DRINKER BIDDLE & REATH LLP
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Attorneys for Defendants
DEPUY ORTHOPAEDICS, INC., DEPUY, INC.,
DEPUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON INTERNATIONAL,
JOHNSON & JOHNSON SERVICES, INC., AND
JOHNSON & JOHNSON

FILED
AUG 08 2011
BRIAN R. MARTINOTTI, J.S.C.

IN RE DEPUY ASR™ HIP IMPLANTS LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY CASE CODE 293 CIVIL ACTION
This Document Relates to All Actions	**CASE MANAGEMENT ORDER NO. #5**

THIS MATTER having been opened to the Court by lead counsel for the parties, and the parties consenting to the form, substance and entry of the Order, and for good cause shown,

IT IS on this 8th day of August 2011;

ORDERED as follows:

1. This Order applies to all DePuy ASR™ Hip Implant Products Litigation actions centralized for coordinated management in the Bergen County Vicinage and all those hereinafter filed or transferred to the Bergen County Vicinage pursuant to the Supreme Court Order dated April 12, 2011.

2. Notwithstanding the provisions of this Order for procedures for complaints and answers, the defendants do not waive service, and all defendants must be served in accordance with the New Jersey Rules of Court and the Hague Convention as applicable.

FORM OF DIRECT FILED COMPLAINTS AND ANSWERS

3. In the interests of judicial economy, Plaintiffs filing cases directly into *In Re DePuy ASR™ Hip Implants Litigation*, Case Code 293 shall file short-form complaints, which are in an abbreviated form and which briefly articulate the injury, the dates, the home state, the plaintiff's date of birth, the basic theories of liability, without the need for detailed pleadings. Said short Form Complaint is annexed hereto as Exhibit A.

4. In turn, the Defendants shall file one Master Abbreviated or Short-Form Answer which shall set forth a General Denial and which shall be deemed to deny all allegations in all Complaints, and which shall further set forth all Separate Defenses. Said Short Form Answer is annexed hereto as Exhibit B.

5. Whether and when there will be a master long form complaint and answer will be the subject of further discussions among counsel and the Court. Plaintiffs and Defendants have further stipulated and agreed that at this time and until further Order of the Court, they will not assert that any Short-Form Complaint or the Answer filed in *In Re DePuy ASR™ Hip Implants Litigation*, Case Code 293 (1) fails to state a recognizable cause of action, (2) fails to state a claim upon which relief may be granted, (3) fails to plead allegations with sufficient particularity, or any other defenses related to insufficiency of pleadings. The Parties have further stipulated and agreed that until further Order of the Court, they will not file motions pursuant to R. 4:6 against any filed Short-Form Complaints or any Answers asserting a failure to plead allegations with specificity, or failing to meet the requirements of R. 4:5. Motion practice on the individual personal injury Complaints or Answers subject to this Order shall be stayed and may proceed only upon leave of Court.

6. Upon completion of the pretrial proceedings of *In Re DePuy ASR™ Hip Implants Litigation*, Case Code 293, this Court will require the parties to amend all pleadings to conform to the evidence as adduced by discovery. Plaintiffs have the express right to file and serve Amended Complaints more fully setting forth the facts specific to their case, the causes of action and allegations against the Defendants, theories of liability and damages alleged. Defendants will be required to file within 30 days of service of the Amended Complaint a responsive pleading or Answer and assert any and all cognizable defenses based on the allegations and theories set forth in the Amended Complaint. More detailed pleadings will be required only in cases selected for advanced discovery for potential bellwether consideration. For any such selected cases, the plaintiffs shall file an Amended Complaint within thirty days of selection for such advanced discovery by Order of this Court and Defendants shall have thirty days thereafter to file an Amended Answer.

IT IS SO ORDERED.

BRIAN R. MARTINOTTI, J.S.C.

FP01/ 6502925.2

EXHIBIT A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN RE: DePUY ASR HIP IMPLANTS
LITIGATION
CASE CODE 293

[INSERT NAME], **Plaintiff(s)** **vs.** DePUY ORTHOPAEDICS, INC., et al., **Defendant(s)**	**SHORT FORM COMPLAINT, DEMAND FOR JURY TRIAL AND DESIGNATION OF TRIAL COUNSEL FOR DePUY ASR™ HIP IMPLANTS LITIGATION**

ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS, INC. ASR™ HIP IMPLANT PRODUCTS LIABILITY LITIGATION

ASR™ALLEGATIONS AS TO VENUE

1. Plaintiff(s), [NAME], states and brings this civil action before the Superior Court of New Jersey, Bergen County vicinage, as a related action in the matter entitled IN RE: DePUY ASR HIP IMPLANTS LITIGATION, Case Code No. 293. Plaintiff is filing this short form complaint as permitted by Case Management Order No. ___ of this Court.
2. Plaintiff, _____, is a resident and citizen of _____ and claims

damages as set forth below. Plaintiff's Spouse, _____, is a resident and citizen of _____, and claims damages as a result of loss of consortium. *#Cross out Spousal Claim if not applicable.*

