

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CARLOS R. FLORES-ESPINOZA;

Plaintiff,

v.

BREG, INC., a California Corporation; and
LMA NORTH AMERICA, INC., a
Nevada Corporation; **DJO, LLC**, a
Delaware Corporation; **DJO,**
INCORPORATED, a Delaware
Corporation; **MCKINLEY MEDICAL,**
L.L.C., a Colorado Corporation; **MOOG,**
INC., a New York Corporation; **CURLIN**
MEDICAL, INC., a Delaware corporation;

Defendants.

Case No.: 09cv2817 DSD/FCW

Related To: CV-08-0399, et al.

**COMPLAINT
DEMAND FOR JURY TRIAL**

RECEIVED
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CLERK U.S. DIST. COURT
MINNEAPOLIS, MN

NATURE OF THE CASE

1. Plaintiff Carlos R. Flores-Espinoza developed chondrolysis in his shoulder after being implanted with a portable pain pump following shoulder surgery. The pain pump was designed and marketed for continuous administration of anesthetic drugs into the shoulder joint, or "intra-articular" space, even though the FDA had rejected this indication. As a result, the plaintiff has suffered the complete or nearly complete loss of cartilage in the shoulder joint, injury that is irreversible, disabling, and extremely painful. This lawsuit asserts claims for negligence, strict product liability for design defect, and strict product liability for failure to warn against defendants.

JURISDICTION, VENUE, AND PARTIES

2. Venue is proper in this district under 28 U.S.C. §1391 because all defendants transact business in this district.

SCANNED

OCT 05 2009

U.S. DISTRICT COURT

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the plaintiff and defendants.

The Plaintiff

4. Carlos Flores-Espinoza was at all relevant times a resident and citizen of Oregon.

5. Carlos R. Flores-Espinoza underwent shoulder surgeries in Portland, Oregon. Based on information and belief, a pain pump designed, manufactured, and marketed by Breg was implanted into his shoulder on January 28, 2002 by his orthopedic surgeon. Based on information and belief, a pain pump designed, manufactured, and marketed by McKinley Medical Corporation and marketed and distributed by DJO LLC was implanted into his shoulder on April 28, 2004 by his orthopedic surgeon. Following plaintiff's January 2002 surgery, he was administered 120 cc of 0.5% bupivacaine with epinephrine in the pain pump. Following plaintiff's April 2004 surgery, he was administered 275 cc of 0.5% marcaine with epinephrine in the pain pump. The pain pumps used following plaintiff's surgeries injected pain relief medication directly into plaintiff's shoulder joint on a continuous basis, for up to 72 hours or more following his surgery. Plaintiff was diagnosed with chondrolysis on or around December 21, 2005. Plaintiff's doctors are currently recommending a total shoulder replacement for his injury.

6. The incident causing the injury, and from which the plaintiff's claims arise, occurred on or after the administration of anesthetics via a post-operative pain pump following his surgeries on January 28, 2002 and April 28, 2004 respectively. Plaintiff first learned that the administration of pain medication from a pain pump directly to the shoulder joint could cause chondrolysis in approximately March 16, 2009

THE DEFENDANTS

7. Defendant Breg, Inc. (“Breg”) is a California corporation with its principal place of business in Vista, California. Breg manufactured, promoted and distributed the pain pump that was placed in plaintiff’s left shoulder. Breg conducted regular and sustained business in Minnesota by selling and distributing its products in Minnesota.

8. Defendant LMA North America, Inc. (“LMA”) is a Nevada corporation with its principal place of business in San Diego, California. LMA acquired Breg’s pain pump product line in April, 2008. LMA conducted regular and sustained business in Minnesota by selling and distributing its products in Minnesota. On information and belief, LMA is the successor to Breg, Inc. Breg and LMA are collectively referred to as “Breg defendants.”

9. Defendants DJO, LLC and DJO Incorporated (collectively referred to as “DJO defendants”) are Delaware corporations. Their principal place of business is Vista, California. DJO defendants conducted regular and sustained business in Minnesota by distributing products in Minnesota. DJO Incorporated is the ultimate parent corporation of DJO, LLC. DJO Incorporated did not directly distribute pain pumps, but should be liable for any judgment against DJO LLC, because the ultimate parent uses all of DJO LLC’s resources as its own, and holds itself out to the public as if both DJO LLC and DJO Incorporated are one company.

