

District Court, Weld County, Colorado 901 9 th Avenue Greeley, CO 80631	DATE FILED: October 14, 2013 4:36 PM
Plaintiff: EDWARD HAFFNER v. Defendant: STRYKER CORPORATION, STRYKER SALES CORPORATION; HOWMEDICA OSTEONICS CORPORATION, doing business as Stryker Orthopaedics; and John Doe and Jane Doe, persons whose true names are unknown	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No: 2013CV____
Plaintiff's Attorneys: John Case, Esq. #2431 Kari Jones, Esq. #43288 Benson & Case, LLP 1660 S. Albion Street, Suite 1100 Denver, Colorado 80222 Phone Number: (303) 757-8300 FAX Number: (303) 753-0444 E-mail: case@bensoncase.com ; kari@bensoncase.com	Ctrm: Division:
COMPLAINT AND JURY DEMAND	

Plaintiff Edward Haffner, by and through counsel, BENSON & CASE, LLP, states as a Complaint against the Defendants:

1. The Plaintiff suffered injuries as a result of metal poisoning after being implanted with a metal knee in September 2011.
2. At all times relevant the Plaintiff resided in Weld County.
3. On information and belief, Stryker Corporation is a corporation organized and existing under the laws of Michigan with its primary place of business in Mahwah, New Jersey. The registered agent for service of process on Stryker Corporation in Colorado is Melvin Wade, 8060 Olive St., Denver CO 80257.
4. On information and belief, Stryker Sales Corporation is a corporation organized and existing under the laws of Michigan with its primary place of business in Mahwah, New Jersey. The registered agent for service of process on Stryker Sales Corporation in Colorado is The Corporation Company, 1675 Broadway, Suite 1200, Denver CO 80202.



5. On information and belief, Howmedica Osteonics Corporation, doing business as Stryker Orthopaedics, is a corporation organized and existing under the laws of Michigan with its primary place of business in Mahwah, New Jersey. The registered agent for service of process on Howmedica Osteonics Corporation, doing business as Stryker Orthopaedics, in Colorado is The Corporation Company, 1675 Broadway, Suite 1200, Denver CO 80202.
6. John Doe and Jane Doe are persons whose true names are unknown who designed, manufactured, promoted, distributed, marketed, and sold the dangerous metal knee prosthetic implant that injured the plaintiff.
7. At all times mentioned, each of the Defendants was the representative, agent, employee, joint venture, or alter ego of all other Defendants and in doing the things alleged herein was acting within the scope of its authority as such.
8. Stryker Corporation, Stryker Sales Corporation, Howmedica Osteonics Corporation, and John Doe and Jane Doe are collectively referred to herein as “Defendants”.
9. Defendants designed, manufactured and sold the metal knee prosthetic implant that injured the plaintiff.
10. In September 2011, Plaintiff underwent a left total knee arthroplasty.
11. Plaintiff’s left knee was surgically removed and a Stryker Triathlon Total Knee System was implanted in its place.
12. The Stryker Triathlon Total Knee that Plaintiff received included a Triathlon Posteriorly Stabilized Femoral, a Triathlon Total Knee Universal Tibial Baseplate, a Triathlon X3 Symmetric Patella and a Triathlon X3 Tibial Bearing Insert – PS.
13. The Stryker Triathlon Total Knee that Plaintiff received contained cobalt and nickel.
14. The Plaintiff did not know that the Stryker Triathlon Total Knee contained cobalt and nickel.
15. The Plaintiff was allergic to cobalt and nickel.
16. As a result of the acts of the Defendants, the Plaintiff suffered bodily injuries, including but not limited to a failed total knee arthroplasty. The Plaintiff required treatment for his injuries, including but not limited to a total knee arthroplasty revision. Plaintiff suffered damages and losses, including but not limited to bills for medical treatment, and other general and special economic and non-economic damages and losses. The Plaintiff suffered physical and mental pain, permanent physical impairment, temporary and permanent work disability, change in lifestyle,

loss of time, lost wages and benefits, loss of earning capacity, past and future, and loss of enjoyment of life, past and future. The Plaintiff will continue to suffer such injuries, damages, and losses in the future.

