

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 3RD DAY OF
JUSTICE BELOBABA) MARCH, 2016

BETWEEN:

ROSEMARY RITLOP and DONILDA LACKNER

Plaintiffs

-and-

STRYKER CANADA LP, STRYKER CANADA CORP., STRYKER
CANADIAN MANAGEMENT INC., HOWMEDICA OSTEONICS
CORPORATION c.o.b. as STRYKER ORTHOPEDICS and
STRYKER CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(HOSPITAL NOTICE OF CERTIFICATION)**

THIS MOTION, made by the Plaintiffs for an order requiring that Hospitals give notice of certification of this class proceeding as set out below, was heard on March 3, 2016.

ON READING this Court's Certification Order dated December 8, 2015, the Plaintiffs' Motion Record dated December 18, 2015, the affidavits of Terri Retzler of Crawford Class Action Services ("Crawford") confirming that the said Motion Record was provided to the Hospitals (as defined in the said Certification Order), and on hearing the submissions of counsel for the Plaintiffs, the Hospitals having been served by regular mail and not appearing:



1. **THIS COURT ORDERS** that service of the Motion Record dated December 18, 2015 on the Hospitals, as defined in the Certification Order, by regular mail, be and the same is hereby deemed effective as of December 28, 2015.

2. **THIS COURT ORDERS** that the said Hospitals shall, within 30 days of receipt of this order, check the healthcare number in the provincial healthcare system for each person implanted at the Hospital with a Stryker Rejuvenate Modular Hip System to confirm each person's current address, if it is reasonably possible to do so, and mail a copy of the Notice of Certification and Explanatory Letter approved in the Certification Order and attached as Schedule "A" hereto to the updated address that the Hospital has for each person implanted at the Hospital with a Stryker Rejuvenate Modular Hip System.

3. **THIS COURT ORDERS** that, within 20 days after the Notice of Certification and Explanatory Letter are mailed, the Hospitals shall each provide a written report to Crawford indicating the number of persons to whom Notice of Certification and Explanatory Letter were mailed, and the date(s) on which they were mailed.

4. **THIS COURT ORDERS** that within 30 days after the Notice of Certification and Explanatory Letter are mailed, the Hospitals shall each provide to Crawford copies of the Notice of Certification and Explanatory Letter that were returned by Canada Post ("Returned Notices").

5. **THIS COURT ORDERS** that upon receipt of the Returned Notices, Crawford will perform additional searches for such Class Members using Whitepages.ca, 411.ca, reverse address checks and other search engine checks.

6. **THIS COURT ORDERS** that within 1 week of being provided with the Returned Notices in accordance with paragraph 4, if Crawford locates new and/or different addresses for the Class Members that were sent Returned Notices, Crawford shall send the Notice of Certification and Explanatory Letter to these new and/or different addresses (the "Additional Notices").

7. **THIS COURT ORDERS** that Crawford provide Class Counsel and the Defendants with a report of which Hospitals responded, the number of persons to whom each Hospital reported giving the notice, the number of reported Returned Notices and the number of Additional Notices provided by Crawford, and the identities of any Hospitals, if any, that did not respond, within 68 days from the date of this Order; such report shall be kept confidential and is not to be filed with the Court, absent further order or a written direction jointly signed by lawyers for both the Class and the Defendants.


8. **THIS COURT ORDERS** that the reasonable costs of the Hospitals for compliance with this Order shall be paid by the Representative Plaintiffs.

9. **THIS COURT ORDERS** that Crawford keep the names of Hospitals and of persons who send it opt-out notices confidential, except as otherwise ordered by this Court, with the following exceptions:

- (a) Crawford may advise the Defendants whether a specific Class Member, who has made a written demand of the Defendants or commenced a lawsuit against them in any jurisdiction, sent Crawford an opt-out notice, and when such notice was received by Crawford;
- (b) for each Class Member who has opted out, Crawford shall advise the Hospital where the Class Member was implanted, and that the Class Member has opted out for the purposes of removing such Class Member from any future mailing list; and
- (c) in accordance with paragraph 7 above.