10. Defendant McKinley Medical, L.L.C. (“McKinley”) is a company incorporated under the laws of the State of Colorado. Its principal place of business is in Wheat Ridge, Colorado. McKinley conducted regular and sustained business in Minnesota by selling and distributing its products in Minnesota, as described below. Based on information and belief, McKinley developed, manufactured and marketed pain

pumps distributed by DJO defendants beginning in 2005. McKinley was acquired by defendant Moog, Inc. by merger in August, 2006.

11. Defendant Curlin Medical, Inc. ("Curlin") is a company incorporated under the laws of the State of Delaware. Its principal place of business is in California. Curlin was acquired by defendant Moog, in or around August, 2006. Curlin conducted regular and sustained business in Colorado by selling and distributing its products in Colorado as described below. Curlin is the successor by merger to defendant McKinley L.L.C.

12. Defendant Moog, Inc. ("Moog") is a company incorporated under the laws of the State of New York. Its principal place of business is in East Aurora, New York. Moog is a global corporation that designs and manufactures aircraft, industrial and medical device products. Moog, Inc. is the successor by merger to McKinley L.L.C. and to Curlin Medical Inc. DJO defendants, and McKinley, Curlin and Moog are "pain pump defendants."

FACTS COMMON TO ALL CLAIMS

13. At all relevant times, the defendants designed, manufactured, and distributed a product called a "pain pump," a medical device intended to deliver, via catheter, continuous doses of pain relief medication directly into the shoulder joint space. The pain pumps deliver anesthetic pain medication directly into the operative site for 72 hours or more immediately following shoulder surgery.

14. The pain pumps are designed and intended to be used with commonly used anesthetics such as Marcaine or bupivacaine, with or without epinephrine, in volumes of 250 cc's or more, over two days or more. The continuous injection of such medications at such doses over time directly into the shoulder joint, however, can cause serious and permanent damage to the cartilage of the shoulder joint. The plaintiff had a pain pump inserted post-operatively, and she received dangerous doses of continuously injected medication in his shoulder joint. As a result, she suffered narrowing of the joint space and/or a condition called "chondrolysis," which is the complete or nearly complete loss

of cartilage in the shoulder joint, an irreversible, disabling, and extremely painful condition.

15. As a result of the narrowing of the joint space and/or chondrolysis caused by the dangerously defective pain pump, plaintiff's physicians are currently recommending that he have a total shoulder replacement. Plaintiff's doctors are currently recommending a total shoulder replacement for his injury. Plaintiff is likely to undergo several additional shoulder joint replacement surgeries throughout the rest of his life.

16. None of the defendants warned the plaintiff or his surgeon about the unreasonable risks and dangers of using the pain pumps and anesthetic medications in this manner. Each of plaintiff's medical providers used the pain pumps in the manner instructed and directed by the defendants.

FIRST CLAIM FOR RELIEF

(Strict Products Liability: Design defect, Failure to Warn)

17. Plaintiff realleges all preceding paragraphs.

18. The pain pump devices, and the anesthetic medications used in them, were unreasonably and dangerously defective beyond the extent contemplated by ordinary patients with ordinary knowledge regarding the device, in one or more of the following particulars:

- A The labeling failed to instruct or warn the U.S. medical community that the safety of the device and its medications had not been established for use in the shoulder joint space;
- B The labeling failed to disclose to the U.S. medical community that continuous injection of commonly used anesthetics such as lidocaine or bupivacaine, with or without epinephrine, in volumes of at least 120 cc's, for two or more days, into the shoulder joint space, may cause serious and permanent injury to the joint cartilage;

- C The labeling failed to include a precaution against placing the catheter of the pain pump in the shoulder joint space;
- D The labeling failed to provide to the U.S. medical community adequate instructions for the safe use of the device, failing specifically to identify anesthetic medications that could be safely and effectively used in the shoulder joint space;
- E The labeling failed to disclose to the U.S. medical community that the effectiveness of the device was uncertain for use in the shoulder joint space;
- F The labeling failed to disclose to the U.S. medical community that the FDA had considered the defendants' request to put this indication in the pain pump label, and then had rejected this precise indication for the pain pumps' use, to deliver the pain medicine directly into the joint space.
- G The products were designed to inject commonly used medications associated with damage to articular cartilage directly into the shoulder joint; and
- H When used as designed, the pain pumps delivered, over time, dangerously high doses of medication directly into shoulder tissue.

