES ACT
(Minn. Stat. § 325D.09, *et seq.*)
(ALL DEFENDANTS)

128. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

129. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

130. Defendants' actions are governed by the Minnesota Unlawful Trade Practices Act ("MUTPA"), Minn. Stat. § 325D.09, *et seq.*

131. Under the MUTPA, "[n]o person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise." Minn. Stat. § 325D.13.

132. Plaintiff's purchase of the PowerPort constitutes a "sale" within the meaning of the MUTPA. *See* Minn. Stat. § 325D.10(c).

133. Defendants each qualify as a "person" within the meaning of the MUTPA. *See* Minn. Stat. § 325D.10(a).

134. Defendants knowingly misrepresented the true quality of the PowerPort's safety in connection with its sale of the PowerPort to Plaintiff, directly or indirectly through Plaintiff's healthcare providers. *See* Minn. Stat. § 325D.13.

135. Defendants thereby violated and continue to violate the MUTPA.

136. Plaintiff has standing to bring this claim because he has been damaged and injured by Defendants' violation of the MUTPA. *See* Minn. Stat. § 325D.15.

137. Defendants' violation of the MUTPA was a direct and proximate cause of Plaintiff's damages.

138. In accordance with Minn. Stat. § 325D.15, Plaintiff seeks an order: (1) enjoining Defendants from continuing their conduct in violation of the MUTPA; (2) requiring Defendants to conduct a corrective advertising campaign; and (3) awarding Plaintiff his damages.

COUNT IX
VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT
(Minn. Stat. § 325F.68, *et seq.*)
(ALL DEFENDANTS)

139. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

140. Plaintiff brings this count against Defendants BD, Bard, BAS, and Does 1 through 10, inclusive.

141. Defendants's actions are governed by the Minnesota Prevention of Consumer Fraud Act ("MPCFA"), Minn. Stat. § 325F.68, *et seq.*

142. Under the MPCFA, "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise" is forbidden. Minn. Stat. § 325F.69, subd. 1.

143. Plaintiff's purchase of the PowerPort constitutes a "sale" of "merchandise" within the meaning of the MPCFA. *See* Minn. Stat. § 325F.68, subd. 2, 4.

144. Plaintiff was a "consumer" within the meaning of the MPCFA. *See* Minn. Stat. § 325F.70, subd. 3.

145. Defendants each qualify as a "person" within the meaning of the MPCFA. *See* Minn. Stat. § 325F.68, subd. 3.

146. Defendants employed fraud, false pretenses, false promises, misrepresentations, misleading statements, and deceptive practices about the PowerPort's safety in connection with its sale of the PowerPort to Plaintiff. *See* Minn. Stat. § 325F.69, subd. 1.

147. Defendants intended that healthcare providers as well as individual patients would rely on its fraud, false pretenses, false promises, misrepresentations, misleading statements, and deceptive practices.

148. Defendants thereby violated and continue to violate the MPCFA.

149. Defendants had a duty to disclose because their communications did not say enough to prevent the words communicated from misleading others.

150. Defendants also had special knowledge of material facts that healthcare providers as well as individual patients did not have access to, triggering a duty to disclose.

151. Defendants further violated the MPCFA by omitting material facts about the PowerPort.

152. Plaintiff has standing to bring this claim because he has been injured by Defendants' violation of the MPCFA. *See* Minn. Stat. § 325F.70, subd. 3.

153. Defendants' violation of the MPCFA was a direct and proximate cause of Plaintiff's damages.

154. In accordance with Minn. Stat. § 325F.70, subd. 3, Plaintiff seek an order awarding Plaintiff his damages, costs, and reasonable attorney's fees.

PRAYER

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

WHEREFORE, Plaintiff prays for judgment against each of the Defendants as follows:

a. Judgment be entered against all Defendants on all causes of action of this Complaint;

b. Plaintiff be awarded his full, fair, and complete recovery for all claims and causes of action relevant to this action;

c. Plaintiff be awarded general damages according to proof at the time of trial, including past and future pain and suffering and mental anguish;

d. Plaintiff be awarded damages, including past, present, and future, medical expenses according to proof at the time of trial;

e. Awarding pre-judgment and post-judgment interest to the Plaintiff as permitted by law;

f. Awarding the attorney's fees and costs to the Plaintiff;

g. An order enjoining Defendants from continuing their conduct in violation of the MUTPA and requiring Defendants to conduct a corrective advertising campaign; and

h. For such other and further relief, at law or in equity, as the court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all counts and on all issues so triable.

Dated: September 1, 2023

CIRESI CONLIN LLP

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Attorneys for Plaintiff

JS 44 (Rev. 04/21)

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

Robert Cook

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

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

Michael Sacchet and Megan Odom; Ciresi Conlin, 225 S. 6th St. #4600, Minneapolis, MN 55305; 612-361-8220

DEFENDANTS

Becton, Dickinson and Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Does 1 through 10

County of Residence of First Listed Defendant Bergen County, NJ
(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

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

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

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 (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 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

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(a)

Brief description of cause:
Plaintiff brings strict liability, negligence, warranty, and other claims related to Defendants' defective PowerPort.

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ over $75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE David G. Campbell DOCKET NUMBER (D. Ariz.) 2:23-md-03081

DATE 09/01/2023

SIGNATURE OF ATTORNEY OF RECORD /s/ Michael A. Sacchet

FOR OFFICE USE ONLY

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

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.
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 statute.

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.