

Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES A. DOERTY,

Plaintiff,

vs.

JOHNSON & JOHNSON, DEPUY, INC.,
and DEPUY ORTHOPAEDICS, INC.,

Defendants.

No. 2:12-cv-01495 TSZ

JOHNSON & JOHNSON’S ANSWER
TO COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

Defendant Johnson & Johnson (“J&J”) responds to the allegations set forth in Plaintiff’s Complaint as follows:

I. FACTUAL BACKGROUND

1. Plaintiff is James A. Doerty. Plaintiff resides in Seattle, Washington.

ANSWER: J&J lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.

2. On January 17, 2006, plaintiff James A. Doerty (hereafter, “plaintiff”) underwent a total left hip arthroplasty at Swedish Medical Center in Seattle, Washington. As part of this surgery, his surgeon implanted a DePuy Pinnacle 100 series, 52 mm outer diameter titanium cup, lot number Z67DH1000; an Apex hole eliminator; a Pinnacle IDE

1 metal insert, 36 mm ID, 52 mm OD, lot #1950021; a 10.5 mm small stature AML stem, lot
2 number Z54EN1000, and a 36 mm +5 Cobalt chrome femoral head, lot #1967240.

3 **ANSWER:** J&J lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations in Paragraph 2, and therefore denies the same.

5 3. Following this total hip arthroplasty, Plaintiff developed increasingly severe
6 hip pain. On July 30, 2009, an x-ray demonstrated an obvious fracture of the left 10.5 mm
7 small stature AML stem, lot number Z54EN1000 previously implanted on January 17, 2006.

8 **ANSWER:** J&J lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations regarding Plaintiff's medical condition or what a July 30, 2009 x-ray
10 allegedly demonstrated, and therefore denies the same. J&J denies all remaining allegations
11 in Paragraph 3 and expressly denies that any DePuy Orthopaedics, Inc. ("DePuy") products
12 implanted in Plaintiff were defective in any respect.

13 4. Plaintiff underwent revision surgery on August 4, 2009 with total hip
14 replacement including replacement of the fractured left femoral stem implant.

15 **ANSWER:** J&J lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations regarding Plaintiff's August 4, 2009 revision surgery, and therefore
17 denies the same. J&J denies all remaining allegations in Paragraph 4 and expressly denies
18 that any DePuy products implanted in Plaintiff were defective in any respect.

19 **II. LIABILITY AND JURISDICTION AS TO DEFENDANTS**

20 5. Defendant Johnson & Johnson is a New Jersey corporation having its principal
21 place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. At
22 all times material hereto, the Defendant Johnson & Johnson was engaged in the business of
23 designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing,
24 labeling and/or selling the component parts listed in paragraph two above.

1 **ANSWER:** J&J admits that Johnson & Johnson is a New Jersey corporation with
2 its principal place of business located in New Brunswick, New Jersey. J&J denies the
3 remaining allegations in Paragraph 5.

4 6. Defendant DePuy, Inc. is a Delaware corporation having its principal place of
5 business at 700 Orthopaedic Drive, Warsaw, Indiana 46581. At all times material hereto, the
6 Defendant DePuy, Inc. was engaged in the business of designing, developing, manufacturing,
7 testing, packaging, promoting, marketing, distributing, labeling and/or selling the component
8 parts listed in paragraph two above. DePuy, Inc. is part of the Defendant Johnson & Johnson's
9 "Family of Companies."

10 **ANSWER:** J&J admits that DePuy, Inc. is a Delaware corporation with its principal
11 place of business located in Warsaw, Indiana. J&J denies all remaining allegations in
12 Paragraph 6.

13 7. Defendant DePuy Orthopaedics, Inc. is an Indiana corporation having its
14 principal place of business at 700 Orthopaedic Drive, Warsaw, Indiana 46581. At all times
15 material hereto, the Defendant DePuy Orthopaedics, Inc. was engaged in the business of
16 designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing,
17 labeling and/or selling the component parts listed in paragraph two above. DePuy, Inc., parent
18 company of DePuy Orthopaedics, Inc., is part of the Defendant Johnson & Johnson's "Family
19 of Companies."

20 **ANSWER:** J&J admits that DePuy is an Indiana corporation with its principal place
21 of business located in Warsaw, Indiana. J&J further admits that DePuy designed, developed,
22 tested, packaged, marketed, labeled and sold components of the Pinnacle Acetabular Cup
23 System. J&J denies all remaining allegations in Paragraph 7.

24 8. At all times material hereto the Defendants and each of them conducted
25 business in King County, Washington, including marketing and selling hip replacement
26 components including the components listed in Paragraph 2 above.

1 E. Past and future disability; pain, suffering, and disability both physical
2 and emotional; and interference with the enjoyment of normal life activities, all
3 resulting in general damages;

4 F. Interest from the date of injury.

5 **ANSWER:** J&J denies Plaintiff is entitled to any recovery in this matter and denies
6 the allegations in Paragraph 12.

7
8 **AFFIRMATIVE DEFENSES**

9 J&J also asserts the following defenses. By alleging the defenses set forth below, J&J
10 is not in any way agreeing or conceding that it has the burden of proof or the burden of
11 persuasion on any of these issues.