19. The product defects alleged above were substantial contributing causes of the injuries suffered by the plaintiff. Specifically, the pain pump caused plaintiff to suffer the permanent loss of cartilage in his shoulder, resulting in severe pain and discomfort of the shoulder, loss of use and function of the shoulder and arm, and requiring multiple surgeries. The use of the pain pumps also rendered the therapeutic benefits of the shoulder surgeries worthless. He may also require future medical care, as he ages, including future shoulder replacements. In addition, he has suffered mental distress and anguish and has suffered permanent impairment of the use and function of his affected upper extremities.

SECOND CLAIM FOR RELIEF

(Negligence)

20. Plaintiff realleges all preceding paragraphs.

21. At all relevant times, each of the defendants knew or reasonably should have known that their pain pumps were unreasonably dangerous and defective when used as directed and as designed. A reasonably careful search and review of the scientific and medical literature, and of this information, should have indicated to the defendants that:

- A Commonly used anesthetics likely to be used in their pain pumps, such as lidocaine and Marcaine, with or without epinephrine, were harmful to human and animal articular cartilage;
- B Use of the pain pumps in a joint space had not been approved by the F.D.A., and in fact had been specifically rejected by the F.D.A.;
- C Continuous injection of 120 cc's or more of such medications, through a catheter, directly into the shoulder joint, for two days or more, had not been adequately tested for safety or effectiveness;
- D The risk of chondrolysis and other serious post-operative problems associated with using the pain pumps and their medications as designed and instructed outweighed the possible benefits of such use.

22. Based on what they knew or reasonably should have known as described above, defendants were negligent in one or more of the following particulars:

- A In failing to instruct or warn the U.S. medical community that the safety of the device had not been established for use in the shoulder joint space;
- B In failing to disclose to the U.S. medical community that continuous injection of commonly used anesthetics such as lidocaine or bupivacaine, with or without epinephrine, in volumes of at least 120 cc's, for two or more days, into the shoulder joint space, may cause serious and permanent injury to the joint cartilage;

- C In failing to include a precaution against placing the catheter of the pain pump in the shoulder joint space;
- D In failing to provide to the U.S. medical community adequate instructions for the safe use of the device, specifically failing to identify anesthetic medications that could be safely and effectively used in the shoulder joint space;
- E In failing to disclose to the U.S. medical community that the effectiveness of the device with these medications was uncertain for use in the shoulder joint space;
- F Manufacturing a product designed to directly inject into the shoulder joint commonly used medications associated with damage to articular cartilage;
- G Manufacturing a product designed to deliver, over time, dangerously high doses of medication directly into shoulder tissue; and
- H Promoting the pain pumps for use in the joint space after the FDA had considered and rejected such an indication.

23. The negligent acts and omissions alleged above were substantial contributing causes of the injuries suffered by the plaintiff. Specifically, the pain pumps caused plaintiff to suffer the permanent loss of cartilage in his shoulder, resulting in severe pain and discomfort of his shoulder, loss of use and function of his shoulder and arm, and requiring multiple surgeries. The use of the pain pumps also rendered the therapeutic benefits of his shoulder surgeries worthless. As a result of the defendants' negligent acts and omissions, Plaintiff's doctors are currently recommending a total shoulder replacement for his injury, and will incur additional medical expenses as he ages, including future shoulder replacements. In addition, plaintiff has suffered mental distress and anguish and has suffered permanent impairment of the use and function of his affected upper extremities.

