IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES McKELVIA and FRANCES McKELVIA, his wife,	:	CIVIL DIVISION
	:	No.: GD 19 – 002239
Plaintiffs,	:	
	:	**COMPLAINT IN CIVIL ACTION**
-v-	:	
	:	Filed on behalf of Plaintiffs
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS; STRYKER CORPORATION; and STRYKER SALES CORPORATION,	:	Counsel of Record for this Party:
	:	Michael A. Murphy, Esquire
	:	PA ID# 55846
	:	John D. Perkosky, Esquire
Defendants.	:	PA ID#83083
	:	Benjamin J. Gobel, Esquire
	:	PA ID# 309670
	:	
	:	OGG, MURPHY & PERKOSKY, P.C.
	:	245 Fort Pitt Boulevard
	:	Pittsburgh, PA 15222
	:	(412) 471-8500
	:	
	:	JURY TRIAL DEMANDED.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES McKELVIA and FRANCES McKELVIA, his wife,	:	CIVIL DIVISION
	:	No.: GD 19 –
Plaintiff,	:	
-v-	:	
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS; STRYKER CORPORATION; and STRYKER SALES CORPORATION,	:	
Defendants.	:	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
ALLEGHENY COUNTY BAR ASSOCIATION
11th FLOOR KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219
(412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES McKELVIA and FRANCES McKELVIA, his wife,	:	CIVIL DIVISION
	:	No.: GD 19 –
Plaintiff,	:	
-v-	:	
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS, et al.,	:	
Defendants.	:	

COMPLAINT IN CIVIL ACTION

AND NOW, come Plaintiffs, James McKelvia and Frances McKelvia, his wife, by and through their counsel, Michael A. Murphy, Esquire, John D. Perkosky, Esquire, Benjamin J. Gobel, Esquire, and the law firm, Ogg, Murphy & Perkosky, P.C., and file this forgoing Complaint in Civil Action averring as follows:

PLAINTIFFS

1. Plaintiff, JAMES McKELVIA (hereinafter "PLAINTIFF" or "MR. McKELVIA") is an adult individual residing at 322 Kenmawr Avenue, Braddock, Allegheny County, Pennsylvania 15104.

2. At all times relevant to this action, FRANCES McKELVIA (hereinafter "MRS. McKELVIA" and/or "PLAINTIFF-WIFE") is an adult individual residing at 322 Kenmawr Avenue, Braddock, Allegheny County, Pennsylvania 15104.

DEFENDANTS

3. HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS (hereinafter "STRYKER ORTHOPAEDICS"), is a New Jersey business corporation, which engaged in the practice of designing, manufacturing, assembling, inspecting,

testing, approving, marketing, selling, supplying, distributing for sale and/or making available for sale and/or distribution, inter alia, the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem, and which regularly conducts business in the Commonwealth of Pennsylvania, and all counties therein, including Allegheny County, and has a principle place of business at 325 Corporate Drive, Mahwah, New Jersey 07430.

At all times relevant to the matters set forth herein, STRYKER ORTHOPAEDICS, was acting through its agents, ostensible agents, servants and/or employees, namely the engineers, designers, physicians, physicians' assistants, nurses, nurses' assistants, and technicians, who were acting within the course of their employment and the scope of their authority.

4. STRYKER CORPORATION (hereinafter "STRYKER CORP"), is a Michigan business corporation, which engaged in the practice of designing, manufacturing, assembling, inspecting, testing, approving, marketing, selling, supplying, distributing for sale and/or making available for sale and/or distribution, inter alia, the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem, and which regularly conducts business in the Commonwealth of Pennsylvania, and all counties therein, including Allegheny County, and has a principle place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

At all times relevant to the matters set forth herein, STRYKER CORP, was acting through its agents, ostensible agents, servants and/or employees, namely the engineers, designers, physicians, physicians' assistants, nurses, nurses' assistants, and technicians, who were acting within the course of their employment and the scope of their authority.

5. STRYKER SALES CORPORATION (hereinafter "STRYKER SALES"), is a Michigan business corporation, which engaged in the practice of designing, manufacturing, assembling, inspecting, testing, approving, marketing, selling, supplying, distributing for sale and/or making available for sale and/or distribution, inter alia, the LFIT Anatomic V40 Femoral

Head and Accolade TMZF Plus Stem, and which regularly conducts business in the Commonwealth of Pennsylvania, and all counties therein, including Allegheny County, and has a principle place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

At all times relevant to the matters set forth herein, STRYKER SALES, was acting through its agents, ostensible agents, servants and/or employees, namely the engineers, designers, physicians, physicians' assistants, nurses, nurses' assistants, and technicians, who were acting within the course of their employment and the scope of their authority.