17. The acts of the Defendants were attended by circumstances of fraud, malice, and willful and wanton conduct, purposefully committed by a person who must have realized that the conduct was dangerous, and which conduct was done heedlessly and recklessly, either without regard to the consequences, or without regard to the rights and safety of others, particularly the Plaintiff.
18. Venue is proper pursuant to CRCP 98(c) because the Defendants are nonresidents of Colorado, and venue lies in any county designated in the complaint.

FIRST CAUSE OF ACTION
(Strict Product Liability – All Defendants)

19. Plaintiff incorporates all other allegations of this complaint as if fully rewritten.
20. Plaintiff suffered injuries, damages and losses in amounts to be proven at trial.
21. Defendants designed, manufactured, promoted, distributed, marketed, and sold the Stryker Triathlon Total Knee, including the Stryker posteriorly stabilized femoral, the Stryker universal tibial baseplate, the Stryker symmetric patella and the Stryker tibial bearing insert-PS.
22. At all times material hereto, the Stryker Triathlon Total Knee that was designed, manufactured, promoted, distributed, marketed, and sold by the Defendants was expected to reach, and did reach, prescribing physicians and consumers, including Plaintiff, without substantial change in the condition in which it was sold.
23. At all times material hereto, the Stryker Triathlon Total Knee that was designed, manufactured, promoted, distributed, marketed, and sold by the Defendants was in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce. Such condition included, but is not limited to, one or more of the following particulars:
 - (a) When placed in the stream of commerce, the Stryker Triathlon Total Knee contained manufacturing defects, subjecting Plaintiff and others to risks, including the risk that Plaintiff would be allergic to the metals contained in the Stryker Triathlon Total Knee, causing the knee joint to prematurely fail and requiring a complex, risky, and painful surgery to remove and replace the defective product;
 - (b) When placed in the stream of commerce, the Stryker Triathlon Total Knee contained unreasonably dangerous design defects and was not reasonably safe for the intended use, subjecting Plaintiff and others to risks, including the risk that Plaintiff would be allergic to the metals contained in the Stryker Triathlon Total Knee, causing the

knee joint to prematurely fail and requiring a complex, risky, and painful surgery to remove and replace the defective product;

(c) The Stryker Triathlon Total Knee was insufficiently tested;

(d) The Stryker Triathlon Total Knee was not accompanied by adequate instructions and/or warnings to fully inform Plaintiff of the full nature or extent of the risks associated with its use; and/or

(e) In such other ways as discovery may reveal.

24. Defendants knew or should have known of the dangers associated with the use of the Stryker Triathlon Total Knee, as well as the defective nature of the Stryker Triathlon Total Knee. Despite this knowledge, Defendants continued to manufacture, sell, distribute, promote and supply the Stryker Triathlon Total Knee so as to maximize sales and profits at the expense of the public health and safety. Defendants' conduct was done in conscious disregard of the foreseeable harm caused by the Stryker Triathlon Total Knee and in conscious disregard for the rights and safety of consumers such as Plaintiff.

25. Plaintiff and his doctor used the Stryker Triathlon Total Knee as directed for its intended purpose.

26. At all times herein mentioned, the Stryker Triathlon Total Knee was defective, and Defendants knew that it was to be used by the user without inspection for defects therein. Moreover, neither Plaintiff nor his physician knew or had reason to know at the time of the use of the subject products, of the existence of the aforementioned defects. Plaintiff could not have discovered the defects in the Stryker Triathlon Total Knee through the reasonable exercise of care.

27. The Stryker Triathlon Total Knee had not been materially altered or modified prior to its implantation in Plaintiff.

28. The acts of the Defendants were a cause of the injuries, damages, and losses of the Plaintiff.

WHEREFORE, on his First Claim for Relief, the Plaintiff prays that this Honorable Court enter judgment in favor of the Plaintiff and against the Defendants, jointly and severally, in an amount that will compensate the Plaintiff for all injuries, damages, and losses. The Plaintiff prays for interest at the highest legal rate, both statutory and moratory, from the date of injury before and after judgment. The Plaintiff prays for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief. The Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages at the appropriate time.

