

Exhibit A

IN THE STATE COURT OF HALL COUNTY
STATE OF GEORGIA

FILED IN OFFICE
CLERK OF STATE COURT
HALL COUNTY, GEORGIA
2025SV000595
LARRY A. BALDWIN, II
APR 01, 2025 01:03 PM

Mark Pettitt

Mark Pettitt, Clerk
Hall County, Georgia

CIVIL ACTION NUMBER 2025SV000595

MCCOY, MIKE
MCCOY, DEBORAH

PLAINTIFF

VS.

ZIMMER-BIOMET-HOLDINGS, INC
BIOMET, INC
BIOMET TRAUMA, LLC
ZIMMER INC, DBA ZIMMER BIOMET

DEFENDANTS

SUMMONS

TO: ZIMMER BIOMET HOLDINGS, INC

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

Brittany Conner
Salter Shook, Attorneys at Law
407 Randolph Drive
Vidalia, Georgia 30475
bconner@vidaliaalaw.com

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 1st day of April, 2025.

Clerk of State Court

Mark Pettitt

Mark Pettitt, Clerk
Hall County, Georgia

2025 APR 7 PM 11:49
SHERIFF'S OFFICE

FILED IN OFFICE
CLERK OF STATE COURT
HALL COUNTY, GEORGIA
2025SV000595
LARRY A. BALDWIN, II
APR 01, 2025 01:03 PM

Mark Pettit

Mark Pettitt, Clerk
Hall County, Georgia

IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

MIKE MCCOY AND
DEBORAH MCCOY

Plaintiffs,

V.

) CIVIL ACTION NO.: _____

ZIMMER BIOMET HOLDINGS, INC,
BIOMET, INC.,
BIOMET TRAUMA, LLC AND
ZIMMER INC, d/b/a ZIMMER BIOMET

Defendants.

1975 APR -7 1011:49

COMPLAINT

COMES NOW, Mike McCoy and Deborah McCoy (hereinafter “Plaintiffs”), and files this Complaint against Zimmer Biomet Holdings, Inc, Biomet, Inc., and Zimmer Biomet, Inc (hereinafter “Defendants”) and in support thereof, shows the following:

PARTIES, JURISDICTION, AND VENUE

-1-

Plaintiffs, Mike McCoy and wife, Deborah McCoy, are residents of Habersham County, Georgia.

-2-

Defendant Zimmer Biomet Holdings, Inc. (“Zimmer Biomet”) is a publicly traded corporation organized and existing under the laws of the state of Delaware. Its listed headquarters are in the state of Indiana. Zimmer Biomet's primary business is the design, manufacture and sale of medical devices, including orthopedic reconstructive and related surgical products, including

but not limited to the Pheonix Ankle Arthrodesis Nail System. At all times relevant to this action, Zimmer Biomet conducted business in the County of Hall and in the State of Georgia. On information and belief, the other named defendants in this action are subsidiaries or affiliates of Zimmer Biomet and engaged in the same or substantially the same business in the medical device field. Defendant may be served by delivering a copy of the Summons and Complaint to its registered agent at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

-3-

Defendant Biomet, Inc. is an Indiana corporation with its principal place of business in Warsaw, Indiana. At all relevant times, this defendant conducted business in Hall County, Georgia. Defendant may be served by delivering a copy of the Summons and Complaint to its registered agent at Business Corporation Service Company, 135 North Pennsylvania Street, Suite 1610, Indianapolis, IN 46204.

-4-

Defendant Biomet Trauma, LLC. is an Indiana corporation with its principal place of business in Warsaw, Indiana. At all relevant times, this defendant conducted business in Hall County, Georgia. Defendant may be served by delivering a copy of the Summons and Complaint to its registered agent at 2 Sun Cout, Suite 400, Peachtree Corners, GA 30092.

-5-

Defendant Zimmer, Inc. d/b/a Zimmer Biomet, Inc. is an Indiana corporation with its principal place of business in Warsaw, Indiana. At all relevant times, this defendant conducted business in Hall County, Georgia. Defendant may be served by delivering a copy of the Summons and Complaint to its registered agent at 135 North Pennsylvania Street, Suite 1610, Indianapolis,

IN 46204.

-6-

The product that is the subject of this lawsuit was sold, distributed, and implemented at Northeast Georgia Medical Center, Hall County, Georgia.

FACTS

-7-

At all times mentioned, each Defendant was the representative, agent, employee, joint venturer, or alter ego of each of the other entities and in doing the things alleged herein was acting within the scope of its authority as such. Specifically, each Defendant was but an instrumentality or conduit of the other in the prosecution of a single venture, namely the design, promotion, and sale of the Nail System that is the subject of this litigation. Therefore, it would be inequitable for any Defendant to escape liability for an obligation incurred as much for that Defendant's benefit as for the other.

-8-

All Defendants are collectively referred to herein as "Biomet."

-9-

At all times relevant, Mr. McCoy was a 68-year-old male with right ankle arthritis with progressively worsening hindfoot valgus and flatfoot deformity who was referred for definitive surgical treatment.