24. The injuries suffered by plaintiff were the reasonably foreseeable results of defendants' negligence.

THIRD CLAIM FOR RELIEF

(Punitive Damages Against Defendant McKinley)

25. Defendant McKinley engaged in a prolonged, wanton and malicious course of conduct, with conscious and deliberate disregard of a serious risk to the health, safety, rights, and interest of plaintiff and many other patients like him, in one or more of the following respects:

- A. Defendant McKinley knew that the FDA had repeatedly refused to clear an indication for use of other pain pumps in the joint space, and that the FDA revoked a mistaken clearance to McKinley, but failed to disclose the FDA rejections and revocation to the U.S. medical community;
- B. Defendant McKinley failed to undertake the necessary research, analysis and testing to determine the safety of its pain pumps within the joint space before distributing its pain pumps, knowing that the pumps would be used in this manner, and failed to disclose to the U.S. medical community that the safety of using the pain pumps within a joint space was uncertain, unknown, and unpredictable;
- C. Defendant McKinley failed to disclose to the U.S. medical community that use of the pain pumps within the joint space was an "off-label" use, which had never been approved or cleared by the FDA;
- D. Defendant McKinley failed to promptly investigate and report to the FDA once they began receiving reports of dozens of patients who had allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints, and even failed to consider such cases as complaints relating to the safety of its pain pumps;

- E. Defendant McKinley failed to disclose to its own sales force that the FDA had repeatedly rejected McKinley's proposed indication for use of its pain pumps within the joint space. Nor did McKinley disclose to its sales force reports it received of several patients who allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints.
- F. Defendant McKinley actively promoted the use of its pain pumps within the joint space despite knowing such use had never been cleared by the FDA, and that promotion and marketing of its pain pumps for use within the joint space violated federal law;
- G. Defendant McKinley failed to warn the U.S. medical community of the known risk of serious and permanent injury to cartilage associated with the use of pain pumps within the joint space in a manner reasonably likely to meaningfully warn the U.S. medical community, for a prolonged period of time after McKinley became aware of the existence and seriousness of the risk; and
- H. Defendant McKinley put its own profits ahead of a serious risk of harm to the health, safety, and well-being of plaintiff and many other unsuspecting plaintiffs like him.

FOURTH CLAIM FOR RELIEF

(Punitive Damages Against Defendant Breg)

26. Defendant Breg engaged in a prolonged, wanton and malicious course of conduct, with conscious and deliberate disregard of a serious risk to the health, safety, rights, and interest of plaintiff and many other patients like him, in one or more of the following respects:

- A. Defendant Breg knew or reasonably should have known that the FDA had repeatedly refused to clear an indication for use of other pain pumps in the joint space, because Breg represented that its pumps were equivalent

devices to the other pain pumps. Breg failed to disclose the FDA rejections to the U.S. medical community;

- B. Defendant Breg failed to undertake the necessary research, analysis and testing to determine the safety of its pain pumps within the joint space before distributing its pain pumps, knowing that the pumps would be used in this manner, and failed to disclose to the U.S. medical community that the safety of using the pain pumps within a joint space was uncertain, unknown, and unpredictable;
- C. Defendant Breg failed to disclose to the U.S. medical community that use of the pain pumps within the joint space was an “off-label” use, which had never been approved or cleared by the FDA;
- D. Defendant Breg failed to promptly investigate and report to the FDA once they began receiving reports of patients who had allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints, and even failed to consider such cases as complaints relating to the safety of its pain pumps;
- E. Defendant Breg failed to disclose to its own sales force that the FDA had repeatedly rejected proposed indications for use of pain pumps within the joint space. Nor did Breg disclose to its sales force reports it received of several patients who allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints.
- F. Defendant Breg actively promoted the use of its pain pumps within the joint space despite knowing such use had never been cleared by the FDA, and that promotion and marketing of its pain pumps for use within the joint space violated federal law;
- G. Defendant Breg failed to warn the U.S. medical community of the known risk of serious and permanent injury to cartilage associated with the use of

pain pumps within the joint space in a manner reasonably likely to meaningfully warn the U.S. medical community, for a prolonged period of time after Breg became aware of the existence and seriousness of the risk; and

- H. Defendant Breg put its own profits ahead of a serious risk of harm to the health, safety, and well-being of plaintiff and many other unsuspecting plaintiffs like him.

