

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Stryker Rejuvenate and ABG II
Hip Implant Products Liability Litigation

MDL No. 13-2441 (DWF/FLN)

This Document Relates to:
Case No. 0:14-cv-04847

DONALD E. RODGERS,

Plaintiffs,

vs.

HOWMEDICA OSTEONICS d/b/a
STRYKER ORTHOPAEDICS,
STRYKER CORP., STRYKER SALES
CORPORATION and STRYKER
IRELAND LIMITED,

Defendants.

**AMENDED SHORT FORM
COMPLAINT AND JURY TRIAL
DEMAND**

1. Plaintiff, Donald E. Rodgers, states and brings this civil action in MDL No. 2441, entitled *In Re: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint as permitted by Pretrial Order #10 dated January 23, 2014 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Donald E. Rodgers, is a resident and citizen of the State of Washington and claims damages as set forth below.

3. Venue of this case is appropriate in the United States District Court, Western

EXHIBIT A

District of Washington. Plaintiff states that but for the Order permitting directly filing into the District of Minnesota pursuant to Pretrial Order No. 4, Plaintiff would have filed in the United States District Court, Western District of Washington. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

4. Plaintiff brings this action:

On behalf of himself

FACTUAL ALLEGATIONS

Allegations as to **Right-Side** Implant/Explant Surgery(ies):

4. Plaintiff was implanted with a Rejuvenate / ABG II Modular hip stem on his right hip on or about February 27, 2012, at the Tuality Community Hospital, 335 S.E. 8th Avenue, Hillsboro, Oregon, by Dr. John Austin.

5. Plaintiff has not yet scheduled a surgery for explantation of the right hip stem at issue.

ALLEGATIONS AS TO INJURIES

8. (a) Plaintiff claims damages as a result of (check all that are applicable):

- INJURY TO HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 SURVIVORSHIP ACTION
 ECONOMIC LOSS

9. Plaintiff has suffered injuries as a result of implantation of the Device(s) at

issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

10. Plaintiff has suffered injuries as a result of the explanation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiffs.

12. Plaintiffs could not have known that the injuries he suffered were as a result of a defect in the Device(s) at issue until after the date the Device was recalled from the market and the Plaintiffs came to learn of the recall.

13. In addition, Plaintiff could not have known that he was injured by excessive levels of chromium and cobalt until after the date he had his blood drawn and he was advised of the results of said blood-work and the fact that those blood work abnormalities were attributable to a defect in the Device(s) at issue.

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

14. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference (check all that are applicable):

- COUNT I - NEGLIGENCE;
- COUNT II - NEGLIGENCE PER SE;
- COUNT III - STRICT PRODUCTS LIABILITY – DEFECTIVE

DESIGN;

- COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT;
- COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN;
- COUNT VI - BREACH OF EXPRESS WARRANTY;
- COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY;
- COUNT VIII - BREACH OF IMPLIED WARRANTIES;
- COUNT IX - VIOLATION OF MINNESOTA DECEPTIVE ACTS AND PRACTICES, UNFAIR TRADE PRACTICES, CONSUMER PROTECTION, MERCHANDISING PRACTICES AND FALSE ADVERTISING ACTS
- COUNT X – VIOLATION OF CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW;
- COUNT XI - NEGLIGENT MISREPRESENTATION
- COUNT XII - LOSS OF CONSORTIUM
- COUNT XIII – UNJUST ENRICHMENT
- COUNT XIV – WRONGFUL DEATH

In addition to the above, Plaintiffs assert the following additional causes of action under applicable state law:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this
action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. For restitution and disgorgement of profits; and,
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Date: February 19, 2019.

Respectfully submitted,

By /s/ William A. Kershaw

WILLIAM A. KERSHAW

Stuart C. Talley
KERSHAW, COOK & TALLEY PC
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 779-7000
Facsimile: (916) 721-2501

Attorneys for Plaintiffs

**LIST OF UNITED STATES FEDERAL COURTS TO WHICH
COUNSEL FOR PLAINTIFF IS ADMITTED**

United States District Court
Central District of California

United States District Court
Eastern District of California

United States District Court
Northern District of California

United States Court of Appeals
Ninth Circuit

I hereby certify that I am admitted and am in good standing with the preceding United States District Court(s) and that I have not been disbarred or suspended from practice before any of these Courts or any other United States District Court.

Dated: February 19, 2019.

By /s/ William A. Kershaw
WILLIAM A. KERSHAW
Attorneys for Plaintiffs