-10-

On or about April 6, 2022, Mr. McCoy, underwent a tibiotocalcaneal arthrodesis procedure

and open tendo Achilles lengthening procedure on his right ankle, at North East Georgia Medical Center. Said procedure was completed without complication.

-11-

During the procedure, an 11-diameter intramedullary nail and 300 mm screw comprising the Pheonix Ankle Arthrodesis Nail System (hereinafter “Nail System” or “Device”) bearing serial numbers 14-440230 and 934160 was used. The Nail System was used and installed for its intended purpose, in a medically appropriate way, pursuant to manufacturer specifications and instructions.

-12-

The Nail System was manufactured by Biomet and intended for use on patients like Mr. McCoy.

-13-

The Nail System was introduced into the stream of commerce on or about June 27, 2008, after receiving Class II FDA approval under the Section 510(k) “substantial equivalence” standard.

-14-

On or about May 9, 2023, after months of unexplained excruciating pain and swelling, Mr. McCoy underwent a revisionary procedure of the right ankle performed by Dr. Johnson.

-15-

Upon removal of the Nail System, Dr. Johnson confirmed that the Nail System had failed

and was fractured.

-16-

The fracture and failure of the Nail System were due to defects in the device.

-17-

Mr. McCoy did not know, and could not know, that his injuries were caused by the defective device until it was removed on May 9, 2023.

-18-

Upon information and belief, between 2019 and 2023, more than 8 instances of Nail System fracture were reported to Biomet and the FDA.

-19-

Biomet had actual knowledge that Nail System was prone to fracture and failure.

-20-

Defendants are strictly liable for the defective, unreasonably dangerous product.

-21-

Defendants were negligent in failing to sufficiently warn Plaintiff or his medical providers of the potential for failure of the Device due to the aforementioned defects.

-22-

Defendants expressly warranted that the Device was safe and fit for the use intended. Contrary to this express warranty, the Device was defective, unsafe, and unfit for its intended use.

-23-

Defendants impliedly warranted that the Device was of merchantable quality and safe and fit for its intended use. Contrary to this implied warranty, the Device was defective, unsafe, and unfit for its intended use.

-24-

As of the date of Plaintiff's surgery, Defendants knew of the defects in the Device and the associated risk of serious injury. Defendants misrepresented the safety and fitness of the Device and the associated risk.

-25-

As of the date of Plaintiff's surgery, Defendants knew of the defects in the Nail System and the associated risk of serious injury. Defendants intentionally and deliberately withheld, suppressed, and concealed this information from Plaintiff and his medical providers.

COUNT I
(Product Liability)

-26-

Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully set forth herein verbatim.

-27-

Biomet designed, manufactured, promoted, distributed, marketed, sold and otherwise placed the Nail System into the stream of commerce.

-28-

At all times material hereto, the Nail System that was designed, manufactured, promoted, distributed, marketed, and sold by Biomet was expected to reach, and did reach, prescribing physicians and consumers, including Plaintiff and his physician, without substantial change in the condition in which it was sold.

-29-

At all times material hereto, the Nail System that was designed, manufactured, promoted, distributed, marketed, and sold by Biomet was in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce. Such dangerous conditions include, but are not limited to:

- a. When placed in the stream of commerce, the Nail System contained manufacturing defects, subjecting Plaintiff and others to risks, including the Nail System's propensity to fracture, and requiring a complex, risky, and painful surgery to remove and replace the defective product;
- b. When placed in the stream of commerce, the Nail System contained unreasonably dangerous design defects and was not reasonably safe for the intended use, subjecting Plaintiff and others to risks, including the Nail System's propensity to fracture, requiring a complex, risky, and painful surgery to remove and replace the defective product;
- c. The Nail System was predisposed to fracture;
- d. The Nail System's unstable and defective design resulted in a product predisposed to fracture, which was more dangerous than the ordinary consumer would expect;
- e. The Nail System failed to perform in a manner reasonably expected in light of its

nature and intended function and subject Mr. McCoy to an unreasonable risk of harm beyond that contemplated by an ordinary person;

- f. The Nail System was insufficiently tested; and
- g. The Nail System was not accompanied by adequate instructions and/or warnings to fully inform Plaintiff and his physicians of the full nature or extent of the risks associated with its use.

-30-

The Nail System is defective in its design or formulation in that it is not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design and formulation.

-31-

Mr. McCoy was unaware of the significant hazards and defects in the Nail System. The Nail System was unreasonably dangerous and/or not reasonably safe in that it was more dangerous than would be reasonably contemplated by the ordinary user. During the period that Mr McCoy used the Nail System, it was being utilized in a manner that was intended by Defendant. At the time Plaintiff received and used the Nail System, it was represented to be safe and free from latent defects.

-32-

At the time the Nail System left the control of the Biomet, there were safer alternative designs. Specifically, there were alternative designs that, in reasonable probability, would have prevented or significantly reduced the risk of injury to Plaintiff. Furthermore, such safer alternative designs were economically and technologically feasible at the time the product left the control of Biomet by the application of existing or reasonably achievable scientific knowledge, and if

applied, would have reduced the risk of the product without unduly compromising its utility.