3. Plaintiff was born on _____.
4. Plaintiff is filing this case in a representative capacity as the _____ of the _____, having been duly appointed as the _____ by the _____Court of _____. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent. *Cross out if not applicable.*
5. Plaintiff is filing this case against the following Defendants:

   - ☐ DePuy Orthopaedics, Inc.
   - ☐ DePuy Inc.
   - ☐ DePuy International Limited
   - ☐ Johnson & Johnson
   - ☐ Johnson & Johnson Services, Inc.
   - ☐ Johnson & Johnson International

ALLEGATIONS AS TO INJURIES

6. Plaintiff claims damages as a result of:

   - ☐ injury to herself/himself
   - ☐ injury to the person represented
   - ☐ wrongful death
   - ☐ survivorship action

- ☐ economic loss
- ☐ loss of services
- ☐ loss of consortium

7. Plaintiff was implanted with a DePuy ASR™ hip implant on his/her _____ hip on or about _____ (date) at the _____ (medical center), in _____, by Dr. _____.
8. Plaintiff was implanted with a DePuy ASR™ hip implant on his/her _____ hip on or about _____ (date) at the _____ (medical center), in _____, by Dr. _____. *Cross out if not bilateral ASR™ hips.*
9. On or about _____ (date), Plaintiff suffered the following personal and economic injur(ies) as result of the implantation with the ASR™ hip implant: _____; and _____.
10. Plaintiff had the right/left ASR™ hip implant explanted on _____, at _____ (medical center and address) by Dr. _____ or Plaintiff will be having the right/left ASR™ hip implant explanted on or about _____, or Plaintiff has not yet scheduled an explantation of the ASR™ hip implant. *Cross out inapplicable sections..*
11. Plaintiff had the right/left ASR™ hip implant explanted on _____, at _____ (medical center and address) by Dr. _____ or Plaintiff will be having the right/left ASR™ hip explanted on or about _____.
12. Plaintiff(s) has suffered injuries as a result of implantation and explantation of the DePuy ASR™ hip implant manufactured by the defendants as shall be fully set forth in Plaintiff's Fact Sheet and other responsive documents provided to the

defendants and are incorporated by reference herein.

13. At the time of implantation with the DePuy ASR™ hip implant, the Plaintiff resided at _____.

14. The defendants by their actions or inactions, proximately caused Plaintiff's injuries.

15. The Plaintiff could not have known that the injuries he/she suffered were as a result of a defect in the DePuy ASR™ hip implant until after the date the device was recalled from the market and the Plaintiff came to learn of the recall.

16. In addition, the Plaintiff could not have known that he/she was injured by excessive levels of chromium and cobalt until after the date he/she had his/her blood drawn and he/she was advised of the results of said blood-work.

17. As a result of the injuries Plaintiff(s) sustained, he/she/they are entitled to recover compensatory damages for pain and suffering and emotional distress (*if applicable)* and for economic loss as well as punitive damages.

ALLEGATIONS AS TO DEFENDANTS' SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

18. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference:

- ☐ FIRST CAUSE OF ACTION (NEGLIGENCE);
- ☐ SECOND CAUSE OF ACTION (NEGLIGENCE PER SE);
- ☐ THIRD CAUSE OF ACTION (STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN)
- ☐ FOURTH CAUSE OF ACTION (STRICT PRODUCTS LIABILITY-MANUFACTURING DEFECT);

- ☐ FIFTH CAUSE OF ACTION
  (STRICT PRODUCTS LIABILITY-FAILURE TO WARN);

- ☐ SIXTH CAUSE OF ACTION
  (BREACH OF EXPRESS WARRANTY);

- ☐ SEVENTH CAUSE OF ACTION
  (BREACH OF WARRANTY AS TO MERCHANTABILITY)

- ☐ EIGHTH. CAUSE OF ACTION
  (BREACH OF IMPLIED WARRANTIES);

- ☐ NINTH CAUSE OF ACTION
  (FRAUDULENT MISREPRESENTATION);

- ☐ TENTH CAUSE OF ACTION
  (FRAUDULENT CONCEALMENT);

- ☐ ELEVENTH CAUSE OF ACTION
  (NEGLIGENT MISREPRESENTATION);

- ☐ TWELFTH CAUSE OF ACTION
  (FRAUD AND DECEIT);

- ☐ THIRTEENTH CAUSE OF ACTION
  (VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT);

- ☐ FOURTEENTH CAUSE OF ACTION
  (MISREPRESENTATION BY OMISSION);