FACTUAL BACKGROUND

6. STRYKER ORTHOPAEDICS, STRYKER CORP, and STRYKER SALES (hereinafter collectively referred to as "STRYKER DEFENDANTS"), designed, manufactured, assembled, inspected, tested, approved, marketed, sold, supplied, distributed for sale and/or made available for sale and/or distribution the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem to be used in combination and/or conjunction within one another.

7. On or about October 5, 2009, MR. McKELVIA, underwent a total left hip replacement at The Western Pennsylvania Hospital. The replacement procedure was performed by Robert Liss, M.D. As part of the procedure, Dr. Liss implanted into MR. McKELVIA, inter alia, (1) a Stryker Accolade TMZF Plus 127 degree Neck Angle V40 Hip Stem (SZE #4, NK LNTH 35mm, STM LNTH 125mm, TPR V40), bearing Reference Number 6021-0435, Lot Number 27641403, and (2) a Stryker LFIT Anatomic V40 Femoral Head (SZE 36mm, OFFST +5mm, TPR V40), bearing Reference Number 6260-9-236, Lot Number MHDJEH.

8. Beginning in approximately 2016, MR. McKELVIA developed left leg and hip pain, groin, buttock, and low back pain, as well as weakness and numbness in these areas. Mr. McKELVIA also experienced an increasing inability to flex his left leg. In early 2017, as a result

of the aforementioned symptoms, MR. McKELVIA was referred to Edward J. McClain, III, M.D., an orthopedic surgeon, at Three Rivers Orthopedic.

9. On or about March 13, 2017, MR. McKELVIA underwent an MRI, which revealed a metal artifact at the left hip, as well as debris at the left pseudocapsule. As a result of diagnostic and laboratory testing, MR. McKELVIA was diagnosed with metallosis.

10. On or about June 8, 2017, MR. McKELVIA underwent a removal of his left total hip and an insertion of an antibiotic spacer at UPMC St. Margaret, which was performed by Dr. McClain. During the procedure, Dr. McClain confirmed the presence of significant trunnionosis and metal debris. Dr. McClain also encountered "copious amounts of thick material, thick pus that had the appearance of vanilla pudding...[which was] very dense...and tracked directly down to the joint." Additionally, he noted that the "purulent material tracked all [sic] way down to the hip joint."

11. On August 22, 2017, MR. McKELVIA underwent a removal of the retained spacer and a reinsertion of a left total hip, which was also performed by Dr. McClain.

12. Postoperatively and to date, MR. McKELVIA has continued to experience pain and weakness in his left leg.

13. On or about August 29, 2016, STRYKER DEFENDANTS issued an Urgent Medical Device Recall Notification (hereinafter "Recall Notification") for certain LFIT Anatomic CoCr V40 Femoral Heads, manufactured prior to 2011, which cited as potential hazards, inter alia, disassociation of femoral head from hip stem, excessive metallic debris, insufficient ROM, insufficient soft tissue tension, loss of implant bone fixation strength, and excessive wear debris (polymeric).

14. The Recall Notification also listed the aforementioned potential hazards as causing loss of mobility, pain requiring revision, inflammatory response, adverse local tissue reaction,

dislocation, joint instability, revision to alleviate hazardous situations, and pain associated with implant loosening, in patients.

15. The Recall Notification included a list of affected lots, which included Reference Number 6260-9-236, Lot Number MHDJEH, the item and lot number for the femoral head implanted into MR. McKELVIA. Prior thereto, STRYKER DEFENDANTS had issued a recall notice of the Accolade TMZF Plus Stem at issue.

COUNT I – STRICT LIABILITY
PLAINTIFFS
-v-
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS

16. PLAINTIFFS incorporate Paragraphs 1 through 15 as if fully set forth herein.

17. At all times relevant hereto, STRYKER ORTHOPAEDICS designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem either directly and/or indirectly to healthcare providers, hospitals, and members of the general public within the Commonwealth of Pennsylvania, including MR. McKELVIA.