10. **THIS COURT ORDERS** that Crawford preserve all information it receives from Hospitals, and all opt-out notices it receives, until permitted to dispose of such information by further order of this Court or by written direction jointly signed by lawyers for both the Class and the Defendants.

11. **THIS COURT ORDERS** that there shall be no costs of this motion to any party.


ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 3 2016

PER / PAR:



SCHEDULE "A"

Dear Sir/Madam,

Re: Your Stryker Rejuvenate Modular Hip Implant

We are the court-appointed Class Counsel in a national class action lawsuit certified by the Ontario Superior Court concerning people who were implanted with a Stryker Rejuvenate Modular Hip Implant in Canada.

The Ontario Superior Court has ordered this letter and the enclosed notice be mailed by health care institutions to people who have been implanted with a Stryker Rejuvenate Modular Hip Implant.

The enclosed notice may affect your rights. Please read it carefully. Your name and private information has not been disclosed to us and we do not represent you merely by sending you this letter. However, if you do not opt out of this Proceeding as set out in the attached notice, we will represent you and your name may be disclosed to us.

If the reader of this letter is not the patient but the next of kin of a now deceased patient, we are sorry for your loss and apologize for bringing this to your attention, but the executors do still need to decide whether to remain as a party to this class action or to opt out of the proceeding.

Yours very truly,

Were you implanted with a Stryker Rejuvenate Modular Hip System?

If so, this notice may affect your legal rights. Please read carefully.

The Ontario Superior Court has certified a class action for people who were implanted with a Stryker Rejuvenate Modular Hip System ("Rejuvenate Modular") in Canada. If you were implanted with a Rejuvenate Modular, you may be a class member. **Please note that this Notice does not relate to any other Stryker hip implant system, including the Rejuvenate Monoblock Hip System.**

Who are the class members?

The Class is defined as:

- (a) all persons who were implanted in Canada with the Stryker Rejuvenate Modular Hip System and were resident in Canada at the time of implant; and
- (b) all other persons who, by reason of his or her relationship to one or more of the above, have standing to sue pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F3 or the equivalent legislation in other provinces and territories.

The Rejuvenate Modular hip system is an artificial hip implant.

What the Class Action Is About?

The lawsuit seeks financial compensation for class members. This lawsuit alleges that the Defendants were negligent in designing, manufacturing, distributing and selling the Rejuvenate Modular (the "Proceeding"). The Proceeding alleges, among other things, that the Rejuvenate Modular suffers from fretting and corrosion at its modular-neck junction which results in adverse local tissue reactions as well as pain and swelling at or around the hip and the need for possible revision surgery. The Court has not yet made any finding as to the merits of the Proceeding. The Defendants deny the allegations made in the Proceeding.

The Representative Plaintiffs are Donilda Lackner and Rosemary Ritlop. The law firms representing the Class are Koskie Minsky LLP, Klein Lawyers and Stevenson Whelton MacDonald & Swan LLP.

PARTICIPATION IN AND EXCLUSION FROM THE CLASS

If you are a class member, **you will automatically be included** in this class action, unless you opt out in the manner described below. If you do not wish to opt out, you are not required to take any further steps at this stage.

IF YOU ARE A CLASS MEMBER WHO WAS IMPLANTED WITH A REJUVENATE MODULAR AND YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS PROCEEDING ("opt out") you must deliver a written notice to Crawford Class Action Services

at 3-505, 133 Weber St N, Waterloo, ON, N2J 3G9, specifying your desire to opt out of the class action. Notice of your decision to opt out must be received by Crawford Class Action Services within 90 days of **[insert date that is 90 days after Hospital Notice Order]**. You may use the Opt-Out Form attached hereto if you wish. If you opt out of the Proceeding, your family members will also be deemed to have opted out.

IF YOU ARE A CLASS MEMBER WHO WAS NOT IMPLANTED WITH A REJUVENATE MODULAR AND WISH TO EXCLUDE YOURSELF FROM THE CLASS PROCEEDING ("opt out") you must likewise deliver a written notice to Crawford Class Action Services at 3-505, 133 Weber St N, Waterloo, ON, N2J 3G9, specifying your desire to opt out of the class action. Notice of your decision to opt out must be received by Crawford Class Action Services within 90 days of **[insert date that is 90 days after Hospital Notice Order]**.

