

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-000550-109

SUPERIOR COURT

(Class Action)

ALAN DICK

Petitioner

-VS-

JOHNSON & JOHNSON INC.,

DEPUY ORTHOPAEDICS INC.,

Respondents

<p>NOTICE TO MEMBERS</p>

1. TAKE NOTICE that the bringing of a class action has been authorized by judgment of the Superior Court, for the benefit of the persons forming part of the group hereinafter described, namely:

“All natural persons who, between July 2003 and August 24, 2010 (the “Period”), were surgically implanted with an ASR XL Acetabular Hip System or an ASR Hip Resurfacing System (hereinafter, “ASR Implant System”), designed, manufactured, sold or distributed by the Respondents, which system was recalled by the Respondents on August 24, 2010, and who were either: (i) Quebec residents at the time of receipt of the ASR Implant System or any revision thereof; or (ii) Quebec residents at the time of the Respondents’ recall of the ASR Implant System; or (iii) Recipients of the ASR Implant System or any revision thereof in Quebec, who were Canadian residents at that time, and who now reside outside of Canada (hereinafter, the “**Group**”). All individuals who make claims against the Respondents in the context of class actions elsewhere in Canada will be excluded from the Group.”

2. The class action is an Action claiming compensatory and punitive damages for the members of the Group, in relation with the Respondents’ manufacturing, design, sale, distribution and recall of the ASR Implant System.
3. The Chief Justice of the Superior Court of Quebec has ordered that the class action authorized by the said judgment shall be brought in the district of Montreal.

4. Group members are encouraged to contact the attorneys representing the Group free of charge if they have questions about the class action and to discuss their rights. The Group is represented by:

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5. For the purposes of the class action, the status of representative has been ascribed to Mr. Alan Dick, domiciled and residing at 9 Calais, in the Town of Kirkland, Quebec, H9H 3R7;
6. The principal questions of law or fact to be dealt with collectively in the class action are as follows:
 - a. Did the Respondents manufacture, design, sell or distribute the ASR Implant System in Quebec during the Period?
 - b. Did the Respondents have an obligation to ensure that the ASR Implant System was free of manufacturing and design defects, including latent and safety defects?
 - c. Did the Respondents have an obligation to warn of problems with the ASR Implant System in a responsible and timely manner?
 - d. If the answer to any of the above questions is “yes”, did the Respondents breach their obligations as a manufacturer, designer, vendor or distributor of the ASR Implant System?
 - e. If the Respondents breached any or all of their obligations, are the Group members entitled to recover from the Respondents, either collectively or at an eventual individual recovery stage, (i) pecuniary damages; (ii) non-pecuniary damages; and/or (iii) punitive damages in virtue of the *Charter of Human Rights and Freedoms* or the *Consumer Protection Act*?
 - f. What damages or quantum of damages (pecuniary, non-pecuniary, punitive), if any, can be determined on a collective basis, and what damages may only be determined at an eventual individual recovery stage?

7. The conclusions sought with respect to such questions are as follows:

GRANT the Class Action against the Respondents;

CONDEMN the Respondents, solidarily, to pay to the Petitioner and to each member of the Group who required, requires or will require within the next seven (7) years Revision Surgery, non-pecuniary damages in the amount of \$200,000.00, and pay to each member of the Group who does not require Revision Surgery non-pecuniary damages in the amount of \$25,000.00, to be recovered collectively, the whole with interest and the additional indemnity provided by law from and as of service of the Petitioner's Motion for Authorization to Institute a Class Action;

CONDEMN the Respondents, solidarily, to pay to the Petitioner damages in the amount of \$40,000.00 for pecuniary damages, and to pay to each member of the Group pecuniary damages to be determined by the Court, the whole with interest and the additional indemnity provided by law from and as of service of the Petitioner's Motion for Authorization to Institute a Class Action;

CONDEMN the Respondents, solidarily, to pay to the Petitioner and to each member of the Group, exemplary and punitive damages in the amount of \$50,000.00, to be recovered collectively, the whole with interest and the additional indemnity provided by law from and as of service of the Petitioner's Motion for Authorization to Institute a Class Action.

RESERVE the rights of the members of the Group to apply for additional damages, the whole in accordance with Article 1615 of the *Civil Code of Quebec*;

ORDER collective recovery of the total amount of the non-pecuniary and punitive damages claims herein, and **ORDER** individual recovery of the pecuniary damages claims of the members;

ORDER that the claims of the members of the Group be the object of individual liquidation in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondents to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Group;

ORDER the Respondents to advise all hospitals and/or medical clinics in the Province of Quebec, which purchased the defective ASR Implant System, of the present Class Action lawsuit, and **DEMAND** that these hospitals and/or clinics advise all of their patients who were implanted with the defective ASR Implant System of the pending Class Action and of their right to contact Counsel for the Group free of charge;

CONDEMN the Respondents to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, reports, expertise and

publication of notices.

8. All members of the Group will be eligible to benefit from the class action and will be bound by any judgment to be rendered on the class action without having to “opt in” to the class action;
9. Members of the Group who do not wish to be eligible to benefit from or be bound by the class action must advise the clerk of the Superior Court of the district of Montreal by registered or certified mail by no later than July 25, 2014 that they wish to exclude themselves from the class action;
10. Any member of the Group who has brought an individual lawsuit which the final judgment on the present class action would decide, is deemed to have requested his exclusion from the Group if he does not, before the expiry of the delay for exclusion (July 25, 2014), discontinue such suit;
11. A member of the Group other than the representative or an intervenant cannot be condemned to pay the costs of the class action;
12. The Court may permit a member to intervene in the class action if it considers such intervention useful to the Group. An intervening member may be bound to submit to examination on discovery or a medical examination, or both, at the request of the respondent. A member who does not intervene in the class action may not be required to submit to an examination on discovery or a medical examination absent a decision rendered by the Court.