18. STRYKER ORTHOPAEDICS, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER CORP and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable in some or all of the following particulars:

a. The LFIT Anatomic V40 Femoral Head was defective in its design;

b. The Accolade TMZF Plus Femoral Stem was defective in its design;

c. The LFIT Anatomic V40 Femoral Head was defective in its construction and manufacture;

d. The Accolade TMZF Plus Femoral Stem was defective in its construction and manufacture;

e. The LFIT Anatomic V40 Femoral Head was not designed and constructed with the proper material or in the proper manner for its intended use;

f. The Accolade TMZF Plus Femoral Stem was not designed and constructed with the proper material or in the proper manner for its intended use;

g. The LFIT Anatomic V40 Femoral Head was not accompanied by adequate warning and instruction in regard to its intended use;

h. The Accolade TMZF Plus Femoral Stem was not accompanied by adequate warning and instruction in regard to its intended use;

i. The LFIT Anatomic V40 Femoral Head was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

j. The Accolade TMZF Plus Femoral Stem was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

k. The LFIT Anatomic V40 Femoral Head was not designed and manufactured with the proper materials for its intended use such that its use with the Accolade TMZF Plus Femoral Stem, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

l. The Accolade TMZF Plus Femoral Stem was not designed and manufactured with the proper materials for its intended use such that its use with the LFIT Anatomic V40 Femoral Head, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

m. In failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction, direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

n. In failing to warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

o. In failing to adequately warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

p. In failing to warn and/or adequately warn physicians and MR. McKELVIA that use of the LFIT Anatomic V40 Femoral Head and the Accolade TMZF Plus Femoral Stem, either independently or together, posed a significant increased risk of fretting, corrosion, metallosis, trunnionosis, disassociation, and taper lock failure; and

q. The LFIT Anatomic V40 Femoral Head was implanted into MR. McKELVIA without substantial change or modification in the condition in which it was manufactured and delivered to The Western Pennsylvania Hospital and Dr. Liss.

19. STRYKER ORTHOPAEDICS, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER CORP and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable, in some or all of the following particulars:

a. That with respect to the LFIT Anatomic V40 Femoral Head, STRYKER ORTHOPAEDICS misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

b. That with respect to the Accolade TMZF Plus Femoral Stem, STRYKER ORTHOPAEDICS misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

c. That MR. McKELVIA and Dr. Liss, the implanting surgeon, justifiably relied on such misrepresentations; and

d. That such justified reliance caused MR. McKELVIA to suffer physical harm.

20. As a direct and proximate result of the conduct of STRYKER ORTHOPAEDICS, as alleged above, MR. McKELVIA, sustained injuries, including the following:

a. Need for revision, left hip replacement;

b. Metallosis;

c. Elevated cobalt levels;

d. Left leg and hip pain;

e. Left leg and hip weakness;

f. Left femoral nerve injury;

g. Left knee pain;

h. Shock to the nerves and nervous system; and

i. Some or all of the above injuries may be permanent in nature.

21. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the following damages:

a. Medical expenses for services and supplies incident to the treatment of his injuries;

b. Disfigurement;

c. Medical expenses for hospital admissions, surgeries, treatment and therapies, both past and future;

d. Impairment of his general health, strength, and vitality;

e. Past and future pain and suffering;

f. Past and future anguish, embarrassment, and inconvenience;

g. Deprivation of his ability to enjoy ordinary pleasures of life;

h. Increased risk of complications and corrective procedures;

i. Loss of past and future earnings and earning power; and

j. Other losses and damages recoverable by law.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, claim damages against HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT II – STRICT LIABILITY
PLAINTIFFS
-v-
STRYKER CORPORATION

22. PLAINTIFFS incorporate Paragraphs 1 through 21 as if fully set forth herein.

23. At all times relevant hereto, STRYKER CORP designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem either directly and/or indirectly to healthcare providers, hospitals, and members of the general public within the Commonwealth of Pennsylvania, including MR. McKELVIA.

24. STRYKER CORP, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable in some or all of the following particulars:

a. The LFIT Anatomic V40 Femoral Head was defective in its design;

b. The Accolade TMZF Plus Femoral Stem was defective in its design;

c. The LFIT Anatomic V40 Femoral Head was defective in its construction and manufacture;

d. The Accolade TMZF Plus Femoral Stem was defective in its construction and manufacture;

e. The LFIT Anatomic V40 Femoral Head was not designed and constructed with the proper material or in the proper manner for its intended use;

f. The Accolade TMZF Plus Femoral Stem was not designed and constructed with the proper material or in the proper manner for its intended use;

g. The LFIT Anatomic V40 Femoral Head was not accompanied by adequate warning and instruction in regard to its intended use;

h. The Accolade TMZF Plus Femoral Stem was not accompanied by adequate warning and instruction in regard to its intended use;

i. The LFIT Anatomic V40 Femoral Head was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

j. The Accolade TMZF Plus Femoral Stem was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

k. The LFIT Anatomic V40 Femoral Head was not designed and manufactured with the proper materials for its intended use such that its use with the Accolade TMZF Plus Femoral Stem, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

l. The Accolade TMZF Plus Femoral Stem was not designed and manufactured with the proper materials for its intended use such that its use with the LFIT Anatomic V40 Femoral Head, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

m. In failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction, direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

n. In failing to warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

o. In failing to adequately warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

p. In failing to warn and/or adequately warn physicians and MR. McKELVIA that use of the LFIT Anatomic V40 Femoral Head and the Accolade TMZF Plus Femoral Stem, either independently or together, posed a significant increased risk of fretting, corrosion, metallosis, trunnionosis, disassociation, and taper lock failure; and

q. The LFIT Anatomic V40 Femoral Head was implanted into MR. McKELVIA without substantial change or modification in the condition in which it was manufactured and delivered to The Western Pennsylvania Hospital and Dr. Liss.

