UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES MICHAEL CLINE,	§	
	§	
Plaintiff	§	
	§	
VS.	§	**Civil Action No. 3:14-cv-2361**
	§	
Zimmer, Inc., Zimmer Holdings, Inc., Wilson/Phillips, Inc. a/k/a Zimmer Wilson Phillips, and Zimmer Orthopaedic Surgical Products, Inc.,	§	
	§	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

COMPLAINT

COME NOW the Plaintiff, by and through his undersigned attorney, and, for his Complaint against the Defendant, alleges as follows:

1. The Plaintiff, is a citizen of the State of Iowa, and resides in the City of Burlington, in the County of Des Moines.

2. Defendant Zimmer, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Warsaw, Indiana.

3. Defendant Zimmer Holdings, Inc. is a corporation organized and existing under the laws of Delaware, and has its principal place of business located in Warsaw, Indiana.

4. Defendant Wilson/Phillips Holdings, Inc., a/k/a Zimmer Wilson Phillips is a corporation organized and existing under the laws of Texas, and has its principal place of business located in Richardson, Texas.

5. Defendant Zimmer Orthopaedic Surgical Products, Inc. is a corporation organized and existing under the laws of Ohio, and has its principal place of business in Dover, Ohio.

JURISDICTION AND VENUE

6. This Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. §1332(a). No Defendant is a citizen of the same state as Plaintiff and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

7. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(c) because Defendants are corporations. A corporation is deemed to reside in any judicial district where its contacts would be sufficient to subject it to personal jurisdiction at the time the action is commenced. Defendants distributed, recommended, merchandised, advertised, promoted, supplied and sold to distributors, physicians, hospitals and medical practitioners at all times relevant and including the day this action is commenced, certain orthopedic medical devices intended to be surgically implanted in patients in the State of Texas, and more particularly within the jurisdiction boundaries of the United States District Court of the Northern District of Texas.

NATURE OF THE CASE

8. This is an action for damages suffered by Plaintiff, as a direct and proximate result of Defendants placing into the stream of commerce an unreasonably dangerous product and Defendants' negligence in connection with the development, design, manufacture, distribution and selling of Defendants' knee

replacement product, the Zimmer NexGen knee replacement system (hereinafter "Zimmer NexGen Knee").

9. The Zimmer NexGen Knee prematurely loosens in patients, such as Plaintiff, causing personal injury, significant pain, and loss of movement, and that this injury can only be remedied through subsequent knee revision surgery.

FACTUAL BACKGROUND

KNEE REPLACEMENT BACKGROUND

10. Total knee arthroplasty (TKA), also called total knee replacement, is a common medical procedure performed. The surgery is designed to help relieve pain and improve joint function in people with severe knee degeneration due to arthritis or trauma.

11. The TKA procedure is typically done by separating the muscles and ligaments around the knee to expose the inside of the joint. The ends of the thigh bone (femur) and the shin bone (tibia) are removed as is often the underside of the kneecap (patella).

12. Mechanical loosening means that for some reason (other than infection) the attachment between the artificial knee and the bone has become loose.

13. Loosening of an artificial knee can be diagnosed by among other things using an xray. In patients with a loose knee joint there may be one or more radiolucent lines around the contours of the artificial knee joint.

14. A loose knee replacement may cause metal or plastic wear particles to circulate in the knee joint; cause joint inflammation and swelling; and cause osteolysis or loss

of bone in the regions around the knee, resulting in pain and disability for the patient.

15. Once the pain becomes unbearable or the individual loses function of the knee, and/or the knee becomes unstable, another operation will typically be required to revise the knee replacement. A loose, painful artificial knee can usually, but not always, be revised.

16. The purpose of knee revision surgery is to remove the failed knee implant and replace it with a new one. In a revision operation if a total knee has failed, the orthopaedic surgeon must remove the components used for the original surgery. The orthopaedic surgeon's goal is to restore stability and alignment to the knee, adding bone graft if needed, custom wedges or trabecular metal wedges or augments, and often using revision implants.

17. Generally, the results of a revision surgery are not as good as the initial TKA and the risks of complications are higher.

THE ZIMMER NEXGEN KNEE

18. Zimmer was founded in 1927, and purports to be a worldwide leader in the design and manufacture of orthopaedic reconstructive, spinal and trauma devices, dental implants, and related orthopaedic surgical products.

19. The Zimmer NexGen Knee uses a "high-flex" porous femoral component made of a cobalt-chromium-molybdenum alloy. A porous coat of sintered titanium metal is applied to the surfaces of the implant that are designed to contact bone. In this

fashion, the femoral component is designed to achieve stability by having the patient's own bone grown into the femoral implant.

