

MOIRA JACKSON, et. al.	*	CIRCUIT COURT
Plaintiffs,	*	FOR
v.	*	PRINCE GEORGE'S
DEPUY ORTHOPAEDICS, INC., et. al.	*	COUNTY
Defendants.	*	No. CAL10-32147
* * * * *	*	* * * * *

**ANSWER OF DEPUY ORTHOPAEDICS, INC. AND CHESAPEAKE SURGICAL, LTD
TO PLAINTIFFS' COMPLAINT AND DEMAND FOR JURY TRIAL**

Defendants DePuy Orthopaedics, Inc. and Chesapeake Surgical, Ltd. (collectively "Defendants"), by their undersigned attorneys, hereby answer the Complaint and Demand for Jury Trial ("Plaintiffs' Complaint" or "Complaint") filed by plaintiffs Moira Jackson, Jonathan B. Handley, Robert O'Bryhim and Kathryn Rassier, and state:

GENERAL DENIAL

1. Pursuant to Rule 2-323(d) of the Maryland Rules, Defendants generally deny liability for all counts asserted.
2. Pursuant to Rule 3-323(c) of the Maryland Rules, Defendants generally deny all averments in the Complaint that are not specifically admitted herein.

ADDITIONAL OR AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint, and each and every count and claim thereof, are barred by the applicable statute of limitations.

2. Plaintiffs' Complaint, and each and every count and claim thereof, fail to state a claim upon which the relief requested can be granted.

3. If Plaintiffs sustained any injuries alleged in the Complaint, which is denied, there was an intervening and/or superseding cause or causes leading to the alleged injuries, and therefore, any action on the part of Defendants was not the proximate and/or competent producing cause of any such alleged injuries.

4. If Plaintiffs sustained any injuries alleged in the Complaint, which is denied, those injuries were caused solely by the conduct of one or more third persons for whose conduct Defendants are not responsible and with whom Defendants have no legal relation.

5. Plaintiffs' claims were at the time of filing and are now barred by the applicable statutes of repose.

6. Plaintiffs' claims are barred for failure of Plaintiffs to mitigate, prevent, and/or reduce their alleged damages and injuries.

7. Plaintiffs' claims were at the time of filing and are now barred by the doctrine of laches.

8. Defendants allege that the subject products were fit and safe for their normal and intended use, handling and storage; and any and all damages, injuries and losses, if any, were caused by the abnormal, unforeseeable and improper use, handling and storage of said product.

9. Defendants allege that the strict liability cause of action of the complaint is subject to the limitations placed upon the doctrine of strict products liability for a design defect as set forth in the applicable Restatement of Torts.

10. Defendants allege that they did not make to Plaintiffs nor did they breach any express or implied warranties and/or breach any warranties created by law. To the extent that

Plaintiffs relied on any theory of breach of warranty, such claims are barred by applicable law, and for lack of privity with Defendants and/or for failure of Plaintiffs, or Plaintiffs' representatives, to give timely notice to Defendants of any alleged breach of warranty. Defendants further specifically plead as to any breach of warranty claim all affirmative defenses under the Uniform Commercial Code existing and which may arise in the future.

11. Plaintiffs' claims are barred because any duty to warn owed by Defendants was discharged by giving of adequate instructions and warnings concerning the product's use to physicians and other learned intermediaries.

12. Plaintiffs' claims are barred because if they sustained any injuries or damages, which is denied, those injuries or damages resulted from pre-existing or unrelated medical, genetic or environmental conditions, diseases, or illnesses, subsequent medical conditions, or natural course of conditions for which Defendants are not responsible.

13. Plaintiffs' claims are barred because if they sustained any injuries or damages, which is denied, those injuries and damages were proximately caused by an idiosyncratic reaction and not from any act or omission of Defendants.

14. Plaintiffs' claims are barred by the doctrines of informed consent, release and/or waiver.

15. Plaintiffs' claims may be barred by collateral estoppel or res judicata.

16. Plaintiffs' claims may be barred by payment.

17. Recovery by plaintiffs of non-economic compensatory damages in excess of the amount permitted by Md. Cts. & Jud. Proc. Code Ann. § 11-108 is barred.

18. The Circuit Court for Prince George's County is an inconvenient forum for the litigation of all or some of the claims asserted in this action and those claims should be dismissed or transferred to a more convenient forum.

19. The claims of the Plaintiffs are not properly joined in one action and should be severed.

20. Plaintiffs' claims are barred by any contributory negligence that was a direct and proximate cause of Plaintiffs' alleged injuries.

21. Plaintiffs' claims are barred in whole or in part under comment k to Section 402A of the Restatement (Second) of Torts.

22. Plaintiffs' claims are barred in whole or in part because Defendants provided adequate "directions or warnings" as the use of the subject products within the meaning of comment j to Section 402A of the Restatement (Second) of Torts.

23. If Plaintiffs have sustained injuries as alleged in the Complaint, Defendants are not liable to the extent that such injuries were sustained only after Plaintiffs knowingly, voluntarily and willfully assumed the risk of any injury as the result of the implantation of the subject products.

24. To the extent Plaintiffs have settled or will in the future settle with any person or entity with respect to the injuries asserted in the Complaint, Defendants' liability, if any, should be reduced accordingly.

25. To the extent Plaintiffs are seeking recovery for benefits entitled to be received or actually received from any other source for injuries alleged in the Complaint, such benefits are not recoverable in this action under the applicable state law.

26. Plaintiffs' claims are barred in whole or in part because the product at issue was made in accordance with the state of the art at the time it was manufactured.

27. There is no practical or technically feasible alternative design that would have reduced the alleged risk without substantially impairing the reasonably anticipated and intended function of the subject product.

28. Defendants are entitled to the protections and limitations afforded under Ind. Code Ann. §§ 34-51-3-1, et seq.

29. Defendants are entitled to, and claim the benefits of, all defenses and presumptions set forth in or arising from any rule of law or statute in the state of Maryland and Virginia, Plaintiffs' alleged states of citizenship and residence, and any other state whose law is deemed to apply in this case.

30. To the extent Plaintiff's claims are based on alleged misrepresentations or omissions made to the FDA, Defendants allege that such claims are barred pursuant to Buckman Co. v. Plaintiff's Legal Comm., 531 U.S. 341 (2001).

31. If Defendants' products are unsafe in any way, which is denied, they are unavoidably unsafe. Plaintiffs' purported action is, therefore, barred by Comment K of §402A of the Restatement (Second) of Torts and/or other applicable law .

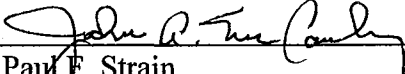
32. Defendants reserve the right to rely upon such other defenses as may become available or arise during discovery proceedings in this case, and to amend its answer to assert any such defense.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants DePuy Orthopaedics, Inc. and Chesapeake Surgical, Ltd. respectfully request that the Complaint be

dismissed, that Defendants recover all costs herein expended on its behalf including costs, attorneys' fees, and such other relief as this Court deems just and proper.

Respectfully submitted

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Attorneys for Defendants DePuy Orthopaedics, Inc.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21st day of December, 2010, a copy of the foregoing Answer to Plaintiffs' Complaint and Demand for Jury Trial was mailed, first class, postage prepaid to:

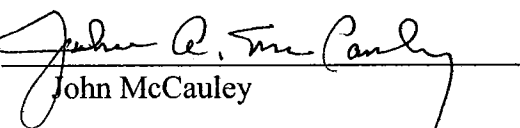
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By: 
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