25. STRYKER CORP, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable, in some or all of the following particulars:

a. That with respect to the LFIT Anatomic V40 Femoral Head, STRYKER CORP misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

b. That with respect to the Accolade TMZF Plus Femoral Stem, STRYKER CORP misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

c. That MR. McKELVIA and Dr. Liss, the implanting surgeon, justifiably relied on such misrepresentations; and

d. That such justified reliance caused MR. McKELVIA to suffer physical harm.

26. As a direct and proximate result of the conduct of STRYKER CORP, as alleged above, MR. McKELVIA sustained the injuries set forth in Paragraph 20, which Paragraph is incorporated by reference.

27. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 21, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT III – STRICT LIABILITY
PLAINTIFFS
-v-
STRYKER SALES CORPORATION

28. PLAINTIFFS incorporate Paragraphs 1 through 27 as if fully set forth herein.

29. At all times relevant hereto, STRYKER SALES designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Stem either directly and/or indirectly to healthcare providers, hospitals, and members of the general public within the Commonwealth of Pennsylvania, including MR. McKELVIA.

30. STRYKER SALES, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER CORP, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable in some or all of the following particulars:

a. The LFIT Anatomic V40 Femoral Head was defective in its design;

b. The Accolade TMZF Plus Femoral Stem was defective in its design;

c. The LFIT Anatomic V40 Femoral Head was defective in its construction and manufacture;

d. The Accolade TMZF Plus Femoral Stem was defective in its construction and manufacture;

e. The LFIT Anatomic V40 Femoral Head was not designed and constructed with the proper material or in the proper manner for its intended use;

f. The Accolade TMZF Plus Femoral Stem was not designed and constructed with the proper material or in the proper manner for its intended use;

g. The LFIT Anatomic V40 Femoral Head was not accompanied by adequate warning and instruction in regard to its intended use;

h. The Accolade TMZF Plus Femoral Stem was not accompanied by adequate warning and instruction in regard to its intended use;

i. The LFIT Anatomic V40 Femoral Head was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

j. The Accolade TMZF Plus Femoral Stem was not designed and manufactured in the proper manner for its intended use such that it did not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended use;

k. The LFIT Anatomic V40 Femoral Head was not designed and manufactured with the proper materials for its intended use such that its use with the Accolade TMZF Plus Femoral Stem, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

l. The Accolade TMZF Plus Femoral Stem was not designed and manufactured with the proper materials for its intended use such that its use with the LFIT Anatomic V40 Femoral Head, causes fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint, presenting an unreasonably dangerous condition for its intended recipients;

m. In failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction, direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

n. In failing to warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

o. In failing to adequately warn physicians and MR. McKELVIA of any and all dangers and risks involved with the use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

p. In failing to warn and/or adequately warn physicians and MR. McKELVIA that use of the LFIT Anatomic V40 Femoral Head and the Accolade TMZF Plus Femoral Stem, either independently or together, posed a significant increased risk of fretting, corrosion, metallosis, trunnionosis, disassociation, and taper lock failure; and

q. The LFIT Anatomic V40 Femoral Head was implanted into MR. McKELVIA without substantial change or modification in the condition in which it was manufactured and delivered to The Western Pennsylvania Hospital and Dr. Liss.

31. STRYKER SALES, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER CORP, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, is strictly liable and/or vicariously liable, in some or all of the following particulars:

a. That with respect to the LFIT Anatomic V40 Femoral Head, STRYKER SALES misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

b. That with respect to the Accolade TMZF Plus Femoral Stem, STRYKER SALES misrepresented material facts to the public, including MR. McKELVIA, The Western Pennsylvania Hospital, and Dr. Liss, the implanting surgeon, concerning the character and/or quality of the product;

c. That MR. McKELVIA and Dr. Liss, the implanting surgeon, justifiably relied on such misrepresentations; and

d. That such justified reliance caused MR. McKELVIA to suffer physical harm.

32. As a direct and proximate result of the conduct of STRYKER SALES, as alleged above, MR. McKELVIA sustained the injuries set forth in Paragraph 20, which Paragraph is incorporated by reference.

33. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 21, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER SALES CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT IV – BREACH OF WARRANTY
PLAINTIFFS
-v-
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS

34. PLAINTIFFS incorporate Paragraphs 1 through 33 as if fully set forth herein.

35. STRYKER ORTHOPAEDICS warranted that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem were merchantable and fit for the purpose for which they were intended.

36. MR. McKELVIA made use of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem as alleged herein in reliance on the warranties by STRYKER ORTHOPAEDICS.

37. The injuries and damages sustained by MR. McKELVIA were proximately caused by STRYKER ORTHOPAEDICS's breach of express and implied warranties as follows:

a. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would be free from

defects in STRYKER ORTHOPAEDICS's materials, design and workmanship;

b. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would function properly in use;

c. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not fit for the particular purpose for which it was sold; and

d. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not merchantable.

38. The warranties were breached by STRYKER ORTHOPAEDICS with the advent of previously mentioned defects and/or malfunctions associated with the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem and/or failure of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to work properly.

39. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER ORTHOPAEDICS, MR. McKELVIA sustained the injuries set forth in Paragraph 20, which Paragraph is incorporated by reference.

40. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER ORTHOPAEDICS, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 21, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT V – BREACH OF WARRANTY
PLAINTIFFS
-v-
STRYKER CORPORATION

41. PLAINTIFFS incorporate Paragraphs 1 through 40 as if fully set forth herein.

42. STRYKER CORP warranted that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem were merchantable and fit for the purpose for which they were intended.

43. MR. McKELVIA made use of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem as alleged herein in reliance on the warranties by STRYKER CORP.

44. The injuries and damages sustained by MR. McKELVIA were proximately caused by STRYKER CORP's breach of express and implied warranties as follows:

a. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would be free from defects in STRYKER CORP's materials, design, and workmanship;

b. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would function properly in use;

c. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not fit for the particular purpose for which it was sold; and

d. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not merchantable.

45. The warranties were breached by STRYKER CORP with the advent of previously mentioned defects and/or malfunctions associated with the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem and/or failure of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to work properly.

46. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER CORP, MR. McKELVIA sustained the injuries set forth in Paragraph 20, which Paragraph is incorporated by reference.

47. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER CORP, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 21, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT VI – BREACH OF WARRANTY
PLAINTIFFS
-v-
STRYKER SALES CORPORATION

48. PLAINTIFFS incorporate Paragraphs 1 through 47 as if fully set forth herein.

49. STRYKER SALES warranted that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem were merchantable and fit for the purpose for which they were intended.

50. MR. McKELVIA made use of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem as alleged herein in reliance on the warranties by STRYKER SALES.

51. The injuries and damages sustained by MR. McKELVIA were proximately caused by STRYKER SALES's breach of express and implied warranties as follows:

a. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would be free from defects in STRYKER SALES's materials, design, and workmanship;

b. In breaching express and implied warranties that the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem would function properly in use;

c. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not fit for the particular purpose for which it was sold; and

d. In designing, manufacturing, distributing, and/or selling a femoral head and/or femoral stem that was not merchantable.

52. The warranties were breached by STRYKER SALES with the advent of previously mentioned defects and/or malfunctions associated with the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem and/or failure of the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to work properly.

53. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER SALES, MR. McKELVIA sustained the injuries set forth in Paragraph 20, which Paragraph is incorporated by reference.

54. As a direct and proximate consequence of the conduct and breaches of warranty by STRYKER SALES, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 21, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER SALES CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT VII – NEGLIGENCE
PLAINTIFFS
-v-
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS

55. PLAINTIFFS incorporate Paragraphs 1 through 54 as if fully set forth herein.

56. At all times relevant hereto, STRYKER ORTHOPAEDICS designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus

Femoral Stem either directly or indirectly to healthcare providers, hospitals, and members of the general public, within the Commonwealth of Pennsylvania, including MR. McKELVIA.

57. STRYKER ORTHOPAEDICS had a duty and responsibility to MR. McKELVIA to appropriately, sufficiently, satisfactorily, and/or reasonably design, develop, test, assemble, manufacture, package, labele, prepare for distribution, distribute, market, supply, and sell the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem.

