

**IN THE STATE COURT OF BOBB COUNTY
STATE OF GEORGIA**

PAULA PLAINTIFF,)	
Plaintiff,)	
)	
vs.)	
)	
MEGA-MANUFACTURER, INC.,)	CIVIL ACTION
SUPER-MANUFACTURER, INC d/b/a)	FILE NO. _____
SUPER, SUPER ORTHOPAEDICS,)	
SUPER IMPLANTS, and SUPER)	
SURGICAL; and ORTHO SURGEONS,)	
P.C. d/b/a ORTHOPAEDIC SURGEONS)	
CLINIC,)	
)	
Defendants.)	JURY TRIAL DEMANDED
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COMPLAINT FOR DAMAGES

COMES NOW, the plaintiff, PAULA PLAINTIFF, by and through her undersigned counsel of record and files this Complaint for Damages against the defendants and avers as follows:

1.

Defendant, **MEGA-MANUFACTURER, INC.**, [Hereinafter referred to as “MEGA”] at times material to this action, was a foreign corporation organized under the laws of the State of Delaware with its headquarters and principle place of business in Dallas, Texas. At all times material to this action, **MEGA** regularly conducted business in the State of Georgia in Bibb County, Georgia, and marketed, distributed, supplied and/or sold orthopaedic prosthetic knee implants to Georgia physicians, surgical groups and hospitals for use and surgical implantation in Georgia citizens and is subject to the venue and jurisdiction of this Court.

2.

Defendant, **SUPER-MANUFACTURER, INC** [Hereinafter referred to as “SUPER”] at times material to this action, was a foreign corporation organized under the laws of the State of Delaware with its headquarters and principle place of business in Dallas, Texas. At all times material to this action, SUPER. regularly conducted business in the State of Georgia in Bibb County, Georgia, and marketed, distributed, supplied and/or sold orthopaedic prosthetic knee implants to Georgia physicians, surgical groups and hospitals for use and surgical implantation in Georgia citizens and is subject to the venue and jurisdiction of this Court.

3.

At all times material to the present action, there existed a unity of ownership between Defendants SUPER and MEGA [Hereinafter referred to collectively as “MANUFACTURERS” and/or “MANUFACTURER DEFENDANTS.”], such that any individuality and separateness between them has ceased. These defendants are the alter egos of one another and exerted control over each other.

4.

At all times material to the present action, Manufacturer Defendants regularly conducted business in the State of Georgia in Bibb County, Georgia, and marketed, distributed, supplied and/or sold orthopaedic prosthetic knee implants to Georgia physicians, surgical groups and hospitals for use and surgical implantation in Georgia citizens.

5.

Defendant, **ORTHO SURGEONS, P.C.**, [Hereinafter referred to as “Medical Provider Defendant.”], is a professional medical corporation operating under the name “Orthopaedic Surgeons Clinic” and maintaining offices and conducting business in and around the Atlanta, Georgia area. This Defendant regularly conducted business in the State of Georgia, and/or sold and implanted orthopaedic prosthetic knee implants in Georgia citizens and is subject to the venue and jurisdiction of this Court as a joint tortfeasor.

6.

At times material to this action, Medical Provider Defendant, acted in all respects relevant to this action as the agent of the Manufacturer Defendants and carried out a joint scheme, business plan, and/or policy with the Manufacturer Defendants to market, sell and implant orthopaedic prosthetic knee implants in Georgia citizens.

7.

At times material to this action Defendants MEGA, SUPER, and the Medical Provider Defendant, ratified the acts and omissions of each other.

8.

At times material to this action Defendant, MEGA, SUPER, and the Medical Provider Defendant, acted in all respects relevant to this action as the agent of the other, carried out a joint business plan or policy to market, sell and implant orthopaedic prosthetic knee implants in Georgia citizens.

*Facts Applicable To The Failure Of The Manufacturer Knee Systems Implanted By
Medical Provider Defendant Into Plaintiff's Knees.*

9.

By 1995, patients who had the Manufacturer Knee Replacement System [Hereinafter referred to as "Manufacturer implant."] implanted to replace knees reported to the Food and Drug Administration sudden and premature failures of the polyethylene tibial post, which is an integral part of the Manufacturer implant.

10.

In 2004, Medical Provider Defendant implanted a Manufacturer implant into Plaintiff's left knee.

11.

By 2005, Plaintiff was suffering discomfort and pain in her left knee and heard loud noises and popping also in her left knee.