-33-

Defendant is strictly liable to Plaintiff for designing, manufacturing, and placing into the stream of commerce a product that was unreasonably dangerous for its reasonably foreseeable uses at the time it left the control of Defendant.

-34-

The above unreasonably dangerous and defective Nail System was a proximate and producing cause of Plaintiffs' damages. As a result the defects in the product as alleged, Mr. McCoy has suffered physical injury and pain and suffering, disability and impairment, disfigurement in the past and future, loss capacity to enjoy life in the past and future, medical expenses in the past and future, expense of hospitalization, medical and nursing treatment, lost wages and lost earning capacity, and fear and mental anguish concerning future medical problems. In addition, Mrs. McCoy has suffered lost consortium. These injuries are permanent and continuing in nature and will continue into the future. The amount of damages will be determined by the enlightened conscience of the jury at trial, but in any case, greatly exceeds the jurisdictional minimum to confer jurisdiction in this Court.

COUNT II
(Breach of Implied Warranty)

-35-

Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully set forth herein verbatim.

-36-

Prior to the time that the Nail System was used by Plaintiff, Biomet impliedly warranted to Plaintiff and his physicians that the Nail System was of merchantable quality and safe and fit for the use for which it was intended.

-37-

Plaintiff's physicians were and are unskilled in the research, design and manufacture of the Nail System, and they reasonably relied entirely on the skill, judgment and implied warranty of Biomet in using the Nail System.

-38-

The Nail System was neither safe for its intended use nor of merchantable quality, as warranted by Biomet, in that it had dangerous propensities when put to its intended use and would cause severe injuries to the user.

-39-

Biomet, by selling, delivering and/or distributing the defective Nail System to Plaintiff, breached the implied warranty of merchantability and fitness and caused Plaintiff pain and emotional distress, incurred medical expenses and incurred a loss of earning capacity, in an amount to be determined by the enlightened conscience of an impartial jury. In addition, Mrs. McCoy has suffered lost consortium.

COUNT III
(Breach of Express Warranty)

-40-

Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully set forth herein verbatim.

-41-

At all times herein mentioned, Biomet expressly warranted to Plaintiff and his physicians, by and through statements made by Biomet or their authorized agents or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that the aforementioned Nail System was “strong,” safe, effective, and fit and proper for its intended use.

-42-

In utilizing the aforementioned Nail System, Mr. McCoy and his physician relied on the skill, judgment, representations, and foregoing express warranties of Biomet.

-43-

Said warranties and representations were false in that the aforementioned Nail System was not safe and was unfit for the uses for which it was intended.

-44-

At the time Biomet made these express warranties, it knew or should have known that the Nail System did not conform to the express warranties because the Nail System was unreasonably dangerous and defective and had numerous serious risks, including fracture, many of which Biomet did not warn about.

-45-

As a direct and proximate result of one or more of the foregoing wrongful acts or omissions by Defendant, Plaintiffs have sustained severe and permanent injuries, including pain, suffering, loss of care, comfort, consortium, and economic damages, in an amount to be determined by the enlightened conscience of an impartial jury.

COUNT IV
(Loss of Consortium)

-46-

Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully set forth herein verbatim.

-47-

Deborah. Smith brings this claim for loss of consortium, including loss of comfort, companionship, society, aid, services, cooperation, and affection in her marriage to Mr. McCoy as a result of his injury, pain, suffering, and distress caused by the negligence of Defendants.

-48-

As such, Defendants are liable in damages to Debroah McCoy for the loss of consortium he endured as a result of the actions of Defendants in an amount to be determined by the enlightened consciousness of a fair and impartial jury.

WHEREFORE, Plaintiffs pray and demand the following:

- a) Judgment against Defendants for special damages including past and future medical expenses in an amount to be determined by the enlightened consciousness of a fair and impartial jury;
- b) Judgment against Defendants for general damages, including past and future pain and suffering in an amount to be determined by the enlightened consciousness of a fair and impartial jury;
- c) Judgment against Defendants for Plaintiff Deborah McCoy for the loss of consortium

of her husband, an amount to be determined by the enlightened consciousness of a fair and impartial jury;

- d) Attorney fees and costs if such is allowed by law; and
- e) Such further and other relief as is just and proper.

This 1st day of April, 2025.

/s/ Brittany N. Conner
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April 2, 2025

Service Via Sheriff:

**Zimmer Biomet Holdings, Inc
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808**

2025 APR -7 AM 11:49
SHERIFF'S OFFICE

Re: McCoy et al. v. Zimmer Biomet Holdings, Inc et al.
Docket #: 2025SV000595 (Hall County, GA)

Dear Registered Agent:

Enclosed please find a Summons and Complaint for Service upon you.

Sincerely,

SALTER SHOOK, Attorneys at Law

Brittany N. Conner
Attorney for Plaintiffs