

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: NSD213/2011**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/05/2014.

DETAILS OF FILING

Document Lodged: Amended Document
File Number: NSD213/2011
File Title: Tammy Maree Stanford & Anor v DePuy International Limited & Anor
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 16/05/2014

Registrar

Warwick Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



**~~Third Second~~ Further Amended Originating Application starting a
representative proceeding under Part IVA of the Federal Court of
Australia Act 1976**

Amended on 16 May 2014 and filed pursuant to an order made on 16 May 2014

No. NSD 213 of 2011

Federal Court of Australia
District Registry: New South Wales
Division: General

Tammy Stanford and Another
Applicants

DePuy International Limited and Another
Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of Tammy Stanford (First Applicant); Jamie Dunsmore (Second Applicant)

Prepared by Ben Slade and Rebecca Jancauskas

Law firm Maurice Blackburn (First Applicant)
Shine Lawyers (Second Applicant)

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Address for service c/- Maurice Blackburn Pty Ltd, Level 20, 201 Elizabeth Street, Sydney NSW 2000
service@depuyclasaction.com.au

Details of claim

On the grounds stated in the accompanying ~~third second~~ further amended statement of claim, the Applicants claim that the Respondents each contravened section 74B, section 74D and section 75AD of the *Trade Practices Act 1974* (Cth) (**Trade Practices Act**) and were negligent, and they claim relief as follows:

1. Declarations that:
 - (a) the Implants (as defined in the ~~third second~~ further amended statement of claim) acquired by the First Applicant (**Mrs Stanford**), the Second Applicant (**Mr Dunsmore**) and Group Members ~~were~~ were ~~are~~ not reasonably fit for their purpose within the meaning of section 74B of the Trade Practices Act;
 - (b) the Implants acquired by Mrs Stanford, Mr Dunsmore and Group Members ~~were~~ were ~~are~~ not of merchantable quality within the meaning of section 74D of the Trade Practices Act;
 - (c) the Implants acquired by Mrs Stanford, Mr Dunsmore and Group Members ~~had~~ had ~~have~~ a defect within the meaning of sections 75AC(1) and 75AD of the Trade Practices Act;
 - (d) the first respondent (**DePuy**) was negligent;
 - (e) the second respondent (**Johnson & Johnson**) was negligent;
2. Compensation from DePuy and Johnson & Johnson:
 - (a) pursuant to section 74B and Part VIB of the Trade Practices Act;
 - (b) pursuant to section 74D and Part VIB of the Trade Practices Act;
 - (c) pursuant to section 75AD and Part VIB of the Trade Practices Act;
3. Damages from DePuy and Johnson & Johnson at common law;
4. Aggravated and/or exemplary damages from DePuy and Johnson & Johnson;
5. Interest;
6. Costs; and
7. Such further or other orders as the Court thinks fit.

Details of claim brought on behalf of Sub-Group Members

On the grounds stated in the accompanying ~~third second~~ further amended statement of claim, the sub-group representative parties claim in relation to the Implants that DePuy and Johnson & Johnson did not comply with a statutory warranty arising by virtue of section 4 of the *Manufacturers Warranties Act 1974* (SA) (**Manufacturers Warranties Act**) and they claim relief as follows:

1. Declarations that:
 - (a) the Implants purchased by Robert Webb, Mary Beentjes and Sub-Group Members were ~~are~~ not of merchantable quality within the meaning of section 4 of the *Manufacturers Warranties Act*;
 - (b) DePuy did not comply with the statutory warranty arising by virtue of section 4 of the *Manufacturers Warranties Act* in relation to:
 - (i) the ASR Resurfacing Implant; and
 - (ii) the ASR XL Implant;
 - (c) Johnson & Johnson did not comply with the statutory warranty arising by virtue of section 4 of the *Manufacturers Warranties Act* in relation to:
 - (i) the ASR Resurfacing Implant; and
 - (ii) the ASR XL Implant;
2. Damages from DePuy and Johnson & Johnson pursuant to section 5 of the *Manufacturers Warranties Act*.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the Group Members are:

1. Whether the Implants are goods within the meaning of sections 4 and 74A(2)(a) of the *Trade Practices Act*;
2. Whether the Implants were manufactured by DePuy within the meaning of section 74A(1) and 75AA of the *Trade Practices Act*;
3. Whether the Implants were imported into Australia by Johnson & Johnson or its agent and whether at the time of the importation DePuy did not have a place of business in Australia;
4. Whether Johnson & Johnson is deemed pursuant to section 74A(4) and 75AA of the *Trade Practices Act* to have manufactured the ~~Affected~~ Implants;