58. STRYKER ORTHOPAEDICS, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER CORP and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, was negligent and careless in some or all of the following particulars:

a. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the LFIT Anatomic V40 Femoral Head, when it knew or should have known that same would not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

b. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the Accolade TMZF Plus Femoral Stem, when it knew or should have known that same would not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

c. In negligently failing to warn physicians and MR. McKELVIA of any and all dangers associated with corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation that would result from use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Femoral Stem;

d. In negligently failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction,

direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

e. In negligently supplying the LFIT Anatomic V40 Femoral Head to healthcare facilities, doctors, and MR. McKELVIA when it knew or should have known that its usage with the Accolade TMZF Femoral Stem would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

f. In negligently supplying the Accolade TMZF Femoral Stem to healthcare facilities, doctors, and MR. McKELVIA, when it knew or should have known that is usage with the LFIT Anatomic V40 Femoral Head would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

g. In negligently marketing, distributing, selling and/or supplying the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

h. In negligently marketing, distributing, selling and/or supplying the Accolade TMZF Femoral Stem for use with the LFIT Anatomic V40 Femoral Head when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

i. In negligently recommending the LFIT Anatomic V40 Femoral Head and TMZF Femoral Stem for use together when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

j. In negligently failing to adequately design and manufacture the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to ensure that their combination would not result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint; and

k. In negligently failing to test or adequately test the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem for which it was indicated and intended.

59. As a direct and proximate result of the negligent acts or omissions of STRYKER ORTHOPAEDICS, as alleged above, MR. McKELVIA, sustained injuries, including the following:

a. Need for revision, left hip replacement;

b. Metallosis;

c. Elevated cobalt levels;

d. Left leg and hip pain;

e. Left leg and hip weakness;

f. Left femoral nerve injury;

g. Left knee pain;

h. Shock to the nerves and nervous system; and

i. Some or all of the above injuries may be permanent in nature.

60. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the following damages:

a. Medical expenses for services and supplies incident to the treatment of his injuries;

b. Disfigurement;

c. Medical expenses for hospital admissions, surgeries, treatment and therapies, both past and future;

d. Impairment of his general health, strength, and vitality;

e. Past and future pain and suffering;

f. Past and future anguish, embarrassment, and inconvenience;

g. Deprivation of his ability to enjoy ordinary pleasures of life;

h. Increased risk of complications and corrective procedures;

i. Loss of past and future earnings and earning power; and

j. Other losses and damages recoverable by law.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT VIII – NEGLIGENCE
PLAINTIFFS
-v-
STRYKER CORPORATION

61. PLAINTIFFS incorporate Paragraphs 1 through 60 as if fully set forth herein.

62. At all times relevant hereto, STRYKER CORP designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem either directly or indirectly to healthcare providers, hospitals, and members of the general public, within the Commonwealth of Pennsylvania, including MR. McKELVIA.

63. STRYKER CORP had a duty and responsibility to MR. McKELVIA to appropriately, sufficiently, satisfactorily, and/or reasonably design, develop, test, assemble, manufacture, package, labeled, prepare for distribution, distribute, market, supply, and sell the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem.

64. STRYKER CORP, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER SALES, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, was negligent and careless in some or all of the following particulars:

a. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the LFIT Anatomic V40 Femoral Head,

when it knew or should have known that same would not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

b. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the Accolade TMZF Plus Femoral Stem, when it knew or should have known that same would not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

c. In negligently failing to warn physicians and MR. McKELVIA of any and all dangers associated with corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation that would result from use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Femoral Stem;

d. In negligently failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction, direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

e. In negligently supplying the LFIT Anatomic V40 Femoral Head to healthcare facilities, doctors, and MR. McKELVIA when it knew or should have known that its usage with the Accolade TMZF Femoral Stem would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

f. In negligently supplying the Accolade TMZF Femoral Stem to healthcare facilities, doctors, and MR. McKELVIA, when it knew or should have known that is usage with the LFIT Anatomic V40 Femoral Head would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

g. In negligently marketing, distributing, selling and/or supplying the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

h. In negligently marketing, distributing, selling and/or supplying the Accolade TMZF Femoral Stem for use with the LFIT Anatomic V40 Femoral Head when it knew or should have known from prior recalls that

this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

i. In negligently recommending the LFIT Anatomic V40 Femoral Head and TMZF Femoral Stem for use together when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

j. In negligently failing to adequately design and manufacture the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to ensure that their combination would not result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint; and

k. In negligently failing to test or adequately test the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem for which it was indicated and intended.

65. As a direct and proximate result of the negligent acts or omissions of STRYKER CORP, as alleged above, MR. McKELVIA sustained the injuries set forth in Paragraph 59, which Paragraph is incorporated by reference.

66. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 60, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT IX – NEGLIGENCE
PLAINTIFFS
-v-
STRYKER SALES CORPORATION

67. PLAINTIFFS incorporate Paragraphs 1 through 66 as if fully set forth herein.

68. At all times relevant hereto, STRYKER SALES designed, developed, tested, assembled, manufactured, packaged, labeled, prepared for distribution, distributed, marketed, supplied, and sold the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem

either directly or indirectly to healthcare providers, hospitals, and members of the general public, within the Commonwealth of Pennsylvania, including MR. McKELVIA.