12.

In 2005, Medical Provider Defendant treated Plaintiff but either actively, intentionally and/or negligently concealed from Plaintiff that the medical condition she suffered from in her left knee was the result of a defect in the Manufacturer implant.

13.

Between 2005 and July 2009, Medical Provider defendant either actively, intentionally and/or negligently concealed the Manufacturer implant's internal mechanical failures from Plaintiff and that the said internal mechanical failures were a result of a defect in the Manufacturer implant.

14.

As a direct and proximate result of the sudden and premature failure of the Manufacturer implant in Plaintiff's right knee, Plaintiff suffered, and is expected to continue to suffer instability in Plaintiff's left knee, an orthopaedic disability to replace and/or employ the use of a prosthetic implant to replace Plaintiff's left knee, mental anguish, physical immobility, psychological distress, physical disabilities related thereto, and the loss of the enjoyment of life.

15.

As a direct and proximate result of the sudden and premature failure of the Manufacturer implant in Plaintiff's left knee, Plaintiff was required to undergo further orthopedic surgery to correct the instability in Plaintiff's left knee, which is proximate to said Manufacturer implant failure, and has to date incurred medical expense in excess of \$70,000.00 .

Facts Applicable to Manufacturer Defendants And Medical Provider Defendant.

15.

As early as 1995, adverse medical outcomes were reported to the Food and Drug Administration, which were caused by the failure of the polyethylene tibial insert, which is part of the Manufacturer implant, and which is the prosthetic implant at issue in this action.

16.

Upon information and belief, Manufacturer Defendants and Medical Provider Defendant, had actual or constructive knowledge of and/or knew or should have known,

or were reckless in not knowing, of the defects which caused failures in the Manufacturer implant and were reported as adverse events to the Food and Drug Administration.

17.

Notwithstanding said actual and/or constructive notice and/or knowledge, Manufacturer Defendants continued to manufacture, package, promote, sell and distribute the defective, Manufacturer implant.

18.

Notwithstanding said actual and/or constructive notice and/or knowledge, Medical Provider Defendant, through its agents and/or direct employees, continued to engage in the marketing, promotion and recruitment of patients for Manufacturer implant surgery.

19.

As a direct and proximate result of the herein named defendants' marketing, promotion and recruitment of patients for Manufacturer implant surgery, Medical Provider Defendant knowingly implanted a defective Manufacturer implant into Plaintiff's left knee.

20.

Notwithstanding said notice and/or knowledge, Medical Provider Defendant, through its agents and/or direct employees, continued to market, promote and recruit patients, such as Plaintiff, for Manufacturer implant surgery and/or defective Manufacturer implant replacement surgery.

21.

At times material to this action, notwithstanding said notice and/or knowledge, Medical Provider Defendant, through its agents and/or direct employees, delayed disclosure of the Manufacturer implant's failure in Plaintiff's left knee to allow said failure to damage Plaintiff's left knee's morphology and anatomy in a manner which increased the likelihood that Plaintiff's left knee would require additional medical prophylaxis related to a second prosthetic implant surgery.

22.

At no time before, did Medical Provider Defendant, and/or the agents and/or direct employees of Defendant, University Orthopaedic Clinic, inform Plaintiff of the defects in the Manufacturer knee implants, which were either known to Medical Provider Defendant and/or reported to the Food and Drug Administration.

23.

At no time before, did Medical Provider Defendant, and/or the agents and/or direct employees of Medical Provider Defendant, inform Plaintiff that the defective Manufacturer Implant was the cause of the sound Plaintiff heard in her left knee in 2005.

24.

As related to the duty Medical Provider Defendant had to disclose the cause of the sound Plaintiff heard on, Medical Provider Defendant actively concealed said disclosure.

25.

Medical Provider Defendant's active concealment of the cause of the sound Plaintiff heard on, acted on Plaintiff to Plaintiff's physiological and psychological detriment, and physical disability, and Plaintiff's suitability for future knee replacement of the defective, Manufacturer Revision Knee System.

WHEREFORE, Plaintiff prays that she may have judgment in her favor against the Medical Provider Defendants in an amount determined by a jury to be adequate and just.

**I. COUNT ONE – STRICT PRODUCT LIABILITY, [MANUFACTURING DEFECT],
AGAINST MANUFACTURER DEFENDANTS.**

26.

All prior paragraphs are incorporated herein as if fully set forth.

27.