SECOND CAUSE OF ACTION
(Negligence – All Defendants)

29. Plaintiff incorporates all other allegations of this complaint as if fully rewritten.
30. Plaintiff suffered injuries, damages and losses in amounts to be proven at trial.
31. At all times herein mentioned Defendants had a duty to exercise reasonable care in the design, manufacture, testing, inspection, labeling, and sale of the Stryker Triathlon Total Knee to ensure that it would be safely used in a manner and for a purpose for which it was made.
32. Defendants maliciously, recklessly and/or negligently failed to exercise ordinary care in the design, manufacture, testing, advertising, marketing, and sale of the Stryker Triathlon Total Knee.
33. Defendants maliciously, recklessly and/or negligently failed in their duty to exercise reasonable care in the provision of an adequate warning to Plaintiff as to the risks of the Stryker Triathlon Total Knee.
34. Defendants maliciously, recklessly and/or negligently failed to exercise reasonable care in the post-marketing warnings as to the risks of the Stryker Triathlon Total Knee when they knew or should have known of said risks.
35. The acts of the Defendants were a cause of the injuries, damages, and losses of the Plaintiff.

WHEREFORE, on his Second Claim for Relief, the Plaintiff prays that this Honorable Court enter judgment in favor of the Plaintiff and against the Defendants in an amount that will compensate the Plaintiff for all injuries, damages, and losses. The Plaintiff prays for interest at the highest legal rate, both statutory and moratory, from the date of injury before and after judgment. The Plaintiff prays for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief. The Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages at the appropriate time.

THIRD CAUSE OF ACTION
(Breach of Implied Warranties – All Defendants)

36. Plaintiff incorporates all other allegations of this complaint as if fully rewritten.
37. Plaintiff suffered injuries, damages and losses in amounts to be proven at trial.
38. Prior to the time that the Stryker Triathlon Total Knee was used by Plaintiff, Defendants impliedly warranted to Plaintiff that the Stryker Triathlon Total Knee was of merchantable quality and safe and fit for the use for which it was intended.

39. Plaintiff is unskilled in the research, design and manufacture of the Stryker Triathlon Total Knee, and reasonably relied entirely on the skill, judgment and implied warranty of Defendants in using the Stryker Triathlon Total Knee.
40. The Stryker Triathlon Total Knee was neither safe for its intended use nor of merchantable quality, as warranted by Defendants, in that it had dangerous propensities when put to its intended use and would cause severe injuries to the user.
41. Defendants, by selling, delivering and/or distributing the defective Stryker Triathlon Total Knee to Plaintiff breached the implied warranty of merchantability and fitness and caused Plaintiff to suffer severe pain and emotional distress, incur medical expenses and incur a loss of earning capacity.
42. The acts of the Defendants were a cause of the injuries, damages, and losses of the Plaintiff.

WHEREFORE, on his Third Claim for Relief, the Plaintiff prays that this Honorable Court enter judgment in favor of the Plaintiff and against the Defendants in an amount that will compensate the Plaintiff for all injuries, damages, and losses. The Plaintiff prays for interest at the highest legal rate, both statutory and moratory, from the date of injury before and after judgment. The Plaintiff prays for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief. The Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages at the appropriate time.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty – All Defendants)

43. Plaintiff incorporates all other allegations of this complaint as if fully rewritten.
44. Plaintiff suffered injuries, damages and losses in amounts to be proven at trial.
45. At all times herein mentioned, Defendants expressly warranted to Plaintiff and Plaintiff's physicians, by and through statements made by Defendants 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 Stryker Triathlon Total Knee was safe, effective, fit and proper for its intended use.
46. In utilizing the aforementioned Stryker Triathlon Total Knee, Plaintiff and his physician relied on the skill, judgment, representations and foregoing express warranties of Defendants.
47. Said warranties and representations were false in that the aforementioned Stryker Triathlon Total Knee was not safe and was unfit for the uses for which it was

intended.

48. The acts of the Defendants were a cause of the injuries, damages, and losses of the Plaintiff.

WHEREFORE, on his Fourth Claim for Relief, the Plaintiff prays that this Honorable Court enter judgment in favor of the Plaintiff and against the Defendants in an amount that will compensate the Plaintiff for all injuries, damages, and losses. The Plaintiff prays for interest at the highest legal rate, both statutory and moratory, from the date of injury before and after judgment. The Plaintiff prays for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief. The Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages at the appropriate time.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully submitted October 14, 2013.

BENSON & CASE, LLP

s/ John Case

John Case #2431

Kari Jones #43288

Plaintiff's address is confidential.

Addresses will be provided pursuant to stipulation or by

Court order limiting dissemination and disclosure to third parties.