5. Whether DePuy (as the manufacturer of the Implants) supplied the Implants in trade or commerce to Johnson & Johnson, which acquired the Implants for re-supply to hospitals including hospitals which treated Mrs Stanford, Mr Dunsmore and Group Members;
6. Whether Johnson & Johnson (as the deemed manufacturer of the Implants) supplied the Implants in trade or commerce to hospitals, which acquired the Implants for re-supply to Mrs Stanford, Mr Dunsmore and Group Members;
7. Whether the Implants were supplied to Mrs Stanford, Mr Dunsmore and Group Members as consumers within the meaning of section 4B of the Trade Practices Act;
8. Whether the Implants were acquired by Mrs Stanford, Mr Dunsmore and Group Members for the Purpose (as defined in the third ~~second~~-further amended statement of claim);
9. Whether the Purpose was made known to DePuy and/or Johnson & Johnson;
10. Whether the Implants had the Defects (as defined in the third ~~second~~-further amended statement of claim) or any of them.
11. Whether DePuy and/or Johnson & Johnson knew or ought to have known of the Defects at or about the times pleaded in paragraph 25 of the third ~~second~~-further amended statement of claim.
12. Whether the Implants acquired by Mrs Stanford, Mr Dunsmore and Group Members were not reasonably fit for the Purpose within the meaning of section 74B of the Trade Practices Act;
13. Whether the Implants acquired by Mrs Stanford, Mr Dunsmore and Group Members were not of merchantable quality within the meaning of section 74D of the Trade Practices Act;
14. Whether the safety of the Implants acquired by Mrs Stanford, Mr Dunsmore and Group Members was not such as persons generally were entitled to expect and whether the Implants had a defect within the meaning of sections 75AC(1) and 75AD of the Trade Practices Act;
15. Whether DePuy owed a duty of care to Mrs Stanford, Mr Dunsmore and Group Members;
16. Whether Johnson & Johnson owed a duty of care to Mrs Stanford, Mr Dunsmore and Group Members;
17. Whether DePuy breached its duty of care to Mrs Stanford, Mr Dunsmore and Group Members;
18. Whether Johnson & Johnson breached its duty of care to Mrs Stanford, Mr Dunsmore and Group Members;
19. Whether Mrs Stanford, Mr Dunsmore and Group Members are entitled to aggravated and/or exemplary damages.

Questions common to claims of Sub-Group Members

The questions of law or fact common to the claims of the Sub-Group Members are:

20. Whether DePuy was the manufacturer of the Implants within the meaning of section 3 of the Manufacturers Warranties Act.
21. Whether Johnson & Johnson was the manufacturer of the Implants within the meaning of section 3 of the Manufacturers Warranties Act.
22. Whether the ASR Resurfacing Implants ~~were~~ ~~are~~ manufactured goods within the meaning of section 3 of the Manufacturers Warranties Act.
23. Whether the ASR XL Implants ~~were~~ ~~are~~ manufactured goods within the meaning of section 3 of the Manufacturers Warranties Act.
24. Whether the Implants were:
 - (a) sold by retail in the State of South Australia; or
 - (b) in the alternative, were delivered, upon being sold by retail, to purchasers in the State of South Australia.
25. Whether, by reason of sections 4(1) and 4(2) of the Manufacturers Warranties Act:
 - (a) DePuy warranted that the ASR Resurfacing Implants were of merchantable quality within the meaning of sections 4(1)(c) and 4(2) of the Manufacturers Warranties Act;
 - (b) DePuy warranted that the ASR XL Implants were of merchantable quality within the meaning of sections 4(1)(c) and 4(2) of the Manufacturers Warranties Act;
 - (c) Johnson & Johnson warranted that the ASR Resurfacing Implants were of merchantable quality within the meaning of sections 4(1)(c) and 4(2) of the Manufacturers Warranties Act; and
 - (d) Johnson & Johnson warranted that the ASR XL Implants were of merchantable quality within the meaning of sections 4(1)(c) and 4(2) of the Manufacturers Warranties Act.

(in each case, the **Statutory Warranty**).
26. Whether the Implants were not of merchantable quality within the meaning of sections 4(1) and (2) of the Manufacturers Warranties Act.
27. Whether DePuy did not comply with the Statutory Warranty in relation to:
 - (a) the ASR Resurfacing Implant; and/or
 - (b) the ASR XL Implant.

28. Whether Johnson & Johnson did not comply with the Statutory Warranty in relation to:
- (a) the ASR Resurfacing Implant; and/or
 - (b) the ASR XL Implant.
29. Whether Mr Webb, Ms Beentjes and the Sub-Group Members are consumers within the meaning of section 3 of the Manufacturers Warranties Act.

Representative action

The applicants bring this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**Act**).

The Group Members to whom this proceeding relates are those persons who had surgery performed on them in Australia to implant one or both of the following implants (the **Implants**):

- (a) DePuy ASR Hip Resurfacing System; and/or
- (b) DePuy ASR XL Acetabular System.

On 21 September 2012, the Court made orders pursuant to section 33Q of the Act:

- (a) establishing a sub-group consisting of those Group Members (**Sub-Group Members**) who were surgically implanted with an ASR Resurfacing Implant and/or an ASR XL Implant in the State of South Australia; and
- (b) appointing Mary Beentjes and Robert Harry James Webb to be the sub-group representative parties on behalf of Sub-Group Members.

Applicants' addresses

The Applicants' address for service is:

Place: c/- Maurice Blackburn Pty Ltd
Level 20, 201 Elizabeth Street
Sydney NSW 2000

Email: service@depuyclassaction.com.au

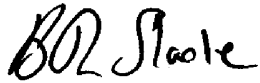
The First Applicant's address is 5 Betsy Mack Place, Howrah, Tasmania 7018

The Second Applicant's address is 3/42 Oaks Avenue, Long Jetty, New South Wales 2261

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 16 May 2014



Signed by Ben Slade
Lawyer for the First Applicant



Signed by Rebecca Jancauskas
Lawyer for the Second Applicant

Schedule

No. NSD 213 of 2011

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

First Applicant: Tammy Stanford
Second Applicant: Jamie Dunsmore

Respondents

First Respondent: DePuy International Limited
Second Respondent: Johnson & Johnson Medical Pty Limited (ACN 000 160 403)