69. STRYKER SALES had a duty and responsibility to MR. McKELVIA to appropriately, sufficiently, satisfactorily, and/or reasonably design, develop, test, assemble, manufacture, package, labeled, prepare for distribution, distribute, market, supply, and sell the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem.

70. STRYKER SALES, directly, and through its officers, directors, as well as through its agents, ostensible agents, servants, and/or employees, including STRYKER ORTHOPAEDICS and STRYKER CORP, who were acting within the scope of their authority, servitude, workmanship and/or employment described herein, was negligent and careless in some or all of the following particulars:

a. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the LFIT Anatomic V40 Femoral Head, when it knew or should have known that same would not properly engage with the recommended and intended Accolade TMZF Plus Femoral Stem, causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

b. In negligently designing, manufacturing, assembling, inspecting, testing, approving, distributing, selling, supplying, making available for sale and/or making available for distribution, the Accolade TMZF Plus Femoral Stem, when it knew or should have known that same would not properly engage with the recommended and intended LFIT Anatomic V40 Femoral Head causing fretting, corrosion, trunnionosis, taper lock failure, metallosis, and disassociation of the joint;

c. In negligently failing to warn physicians and MR. McKELVIA of any and all dangers associated with corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation that would result from use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Femoral Stem;

d. In negligently failing to provide healthcare providers, including The Western Pennsylvania Hospital and Dr. Liss, with adequate instruction,

direction, and/or warning regarding use of the LFIT Anatomic V40 Femoral Head with the Accolade TMZF Plus Femoral Stem;

e. In negligently supplying the LFIT Anatomic V40 Femoral Head to healthcare facilities, doctors, and MR. McKELVIA when it knew or should have known that its usage with the Accolade TMZF Femoral Stem would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

f. In negligently supplying the Accolade TMZF Femoral Stem to healthcare facilities, doctors, and MR. McKELVIA, when it knew or should have known that is usage with the LFIT Anatomic V40 Femoral Head would lead to corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

g. In negligently marketing, distributing, selling and/or supplying the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

h. In negligently marketing, distributing, selling and/or supplying the Accolade TMZF Femoral Stem for use with the LFIT Anatomic V40 Femoral Head when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

i. In negligently recommending the LFIT Anatomic V40 Femoral Head and TMZF Femoral Stem for use together when it knew or should have known from prior recalls that this combination would result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint;

j. In negligently failing to adequately design and manufacture the LFIT Anatomic V40 Femoral Head and Accolade TMZF Plus Femoral Stem to ensure that their combination would not result in corrosion, fretting, metallosis, trunnionosis, taper lock failure, and disassociation of the joint; and

k. In negligently failing to test or adequately test the LFIT Anatomic V40 Femoral Head for use with the Accolade TMZF Femoral Stem for which it was indicated and intended.

71. As a direct and proximate result of the negligent acts or omissions of STRYKER SALES, as alleged above, MR. McKELVIA sustained the injuries set forth in Paragraph 59, which Paragraph is incorporated by reference.

72. As a result of his injuries, MR. McKELVIA has suffered and will continue to suffer some or all of the damages set forth in Paragraph 60, which Paragraph is incorporated by reference.

WHEREFORE, Plaintiffs, JAMES McKELVIA and FRANCES McKELVIA, his wife, claim damages against STRYKER SALES CORPORATION in a sum in excess of the applicable arbitration limits and demands a trial by jury.

COUNT X – LOSS OF CONSORTIUM
FRANCES McKELVIA
-v-
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS, STRYKER CORPORATION and STRYKER SALES CORPORATION

73. PLAINTIFFS incorporate Paragraphs 1 through 72 as if fully set forth herein.

74. PLAINTIFF, MRS. McKELVIA, is now, and was at all times material hereto, married to PLAINTIFF, MR. McKELVIA.

75. As a direct and proximate result of the previously stated negligence of all Defendants, MRS. McKELVIA has suffered and/or will suffer the following damages:

a. Loss of society;

b. Loss of companionship;

c. Loss of consortium;

d. Loss of services; and

e. She has been, and in the future, may be required to expend substantial sums of money for her husband's medical expenses.

WHEREFORE, Plaintiff, FRANCIS McKELVIA, claims damages against HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS,

STRYKER CORPORATION and STRYKER SALES CORPORATION, in a sum in excess of the applicable arbitration limits and demand a trial by jury.