FIFTH CLAIM FOR RELIEF

(Punitive Damages Against DJO Defendants)

27. DJO Defendants engaged in a prolonged, wanton and malicious course of conduct, with conscious and deliberate disregard of a serious risk to the health, safety, rights, and interest of plaintiff and many other patients like him, in one or more of the following respects:

- A. DJO Defendants knew that the FDA had repeatedly refused to clear an indication for use of pain pumps in the joint space, and that the FDA revoked a mistaken clearance to McKinley, but DJO failed to disclose the repeated FDA rejections and revocation to the U.S. medical community;
- B. DJO Defendants knew that the FDA considered all orthopedic use of pain pumps to be off-label use. DJO sponsored research for the orthopedic use of pain pumps without having an Investigational Device Exemption or a New Drug Application, despite the fact that outside consultants advised DJO in 1999 that such approval was necessary from the FDA to undertake research on pain pumps in orthopedic use.
- C. DJO Defendants failed to undertake the FDA supervised research, analysis and testing to determine the safety of its pain pumps within the joint space before distributing its pain pumps, knowing that the pumps would be used in this manner, and failed to disclose to the U.S. medical community that

the safety of using the pain pumps within a joint space was uncertain, unknown, and unpredictable;

- D. DJO Defendants failed to disclose to the U.S. medical community that use of the pain pumps within the joint space was an “off-label” use, which had never been approved or cleared by the FDA;
- E. DJO Defendants failed to disclose to their own sales force or customers that the FDA had repeatedly rejected I-Flow’s and McKinley’s proposed indications for use of pain pumps within the joint space. Nor did DJO disclose to its sales force reports it received of several patients who allegedly suffered injury to their cartilage following use of pain pumps within their shoulder joints.
- F. DJO Defendants actively promoted the use of its pain pumps within the joint space despite knowing such use had never been cleared by the FDA, and that promotion and marketing of its pain pumps for use within the joint space violated federal law;
- G. DJO retained FDA experts in 1999 who told it that this was risk of injury to cartilage from the drugs when they were infused over time into a joint space and that such a use of the pumps would be the most likely to be seen as a violation of FDA regulations.
- H. DJO defendants failed to warn the U.S. medical community of the known risk of serious and permanent injury to cartilage associated with the use of pain pumps within the joint space in a manner reasonably likely to meaningfully warn the U.S. medical community, for a prolonged period of time after DJO became aware of the existence and seriousness of the risk; and

- I. DJO defendants put their own profits ahead of a serious risk of harm to the health, safety, and well-being of plaintiff and many other unsuspecting patients.

DAMAGES

28. Plaintiff realleges all preceding paragraphs.
29. As a result of his injuries described above, plaintiff has suffered monetary damages in amounts to be proven at trial.

PRAYER FOR RELIEF

Wherefore, plaintiff demands judgment against the defendants, and each of them, as follows:

30. Plaintiff prays for judgment against the defendants, and each of them, for economic and noneconomic and punitive damages exceeding \$75,000 in amounts to be proven at trial;

31. Plaintiff seeks his reasonable costs and disbursements incurred herein, including the attorney fees incurred in prosecuting this action; and


32. Plaintiff prays for such other and further relief as justice requires.

JURY DEMAND

Plaintiffs request trial by jury.

Dated: October 9, 2009

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



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Attorneys for Plaintiff

09 cv 2817 DSD/FLN

CK 575739

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CARLOS R. FLORES-ESPINOZA

DEFENDANTS

BREG, INC., LMA NORTH AMERICA, INC.; DJO, LLC; DJO, INCORPORATED; MCKINLEY MEDICAL, L.L.C.; MOOG, INC.; CURLIN MEDICAL, INC.

(b) County of Residence of First Listed Plaintiff Marion

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego, CA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Yvonne M. Flaherty of Lockridge Grindal Nauen P.L.L.P.
100 Washington Ave. S, Ste 2200, Minneapolis, MN 55401 Tel: [redacted]

Attorneys (If Known)

Kim M. Schmid of Bowman and Brooke LLP, 150 S Fifth St.
#3000, Minneapolis, MN 55402 Tel: (612) 339-8682

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 495 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1332

Brief description of cause:
Plaintiff's Proximate cause of injuries by defendants' products (Pain Pump & Anesthetic).

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 75,000.00 Excess of 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE John R. Turheim/Jeffrey J. Keyes DOCKET NUMBER 08-5035 JRT/JJK

DATE

10/9/09

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

SCANNED

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____

OCT 09 2009
MAG. JUDGE

U.S. DISTRICT COURT, Mpls