Manufacturer Defendants manufactured, marketed, sold, promoted, and distributed defective Manufacturer implants, which were implanted into Plaintiff by Medical Provider Defendant.

28.

The defective Manufacturer implants, which were manufactured by Manufacturer Defendants and distributed by Manufacturer Defendants in Georgia, where the defective Manufacturer implants were implanted into Plaintiff by Medical Provider Defendant, were defective and unreasonably dangerous at the time of their manufacture, development, production, testing, inspection, endorsement, sale and distribution.

29.

The defective Manufacturer implants, which were manufactured by Manufacturer Defendants and distributed by Manufacturer Defendants in Georgia, where the defective Manufacturer implants were implanted into Plaintiff by Medical Provider Defendant, were in a defective condition at the time that they left the possession and control of Manufacturer Defendants and were not substantially changed prior to the time of Plaintiff's 2004 implant surgery.

30.

At times material to this action, the defective Manufacturer implants were defective and Manufacturer Defendants knew that said implants were to be used by the user without inspection for the defects therein. Moreover, Plaintiff neither knew, nor had reason to know at the time of Plaintiff's 2004 implant surgery, which is the time of Plaintiff's initial use of the subject defective implant, of the existence of the aforementioned defects.

31.

As a result of the defective and unreasonably dangerous condition of the Manufacturer implants, the Manufacturer defendants are strictly liable for all such injuries and related damages caused by their defective product pursuant to Section 402A of the Restatement (Second) of Torts.

32.

As a direct and proximate result of the defective Manufacturer implant, Plaintiff has suffered serious injuries as set forth herein.

33.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has suffered physical pain, discomfort, and mental anguish and will continue to endure the same for an indefinite period of time in the future, to her physical, emotional and financial detriment and loss.

34.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has been compelled, in order to effect a cure for aforesaid injuries, to expend money for medicine and/or medical attention in an amount in excess of \$70,000.00, and may be required to expend money for the same purposes in the future, to her detriment and loss.

35.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has suffered a loss of life's pleasures and she will continue to suffer same in the future, to her detriment and loss.

36.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has been, and will in the future, be hindered from attending to her daily duties, to her detriment and loss, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against the Manufacturer Defendants, in an amount determined by a jury to be equitable and just.

II. COUNT TWO – STRICT LIABILITY [FAILURE TO WARN] AGAINST MANUFACTURER DEFENDANTS.

37.

All prior paragraphs are incorporated herein as if fully set forth.

38.

The Manufacturer implants were defective at the time of their manufacture, development, production, testing, inspection, testing, endorsement, sale and distribution, in that, and not by way of limitation, the Manufacturer implant and its warnings,

instructions and directions failed to warn implant candidates of the dangerous propensities of the Manufacturer implant.

39.

At times material to this action, the risks were known or reasonable scientifically knowable to the Manufacturer Defendants.

40.

At times material to this action, the Manufacturer Defendants knew or should have known or were reckless in not knowing of the defective condition, dangerous characteristics and the risk associated therewith the Manufacturer implant, as previously set forth.

41.

At times material to this action, the Manufacturer implant was defective and the Manufacturer Defendants knew that the Manufacturer implant was to be used by implant candidates without inspection for the defects inherent to the Manufacturer implant.

42.

Plaintiff neither knew, nor had reason to know, at the time of Plaintiff's 2004 implant surgery, and use of the Manufacturer implant, of the existence of the aforementioned Manufacturer implant defects.

43.

As a direct and proximate result of the defective Manufacturer implant, Plaintiff has suffered serious injuries as set forth herein and had to undergo a revision surgery to replace the defective implant.

44.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has suffered physical pain, discomfort, and mental anguish and will continue to endure the same for an indefinite period of time in the future, to her physical, emotional and financial detriment and loss.

45.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has been compelled, in order to effect a cure for aforesaid injuries, to expend money for medicine and/or medical attention in an amount in excess of \$70,000.00, and may be required to expend money for the same purposes in the future, to her detriment and loss.

46.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has suffered a loss of life's pleasures and she will continue to suffer same in the future, to her detriment and loss.

47.

As a direct and proximate result of the defective Manufacturer implants, Plaintiff has been, and will in the future, be hindered from attending to her daily duties, to her detriment and loss, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against the Manufacturer Defendants, in an amount determined by a jury to be equitable and just.

III. COUNT THREE – NEGLIGENCE AGAINST MANUFACTURER DEFENDANTS.

48.