20. Defendants' manufactured, labeled, packaged, distributed, supplied, marketed, advertised, and/or otherwise engaged in all activities that are part and parcel of the sale and distribution of a medical device, and by said activities, caused the Zimmer NexGen Knee to be placed in the stream of commerce throughout the United States.

21. The Zimmer NexGen Knee has been widely advertised, marketed and represented by the Defendants as a safe and effective medical device for use in TKA procedures.

ALLEGATIONS SPECIFIC TO PLAINTIFF

22. On November 9, 2010, an orthopaedic surgeon performed knee replacement surgery with Zimmer NexGen Knee components utilizing the NexGen CR-FLEX Complete Knee Solution, in the City of West Burlington, Des Moines County, Iowa.

23. Plaintiff began experiencing severe and debilitating pain and a feeling of "looseness" after implants. Plaintiff was later advised his Zimmer NexGen Knees were experiencing "loosening" and would need to be revised.

24. On November 12, 2012, Plaintiff had a second surgery to revise/replace the previously implanted Zimmer NexGen Knee.

25. Plaintiff did not discover, nor could he have discovered through the exercise of reasonable care, the defective nature of the Zimmer NexGen Knee until after he

had the knee revision surgery on November 12, 2012. Further, in no way could Plaintiff have known that Defendants had designed, developed, and manufactured the Zimmer NexGen Knee in such a way as to increase the risk of harm or injury to the recipients until after the recall of the Zimmer NexGen Knee.

COUNT I

(Strict Liability)

26. Plaintiff incorporates by reference each and every paragraph in this Complaint as if fully set forth herein.

27. At all relevant times, hereto, Defendants were engaged in the development, testing, manufacturing, marketing and sales of Zimmer NexGen Knee. Defendants designed, manufactured, marketed, and sold Zimmer NexGen Knee to medical professionals and their patients, knowing it would be implanted for knee replacements.

28. The Zimmer NexGen Knee was designed, manufactured, marketed and sold by Defendants reached Plaintiff without substantial change in its condition and was used by Plaintiff in a reasonably foreseeable and intended manner.

29. The Zimmer NexGen Knee was "defective" and "unreasonably dangerous" when it entered the stream of commerce and was received by Plaintiff, because it was dangerous to an extent beyond that which would be contemplated by the ordinary consumer. At no time did Plaintiff have reason to believe that Zimmer NexGen Knee was in a condition not suitable for their proper and intended use among patients.

30. The Zimmer NexGen Knee was used in the manner for which it was intended, that is, for artificial knee replacement. This use resulted in injury to Plaintiff.

31. The Zimmer NexGen Knee is defective in design because of its propensity to loosen and cause patients unnecessary pain and repeat surgical procedures and because it was sold without adequate warning regarding, inter alia, the propensity of Zimmer NexGen Knee to loosen and cause serious pain and necessitate additional surgery; the post-marketing experience of higher rates of loosening and revision surgery with the Zimmer NexGen Knee; and the probability of suffering loosening and revision surgery.

32. As a direct and proximate result of the Zimmer NexGen Knee's defective and dangerous design and inadequate warnings as aforesaid, Plaintiff has sustained and will continue to sustain severe and debilitating injuries, economic loss, and other damages including, but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, pain and suffering, and the loss of a normal life all to Plaintiff's damages.

WHEREFORE, the Plaintiffs demand judgment against the Defendant for an amount in excess of $75,000.00 together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

COUNT II

(Negligence)

33. Plaintiff incorporated by reference each and every paragraph in this Complaint as if fully set forth herein.

34. At all relevant times, Defendants had a duty to exercise reasonable care in the design, testing, manufacture, marketing, sale, and distribution of Zimmer NexGen Knee.

35. Defendants failed to exercise reasonable care in the design, testing, manufacture, marketing, sale and distribution of Zimmer NexGen Knee because Defendants knew or should have known that Zimmer NexGen Knee had a propensity to cause serious injury, including loosening and revision surgery, and failed to provide adequate warning of the implanting doctors and the general public regarding the risk of serious injury, including, loosening and revision surgery.

36. As a direct and proximate result of Defendants' acts and omissions as aforesaid, Plaintiff suffered severe and debilitating injuries, economic loss, and other damages, including but not limited to, cost of medical care, rehabilitation, lost income, permanent instability and loss of balance, immobility, pain and suffering, and loss of a normal life all to Plaintiff's damages.

WHEREFORE, the Plaintiffs demand judgment against the Defendant for an amount in excess of $75,000.00, together with interest and costs, and demand trial by jury of all issues triable by a jury as of right.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable in this civil action.

Dated: June 30, 2014

Respectfully submitted,

s/Steven M. Johnson
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