- ☐ FIFTEENTH CAUSE OF ACTION
  (CONSTRUCTIVE FRAUD);

- ☐ SIXTEENTH CAUSE OF ACTION
  (NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;

- ☐ SEVENTEENTH CAUSE OF ACTION
  (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS);

- ☐ EIGHTEENTH CAUSE OF ACTION
  (GROSS NEGLIGENCE/MALICE);

- ☐ NINETEENTH CAUSE OF ACTION
  (LOSS OF CONSORTIUM);

- ☐ TWENTIETH CAUSE OF ACTION

(PUNITIVE DAMAGES)

- ☐ TWENTY-FIRST CAUSE OF ACTION (MEDICAL MONITORING)

- ☐ TWENTY-SECOND CAUSE OF ACTION (RESTITUTION OF ALL PURCHASE COSTS AND DISGORGEMENT OF ALL PROFITS FROM MONIES THAT PLAINTIFF INCURRED IN PURCHASE OF THE HIP IMPLANT)

PLAINTIFF(S) ASSERT(S) THE FOLLOWING ADDITIONAL STATE CAUSES OF ACTION:

_____

_____

_____

_____

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive damages or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorneys' fees and costs;
6. For prejudgment interest and costs of suit; and
7. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff(s) hereby demand a trial by jury as to all claims in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c) and R. 4:25-4, Plaintiff(s) hereby designates _____ as trial counsel.

RULE 4:5-1 CERTIFICATION

Plaintiff(s), by his/her/their attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceedings. Plaintiff(s) is/are not currently aware of any other parties that should be joined in this particular action. In addition, Plaintiff(s) recognize(s) his/her/their continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Respectfully submitted,
Counsel for Plaintiff(s)

EXHIBIT B

DRINKER BIDDLE & REATH LLP
A Delaware Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 549-7000
Attorneys for Defendants
DEPUY ORTHOPAEDICS, INC., DEPUY, INC.,
DEPUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON INTERNATIONAL,
JOHNSON & JOHNSON SERVICES, INC., AND
JOHNSON & JOHNSON

IN RE DEPUY ASR™ HIP IMPLANTS LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY CASE CODE 293 CIVIL ACTION
This Document Relates to All Actions	**DEFENDANTS' MASTER ANSWER** **JURY TRIAL DEMANDED**

Defendants DePuy Orthopaedics, Inc., DePuy, Inc., DePuy International Limited, Johnson & Johnson International, Johnson & Johnson Services, Inc., and Johnson & Johnson (collectively "Defendants") respond to the allegations set forth in Plaintiffs' Complaint ("Complaint") as follows: Defendants deny each and every allegation, statement, and matter contained in Plaintiffs' Short Form Complaint, and assert the following separate defenses:

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs' alleged injuries and damages attributable to the use of the products at issue in this case, if any, were not legally caused by the products at issue, but instead were legally caused by intervening and superseding causes or circumstances.

SECOND SEPARATE DEFENSE

Plaintiffs' alleged damages, if any, are barred in whole or in part by Plaintiffs' failure to mitigate such damages.

THIRD SEPARATE DEFENSE

Plaintiffs' causes of action are barred by the applicable statutes of limitation, statutes of repose, and doctrine of laches.

FOURTH SEPARATE DEFENSE

Plaintiffs' damages, if any, are barred or limited by the payments received from collateral sources.

FIFTH SEPARATE DEFENSE

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

SIXTH SEPARATE DEFENSE

Any claim for punitive or exemplary damages against Defendants is unconstitutional in that recovery of punitive or exemplary damages in this case would violate Defendants' constitutional rights to due process and equal protection under the Fourteenth Amendment to the Constitution of the United States and similar protections afforded by the New Jersey and Indiana

state constitutions, and any other state whose law is deemed to apply in this case, and that any law of the states of New Jersey or Indiana, whether enacted by that state's legislature or founded upon a decision or decisions of the courts, or that of any other state whose law is deemed to apply in this case, that would permit recovery of punitive or exemplary damages, is unconstitutional under these provisions.

SEVENTH SEPARATE DEFENSE

Any claim for punitive or exemplary damages against Defendants is unconstitutional in that the standards for granting and asserting punitive or exemplary damages do not prohibit other Plaintiff from seeking and recovering such damages against Defendants for the same allegations of defect in the same products, and as such constitute multiple punishments for the same alleged conduct resulting in deprivation of Defendants' property without due process of law and will result in unjustified windfalls for Plaintiff and Plaintiff's counsel, in violation of the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and similar protections afforded by the New Jersey and Indiana state constitutions, and that of any other state whose law is deemed to apply in this case.

