

Form 23.03

2011

Hfx. No. 355381

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

KEN TAYLOR and JUDY ROWTER

Court Administration

OCT 31 2012

Halifax, N.S.

PLAINTIFFS

- and -

WRIGHT MEDICAL TECHNOLOGY CANADA LTD, WRIGHT MEDICAL
TECHNOLOGY, INC., and, WRIGHT MEDICAL GROUP, INC.

DEFENDANTS

Proceeding under the Class Proceedings Act, S.N.S 2007, c. 28

Notice of Motion

To: Scott C. Norton, Q.C.
Solicitor for the Defendants
Stewart McKelvey
1969 Upper Water Street
Suite 900
Halifax, NS B3J 2X2

Motion

Ken Taylor and Judy Rowter, the Plaintiffs in this proceeding, move for:

- 1) an Order certifying this proceeding as a Class Proceeding pursuant to s. 4(3) and 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28 and appointing the Plaintiffs as Representative Plaintiffs for the Class;

- 2) an Order defining the Class as:
 - a) All persons who were implanted with the Wright Profemur Hip Implant System.
- 3) an Order that the within action be certified on the basis of the following common issues:
 - a) Was the Wright Profemur Hip Implant System defective or unfit for its intended use?
 - b) Did any of the Defendants breach a duty of care owed to any of the Class Members and, if so, when and how?
 - c) Does the Defendants' conduct warrant an award for punitive damages and, if so, to whom should they be paid and in what amount?
 - d) With respect to Nova Scotia residents, did any of the Defendants breach a statutory duty under the *Consumer Protection Act*, R.S., c. 92, s.1?
- 4) an Order that the Notice of Certification to the Class Members be given pursuant to the Litigation Plan attached and marked as Schedule "B" to the Certification Order;
- 5) an Order that the Defendants shall be responsible for all costs associated with the Notice of Certification;
- 6) an Order that the Class Members who elect to opt-out of the class proceeding must do so in a manner and within a period of time to be fixed by the Court;
- 7) an Order for costs of this application on a full indemnity basis, including taxes; and
- 8) Such further and other relief as the Court may seem just.

Time and place

The motion is to be heard by The Honourable Justice Michael J. Wood on June 25, 26, and 27, 2013 commencing each day at 9:30a.m in the Law Courts, 1869 Upper Water Street, Halifax, Nova Scotia. The moving party has arranged for 3 days for the motion to be heard pursuant to the direction of the Honourable Justice Michael J. Wood. The moving party says that the motion will not require more time.

References

The moving party relies on the following legislation, Rules, or points of law:

- (a) The pleadings herein disclose a cause of action against the Defendants;
- (b) There is an identifiable class of persons who share a common interest in the common issues raised by the pleadings;
- (c) The claims of the Class Members raise common issues respecting the within litigation;
- (d) The proposed Representative Plaintiffs will adequately represent the interests of the Class;
- (e) A class proceeding is the preferable procedure for the resolution of the common issues;
- (f) *Class Proceedings Act*, S.N.S. 2007, c. 28; and
- (g) Such further and other grounds as counsel may advise.

Evidence

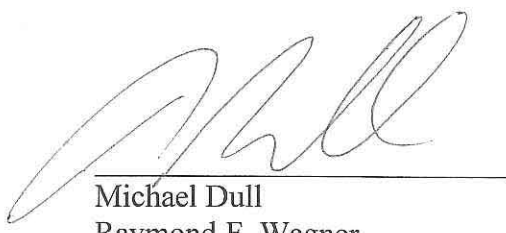
The evidence in support of the motion is as follows:

1. Affidavit of Ken Taylor sworn on October 30, 2012 and filed with this notice;
2. Affidavit of Judy Rowter sworn on October 29, 2012 and filed with this notice;
3. Affidavit of Michael Dull sworn on October 31, 2012 and filed with this notice;
4. Affidavit of Rod Desborough sworn on October 30, 2012 and filed with this notice;
5. Affidavit of Dr. David Zukor sworn on October 26, 2012 and filed with this notice;
6. Affidavit of David Komm sworn on October 25, 2012 and filed with this notice
7. Affidavit of Kerry Knapp sworn on October 25, 2012 and filed with this notice.

Possible order against you

You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the judge may grant an order without further notice to you.

Signature
Signed this 31 day of October, 2012



For

Michael Dull
Raymond F. Wagner
Wagners
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Solicitor for the Plaintiffs