12 **FIRST AFFIRMATIVE DEFENSE**

13 Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief may
14 be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 The injuries and damages claimed by Plaintiff, if any, were caused in whole or in part
17 by the acts or omissions of persons over whom J&J has no control or right of control.

18 **THIRD AFFIRMATIVE DEFENSE**

19 At all times mentioned herein, Plaintiff was negligent, careless, and at fault, and
20 conducted himself so as to contribute substantially to their alleged injuries and damages. Said
21 negligence, carelessness, and fault of Plaintiff bars in whole or in part the damages which
22 Plaintiff seeks to recover herein.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Plaintiff knowingly and voluntarily assumed any and all risks associated with the use
25 of the products at issue in this case, and such assumption of the risks bars in whole or in part
26 the damages Plaintiff seeks to recover herein.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 Plaintiff's alleged damages, if any, are barred in whole or in part by Plaintiff's failure
3 to mitigate such damages.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, because the hip replacement device
6 placed in Plaintiff's hip was at all relevant times manufactured and sold consistent with
7 available technology, scientific knowledge, and the state of the art, and in compliance with all
8 federal, state, and local laws and regulations, and was accompanied by product information
9 and warnings that were reasonable, full and adequate and in accordance with FDA regulating
10 requirements and the state of medical and scientific knowledge then in existence.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 If DePuy's products are unsafe in any way, they are unavoidably unsafe. Plaintiff's
13 purported action is, therefore, barred by Comment k of § 402A of the Restatement (Second)
14 of Torts and/or other applicable law.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 Even if there was negligence and/or breach of warranty on their part in the
17 manufacture and sale of the hip replacement device placed in Plaintiff's hip, which J&J
18 expressly denies, such negligence and/or breach of warranty was not the proximate or
19 producing cause of Plaintiff's alleged injuries or damages.

20 **NINTH AFFIRMATIVE DEFENSE**

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

24 **TENTH AFFIRMATIVE DEFENSE**

25 If Plaintiff incurred any injuries or damages as a result of the use of the hip
26 replacement device placed in Plaintiff's hip, which J&J denies, such injuries or damages were

1 due to an idiosyncratic or idiopathic reaction, or by an unforeseeable or pre-existing
2 condition, without any negligence or culpable conduct by J&J.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims and causes of action are preempted by Medical Device Amendments
5 to the Federal Food, Drug & Cosmetic Act and the FDA regulations promulgated pursuant
6 thereto.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 Plaintiff's causes of action are barred by the applicable statutes of limitation, statutes
9 of repose, and/or doctrine of laches.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's causes of action are barred by the learned intermediary doctrine.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 J&J did not make to Plaintiff nor did it breach any express or implied warranties
14 and/or breach of any warranties created by law. To the extent that Plaintiff relies on any
15 theory of breach of warranty, such claims are barred by applicable law, and for lack of privity
16 with J&J and/or failure of Plaintiff, or Plaintiff's representatives, to give timely notice to J&J
17 of any alleged breach of warranty. J&J further specifically plead as to any breach of warranty
18 claim all defenses under the Uniform Commercial Code existing and which may arise in the
19 future.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims of product defects are barred by Sections 2, 4, and 6(c) and (d) of the
22 Restatement (Third) of Torts: Products Liability.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 Plaintiff may not recover for a Consumer Protection Act violation because at all times
25 J&J's conduct was reasonable.
26

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims should be diminished in whole or in part in the amount paid to
3 Plaintiff by any party or non-party with whom Plaintiff has settled or may settle.

4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's damages, if any, are barred or limited by the payments received from
6 collateral sources.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 J&J is entitled to, and claims the benefits of, all defenses and presumptions set forth in
9 or arising from any rule of law or statute in any state whose law is deemed to apply in this
10 case.

11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred by the equitable doctrine of estoppel.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 Plaintiff's alleged injuries are a result of pre-existing and/or unrelated medical
15 conditions for which J&J is not responsible.

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 Plaintiff has failed to plead allegations of fraud, mistake, or deception with the
22 specificity or detail required to the extent Plaintiff is attempting to assert any such claims.

23 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24 Any claim for punitive damages, to the extent one is asserted in this matter against
25 Defendant, cannot be maintained because punitive damages are not permitted under
26 Washington law.

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 If more than one entity, as that term is used in RCW 4.22.070, is found to be a fault,
3 then fault should be apportioned among all at-fault entities, whether this includes J&J, or not,
4 and among all persons or entities that have settled with Plaintiff at the time of trial. J&J
5 hereby requests apportionment pursuant to RCW 4.22 *et seq.*

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 This Court lacks personal jurisdiction over J&J, and accordingly it should be
8 dismissed from this lawsuit.

9 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

10 J&J reserves its right to raise such further and additional defenses as may be available
11 upon the facts to be developed in discovery and under other applicable substantive law.

12 WHEREFORE, J&J respectfully request that the Court enter judgment in its favor and
13 against the Plaintiff, that Plaintiff be awarded nothing by his Complaint, for costs of this
14 action, and for all other just and proper relief.

15 **DEMAND FOR JURY TRIAL**

16 J&J requests a trial by jury on all issues so triable.

17
18 DATED this 11th day of September, 2012.

19
20 BENNETT BIGELOW & LEEDOM, P.S.

21
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September 2012, I electronically filed this document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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Attorneys for Plaintiff

Dated this 11th day of September, 2012.

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