Respectfully submitted by,

OGG, MURPHY & PERKOSKY, P.C.

Michael A. Murphy, Esquire
John D. Perkosky, Esquire
Benjamin J. Gobel, Esquire
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES McKELVIA and FRANCES McKELVIA, his wife,	:	CIVIL DIVISION
Plaintiff,	:	No.: GD 19 –
-v-	:	
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS, et al.,	:	
Defendants.	:	

VERIFICATION

I hereby verify that I have read the foregoing Complaint in Civil Action and Certificates of Merit to Complaint and that the statements contained therein are correct to the best of my personal knowledge, information, and belief. Further, I hereby verify that this pleading is based on information I furnished to counsel, as well as information gathered by counsel in the course of this lawsuit.

The language of this pleading is that of counsel and not of signer. To the extent that the contents of the pleading are that of counsel, I have relied upon counsel in making this Verification.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if we make knowingly false averments we may be subjected to criminal penalties.

James McKelvia

JAMES McKELVIA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES McKELVIA and FRANCES McKELVIA, his wife,	:	CIVIL DIVISION
Plaintiff,	:	No.: GD 19 –
-v-	:	
HOWMEDICA OSTEONICS CORPORATION t/d/b/a STRYKER ORTHOPAEDICS, et al.,	:	
Defendants.	:	

VERIFICATION

I hereby verify that I have read the foregoing Complaint in Civil Action and Certificates of Merit to Complaint and that the statements contained therein are correct to the best of my personal knowledge, information, and belief. Further, I hereby verify that this pleading is based on information I furnished to counsel, as well as information gathered by counsel in the course of this lawsuit.

The language of this pleading is that of counsel and not of signer. To the extent that the contents of the pleading are that of counsel, I have relied upon counsel in making this Verification.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if we make knowingly false averments we may be subjected to criminal penalties.

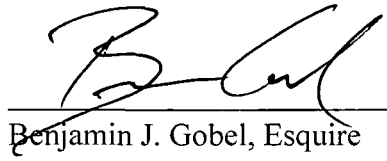
Frances McKelvia

FRANCES McKELVIA

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by,
OGG, MURPHY & PERKOSKY, P.C.



Benjamin J. Gobel, Esquire
PA ID# 309670

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

ALLEGHENY County

For Prothonotary Use Only:	FILED STAMP
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:	Lead Defendant's Name:
JAMES McKELVIA	HOWMEDICA OSTEONICS CORPORATION, et al.
Are money damages requested? ☒ Yes ☐ No	Dollar Amount Requested: (check one) ☐ within arbitration limits ☒ outside arbitration limits
Is this a *Class Action Suit*? ☐ Yes ☒ No	**Is this an *MDJ Appeal*?** ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: BENJAMIN J. GOBEL, ESQUIRE

☐ **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

TORT *(do not include Mass Tort)*
- ☐ Intentional
- ☐ Malicious Prosecution
- ☐ Motor Vehicle
- ☐ Nuisance
- ☐ Premises Liability
- ☒ Product Liability *(does not include mass tort)*
- ☐ Slander/Libel/ Defamation
- ☐ Other:

MASS TORT
- ☐ Asbestos
- ☐ Tobacco
- ☐ Toxic Tort - DES
- ☐ Toxic Tort - Implant
- ☐ Toxic Waste
- ☐ Other:

PROFESSIONAL LIABLITY
- ☐ Dental
- ☐ Legal
- ☐ Medical
- ☐ Other Professional:

CONTRACT *(do not include Judgments)*
- ☐ Buyer Plaintiff
- ☐ Debt Collection: Credit Card
- ☐ Debt Collection: Other
- ☐ Employment Dispute: Discrimination
- ☐ Employment Dispute: Other
- ☐ Other:

REAL PROPERTY
- ☐ Ejectment
- ☐ Eminent Domain/Condemnation
- ☐ Ground Rent
- ☐ Landlord/Tenant Dispute
- ☐ Mortgage Foreclosure: Residential
- ☐ Mortgage Foreclosure: Commercial
- ☐ Partition
- ☐ Quiet Title
- ☐ Other:

CIVIL APPEALS
Administrative Agencies
- ☐ Board of Assessment
- ☐ Board of Elections
- ☐ Dept. of Transportation
- ☐ Statutory Appeal: Other
- ☐ Zoning Board
- ☐ Other:

MISCELLANEOUS
- ☐ Common Law/Statutory Arbitration
- ☐ Declaratory Judgment
- ☐ Mandamus
- ☐ Non-Domestic Relations Restraining Order
- ☐ Quo Warranto
- ☐ Replevin
- ☐ Other:

Updated 1/1/2011