ANY JUDGMENT OBTAINED ON THE COMMON ISSUES IN THIS ACTION, WHETHER FAVOURABLE OR NOT, WILL BIND ALL CLASS MEMBERS WHO DO NOT OPT OUT OF THIS ACTION.

PRIVACY

If you do not opt out of this Proceeding, your identity may be disclosed to the parties to this class action and their lawyers. If you opt out of this Proceeding, Crawford Class Action Services will not disclose your identity to any party or lawyer unless you are suing or later sue the Defendants, in which case Crawford Class Action Services may disclose to the Defendants and their lawyers that you opted out of this Proceeding. Crawford Class Action Services may also disclose to the Hospital where you were implanted that you have opted out of this Proceeding so you can be removed from any list of Class Members that receive future notices.

FINANCIAL CONSEQUENCES

The Representative Plaintiffs have entered into a fee agreement providing that Class Counsel's legal fees for work on the common issues will be paid from the amounts that Class Members who do not opt out recover, plus applicable taxes, disbursements and interest. If the class action does not succeed, Class Members are not responsible for any legal fees or disbursements. The fee agreement must be approved by the court.

If the common issues are determined in favour of the Class, individual Class Member's participation will be required in order to establish individual claims. If individual proceedings are pursued by any Class Member, he or she may have to bear the costs of such individual proceedings. Class Members will have the opportunity at that time to decide whether to make an individual claim.

The Representative Plaintiffs are potentially liable for the Defendants' costs of any common issues trial. Class Members are not liable for the Defendants' costs of the common issues trial, but each Class Member is potentially liable for the Defendants' costs of any individual proceeding that Class Member chooses to pursue thereafter if unsuccessful.

The Representative Plaintiffs have obtained financial support from the Class Proceedings Fund in respect of the Proceeding. As a result, the Representative Plaintiffs will be indemnified for any costs order in favour of the Defendants, and there will be a levy that reduces the amount of any award or settlement funds to which Class Members may become entitled. The levy is the sum of (i) the amount of any financial support provided by the Fund, and (ii) 10 per cent of the amount of any award or settlement funds, if any, to which one or more persons in the Class is entitled.

For further information you may contact:

Class counsel telephone 1-888-502-7460 or email strykerclassaction@kmlaw.ca. Further information can also be obtained at the class action website <http://kmlaw.ca/cases/stryker-implants/>.

Any questions about the matters in this Notice should **not be directed to the Court, because its administrative structure is not designed to address this type of inquiry.**

Opt-Out Form

Stryker Rejuvenate Modular Hip System Class Action

If you want to be excluded from this class action and you are a Class member who was implanted, you may use this form to do so. Your notice must be received by Crawford Class Action Services at the following address by the opt out deadline which is **[insert date that is 90 days after the Hospital Notice Order]** to be effective:

Crawford Class Action Services

3-505, 133 Weber St N
Waterloo, ON
N2J 3G9

Please fill in your name and address:

Name:

Street:

Telephone:

Province:

Postal Code:

I represent that I received a Stryker Rejuvenate Modular Hip System. I hereby opt-out of the Stryker Rejuvenate Modular Hip System Class Action and confirm that I do not wish to be bound by or benefit from any judgment or settlement in it.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period that might bar any claim by me, and for taking all necessary legal steps to protect any claim I may have.

Signature: _____

Date Signed: _____

To opt out, this form must be properly completed and received at the below address no later than **[insert date that is 90 days after the Hospital Notice Order]**.

Please mail your Opt Out Form to:

Crawford Class Action Services

3-505, 133 Weber St N
Waterloo, ON
N2J 3G9

ROSEMARY RITLOP and others
Plaintiffs

-and-
Defendants

STRYKER CANADA LP and others

Court File No. CV-14-504302-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(HOSPITAL NOTICE OF CERTIFICATION)**

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