All prior paragraphs are incorporated herein as if fully set forth.

49.

Manufacturer Defendants had a duty to exercise reasonable care in the design, formulation, manufacture, marketing, promotion, sale and/or distribution of the Manufacturer implant into the stream of commerce, so that the Manufacturer implant was safely used in a manner and for a purpose for which the Manufacturer implants were made.

50.

The Manufacturer Defendants were careless and negligent in the design, formulation, manufacture, marketing, promotion, sale and/or distribution of the Manufacturer implant into the stream of commerce, so that the Manufacturer implant was safely used in a manner and for a purpose for which the Manufacturer implants were made.

51.

The carelessness and negligence of the Manufacturer Defendants consisted, *inter alia*, of the following acts and/or omissions:

- a. Failure to design, manufacture, and sell the Manufacturer implants in a manner so as to render the Manufacturer implants safe for their intended use;
- b. Failure to provide sufficient warnings as to: (I) the unreasonably foreseeable defects in the Manufacturer implants; and (ii) the reasonably foreseeable dangers resulting from the implantation and/or usage of the Manufacturer implants;

- c. Failure to properly test and/or inspect the Manufacturer implants to determine whether the Manufacturer implants were suitable for their intended use without injury to implant candidates;
- d. Failure to exercise due and reasonable care under the circumstances in view of the foreseeable dangers and foreseeable injuries that could occur as a result of implantation of the Manufacturer implant;
- e. Failure to determine whether the Manufacturer knee implant's materials of construction were suitable for its intended use without injury to implant candidates; and
- f. Failure to determine whether the Manufacturer knee implant's materials of construction were unreasonably dangerous for their intended use.

52.

Manufacturer Defendants knew or should have known or was reckless in not knowing that consumers of the Manufacturer implant, such as Plaintiff, would likely suffer injury and related damages as a direct result of Manufacturer Defendants' failure to exercise reasonable care as described above.

53.

As a direct and proximate result of the defective condition of the Manufacturer implant, as designed, formulated, manufactured, marketed, promoted, delivered and/or supplied by Manufacturer Defendants, and of the negligence, carelessness, and other

wrongdoing of Manufacturer Defendants described herein, Plaintiff was injured and suffered bodily damage and psychological and emotional injuries.

54.

As a direct and proximate result of the negligence of the Manufacturer defendants, Plaintiff has suffered serious injuries as set forth herein and had to undergo a revision surgery to replace the defective implant.

55.

As a direct and proximate result of the negligence of the Manufacturer defendants, Plaintiff has suffered physical pain, discomfort, and mental anguish and will continue to endure the same for an indefinite period of time in the future, to her physical, emotional and financial detriment and loss.

56.

As a direct and proximate result of the negligence of the Manufacturer defendants, Plaintiff has been compelled, in order to effect a cure for aforesaid injuries, to expend money for medicine and/or medical attention in an amount in excess of \$70,000.00, and may be required to expend money for the same purposes in the future, to her detriment and loss.

57.

As a direct and proximate result of the negligence of the Manufacturer defendants, Plaintiff has suffered a loss of life's pleasures and she will continue to suffer same in the future, to her detriment and loss.

58.

As a direct and proximate result of the negligence of the Manufacturer defendants, Plaintiff has been, and will in the future, be hindered from attending to her daily duties, to her detriment and loss, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against the Manufacturer Defendants, in an amount determined by a jury to be equitable and just.

IV. COUNT FOUR – BREACH OF EXPRESS WARRANTY AGAINST MANUFACTURER DEFENDANTS.

59.

All prior paragraphs are incorporated herein as if fully set forth.

60.

At times material to this action, Manufacturer Defendants expressly warranted to Plaintiff, by and through statements made by Manufacturer Defendants and Medical Provider Defendant or through Manufacturer Defendants' authorized agents and/or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that the Manufacturer implant was safe, effective, fit and proper for its intended use.

61.

In using the Manufacturer implant, Plaintiff relied upon the skill judgment, representations and the foregoing Manufacturer Defendants express warranties.

62.

The foregoing Manufacturer Defendants express warranties and representations were false in that the Manufacturer Defendants implant was unsafe, unmerchantable, and unfit for ordinary purpose of its intended use.

63.

As a direct and proximate result of Manufacturer Defendants' breach of the aforementioned express warranties, Plaintiff suffered the injuries and damages established herein and had to undergo a revision surgery to replace the defective implant.