EIGHTH SEPARATE DEFENSE

Any claim for punitive damages against Defendants cannot be maintained because an award of punitive damages under current New Jersey and Indiana law, and any other state's law deemed to apply to this action, would be void for vagueness, both facially and as applied. Among other deficiencies, there is an absence of adequate notice of what conduct is subject to punishment; an absence of adequate notice of what punishment may be imposed; an absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose; a risk that punitive damages

will be imposed retrospectively based on conduct that was not deemed punishable at the time the conduct occurred; and it would permit and encourage arbitrary and discriminatory enforcement, all in violation of the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the due process provisions of the New Jersey and Indiana state constitutions, and the common law and public policies of the states New Jersey and Indiana and similar protections afforded by any other state whose law is deemed to apply in this case.

NINTH SEPARATE DEFENSE

To the extent that the laws of New Jersey and Indiana, and any other state whose law is deemed to apply in this case, permit punishment to be measured by the net worth or financial status of Defendants and imposes greater punishment on defendants with larger net worth, such an award would be unconstitutional because it permits arbitrary, capricious, and fundamentally unfair punishments, allows bias and prejudice to infect verdicts imposing punishment, allows punishment to be imposed based on lawful profits and conduct of Defendants in other states, and allows dissimilar treatment of similarly situated defendants, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, the Commerce Clause of the United States Constitution, the state laws and constitutional provisions of New Jersey, and Indiana and similar protections afforded by any other state whose law is deemed to apply in this case.

TENTH SEPARATE DEFENSE

Liability and compensatory damages are not covered by the law of New Jersey but rather the law of the State of Plaintiff's residence at the time of the implant surgery which is the subject of this lawsuit.

ELEVENTH SEPARATE DEFENSE

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

TWELFTH SEPARATE DEFENSE

Defendants are entitled to the protections and limitations afforded under the New Jersey Punitive Damages Act, N.J.S.A. §§ 2A:15-5.9, et seq.

THIRTEENTH SEPARATE DEFENSE

Plaintiffs' claims should be dismissed, reduced, offset, or barred in accordance with the principles of comparative negligence and the New Jersey Joint Tortfeasors Law, N.J.S.A. § 2A:53A-3, et seq.

FOURTEENTH SEPARATE DEFENSE

The injuries and damages claimed by Plaintiffs, if any, were caused in whole or in part by the acts or omissions of persons over whom Defendants have no control or right of control.

FIFTEENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the equitable doctrine of estoppel, accord and satisfaction.

SIXTEENTH SEPARATE DEFENSE

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

SEVENTEENTH SEPARATE DEFENSE

Plaintiffs have failed to plead allegations of fraud with the particularity required by the Federal Rules of Civil Procedure.

EIGHTEENTH SEPARATE DEFENSE

This Court lacks personal jurisdiction over Defendants DePuy, Inc. and DePuy International Limited and therefore these Defendants must be dismissed.

NINETEENTH SEPARATE DEFENSE

Defendants raise and preserve their defenses of failure of service, insufficiency of process, and insufficiency of service of process.

TWENTIETH SEPARATE DEFENSE

Defendants state that venue is improper.

TWENTY-FIRST SEPARATE DEFENSE

Defendants reserve their right to raise such further and additional defenses as may be available upon the facts to be developed in discovery and under other applicable substantive law.

JURY DEMAND

Defendants request a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Susan M. Sharko is hereby designated as trial counsel.

DRINKER BIDDLE & REATH LLP
Attorneys for Defendants
DePuy Orthopaedics, Inc.,
DePuy, Inc., DePuy International
Limited, Johnson & Johnson
International, Johnson & Johnson
Services, Inc., and Johnson & Johnson

By:_____
Susan M. Sharko

R. 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge, information, and belief the matter in controversy is not the subject of any action pending in any court or any pending arbitration proceeding, and that no such other action or arbitration proceeding is contemplated. I further certify to the best of my knowledge, information and belief that there are no non-parties that should be joined pursuant to R. 4:28 or are subject to joinder pursuant to R. 4:29-1(b).

DRINKER BIDDLE & REATH LLP
Attorneys for Defendants
DePuy Orthopaedics, Inc.,
DePuy, Inc., DePuy International
Limited, Johnson & Johnson
International, Johnson & Johnson
Services, Inc., and Johnson & Johnson

By:_____
Susan M. Sharko

CERTIFICATION

1. I certify that the within answer was sent to the Clerk of Bergen County by regular mail.

2. I further certify that a copy of this pleading which has been filed with the Clerk of Bergen County has been served by regular mail today upon:

[FILL IN PLAINTIFFS' LIAISON COUNSEL'S NAME AND ADDRESS]

3. These statements are true to the best of my knowledge, information and belief. I am aware that if any of these statements are willfully false, I may be subject to punishment.

_____

Dated: _____

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