64.

As a direct and proximate result of Manufacturer Defendants's breach of the aforementioned express warranties, Plaintiff has suffered serious injuries as set forth herein.

65.

As a direct and proximate result of Manufacturer Defendants' breach of the aforementioned express warranties, Plaintiff has suffered physical pain, discomfort, and mental anguish and will continue to endure the same for an indefinite period of time in the future, to her physical, emotional and financial detriment and loss.

66.

As a direct and proximate result of Manufacturer Defendants' breach of the aforementioned express warranties, Plaintiff has been compelled, in order to effect a cure for aforesaid injuries, to expend money for medicine and/or medical attention in an amount in excess of \$70,000.00, and may be required to expend money for the same purposes in the future, to her detriment and loss.

67.

As a direct and proximate result of Manufacturer Defendants' breach of the aforementioned express warranties, Plaintiff has suffered a loss of life's pleasures and she will continue to suffer same in the future, to her detriment and loss.

68.

As a direct and proximate result of Manufacturer Defendants' breach of the aforementioned express warranties, Plaintiff has been, and will in the future, be hindered from attending to her daily duties, to her detriment and loss, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against the Manufacturer Defendants, in an amount determined by a jury to be equitable and just.

V. COUNT FIVE – BREACH OF IMPLIED WARRANTY AGAINST MANUFACTURER DEFENDANTS.

69.

All prior paragraphs are incorporated herein as if fully set forth.

70.

At the time that the Manufacturer Defendants designed, manufactured, marketed and distributed the Manufacturer Defendants implant for use by implant candidates, including Plaintiff, the Manufacturer Defendants knew, or should have known, or were reckless in not knowing, that the use for which the Manufacturer implant was intended, and impliedly warranted the Manufacturer implant to be of merchantable quality and safe and fit for its intended use.

71.

Plaintiff reasonable relied upon the skill and judgment of the Manufacturer Defendants as to whether the Manufacturer implant was of merchantable quality and safe and fit for its intended use.

72.

In breach of said implied warranty, the Manufacturer implant was not of merchantable quality or safe and fit for its intended use.

73.

In breach of said implied warranty, the Manufacturer implant was unreasonably dangerous and unfit for the ordinary purpose for which the Manufacturer implant was made for use

74.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, not of merchantable quality or safe and fit for its intended use.

75.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, Plaintiff has suffered serious injuries as set forth herein and had to undergo a revisions surgery to replace the defective implant.

76.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, Plaintiff has suffered physical pain, discomfort, and mental anguish and will continue to endure the same for an indefinite period of time in the future, to his physical, emotional and financial detriment and loss.

77.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, Plaintiff has been compelled, in order to effect a cure for aforesaid injuries, to expend money for medicine and/or medical attention in an amount in excess of \$70,000.00, and may be required to expend money for the same purposes in the future, to his detriment and loss.

78.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, Plaintiff has suffered a loss of life's pleasures and he will continue to suffer same in the future, to his detriment and loss.

79.

As a direct and proximate result of Manufacturer Defendants' breach of its implied warranty, Plaintiff has been, and will in the future, be hindered from attending to his daily duties, to his detriment and loss, humiliation and embarrassment.

V. COUNT FIVE – NEGLIGENCE AGAINST MEDICAL PROVIDER DEFENDANT

80.

All prior paragraphs are incorporated herein as if fully set forth.

81.

The Defendant, **ORTHO SURGEONS, P.C.** d/b/a ORTHOPAEDIC SURGEONS CLINIC, was negligent in selling and/or distributing a product that they knew or should have known was defective.

82.

As a foreseeable result of that negligence, the Plaintiff, PAULA PLAINTIFF, was seriously injured when the defective product sold by the Defendant, Ortho Surgeons, P.C. d/b/a Orthopaedic Surgeons Clinic, was implanted into the Plaintiff.

83.

The Defendant, Ortho Surgeons, P.C., d/b/a Orthopaedic Surgeons Clinic, is liable to the Plaintiff for the injuries she sustained as result of selling and/or distributing a defective product.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor against the Ortho Surgeons, P.C., d/b/a Orthopaedic Surgeons Clinic, [previously referred to as Medical Provider Defendant, supra] Defendant in an amount determined by a jury to equitable and just.

Respectfully submitted this ____ day of _____ 2011.

██████████
Attorney for Plaintiff
State Bar No. ██████████

