

DEC - 1 2016

CLERK, U.S. DISTRICT COURT
By Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, §
INC. PINNACLE HIP IMPLANT §
PRODUCTS LIABILITY §
LITIGATION §

MDL Docket No.

3:11-MD-2244-K

----- §
This Relates To: §

Andrews – 3:15-cv-3484-K §

Davis – 3:15-cv-1767-K §

Metzler – 3:12-cv-2066-K §

Rodriguez – 3:13-cv-3938-K §

Standerfer – 3:14-cv-1730-K §

Weiser – 3:13-cv-3631-K §
----- §

COURT'S CHARGE TO THE JURY

MEMBERS OF THE JURY:

You have now been sworn as the jury to try this case. As the jury you will decide the disputed questions of fact.

As the Judge, I will decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

Soon the lawyers for each of the parties will make what is called an opening statement. Opening statements are intended to assist you in understanding the evidence. What the lawyers say is not evidence. After the opening statements, the

plaintiff will call witnesses and present evidence. Then, the defendant will have an opportunity to call witnesses and present evidence. After each party's main case is completed, the opposing party will be permitted to present rebuttal evidence. After all the evidence is completed, the lawyers will again address you to make final arguments. Then I will instruct you on the applicable law. You will then retire to deliberate on a verdict.

Keep an open mind during the trial. Do not decide any fact until you have heard all of the evidence, the closing arguments, and my instructions.

Pay close attention to the testimony and evidence. If you would like to take notes during the trial, you may do so. If you do take notes, be careful not to get so involved in note taking that you become distracted and miss part of the testimony. Your notes are to be used only as aids to your memory, and if your memory should later be different from your notes, you should rely on your memory and not on your notes. If you do not take notes, rely on your own independent memory of the testimony. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony. Even though the court reporter is making stenographic notes of everything that is said, a typewritten copy of the testimony will not be available for your use during deliberations. However, if you have a specific disagreement as to a particular witness's testimony on a specific subject, we can attempt to obtain that information for you. On the other hand, any exhibits admitted during the trial will be available to you during

your deliberations.

Until this trial is over, do not discuss this case with anyone and do not permit anyone to discuss this case in your presence. Do not discuss the case even with the other jurors until all of the jurors are in the jury room actually deliberating at the end of the case. I know that many of you use cell phones, iPhones, Blackberries, the internet and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, MySpace, LinkedIn, and YouTube. If anyone should attempt to discuss this case or to approach you concerning the case, you should inform the court immediately. Hold yourself completely apart from the people involved in the case—the parties, the witnesses, the attorneys and persons associated with them. It is important not only that you be fair and impartial but that you also appear to be fair and impartial.

Do not make any independent investigation of any fact or matter in this case. You are to be guided solely by what you see and hear in this trial. Do not learn anything about the case from any other source.

During the trial, it may be necessary for me to confer with the lawyers out of

your hearing or to conduct a part of the trial out of your presence. I will handle these matters as briefly and as conveniently for you as I can, but you should remember that they are a necessary part of the trial.

The evidence in this case will consist of the following:

1. The sworn testimony of all witnesses, no matter who called a witness.
2. All exhibits received in evidence, regardless of who may have produced the exhibits.
3. All facts that may have been stipulated or judicially noticed that you must take as true for purposes of this case.

A “stipulation” is an agreement between both sides that certain facts are true. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved.

I may take “judicial notice” of certain facts or events. When I declare that I will take judicial notice of some fact or event, you must accept that fact as true. If I sustain an objection to any evidence or if I order evidence stricken, that evidence must be entirely ignored.

During the trial, the lawyers may make objections to questions asked or answers given. That simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. These relate only to the legal questions that I must determine

and should not influence your thinking. If I sustain an objection to a question, the witness cannot answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. If I overrule an objection, treat the answer like any other. Additionally, some evidence may be admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose only, you must consider it only for that limited purpose and for no other purpose.

You are to consider only the evidence in the case. From the facts that you believe have been proved, you may draw such reasonable inferences or conclusions as you feel are justified in light of your experience.

It is now time for opening statements.

POST-EVIDENCE INSTRUCTIONS

Now that you have heard all the evidence in this case, I will instruct you on the law that you must apply.

GENERAL INSTRUCTIONS

It is your duty to follow the law as I give it to you in this Charge. On the other hand, you the jury are the judges of the facts. Do not consider any statements that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Remember that any statement or arguments made by the lawyers are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Answer each question from the facts as you find them. Your answers and your verdict must be unanimous. Unless you are instructed otherwise, each plaintiff must prove each essential part of his or her claims by a preponderance of the evidence. This means the greater weight and degree of credible evidence before you. In other words, to establish a claim or defense by a "preponderance of the evidence" means to prove that the claim is more likely so than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of any plaintiff's claims by a preponderance of the evidence, you should find for the defendants as to that claim. The fact of an injury, alone, is not sufficient to prove any plaintiff's claims, including the presence of a defect, an inadequate warning, or causation.

You are the sole judges of the "credibility" or believability of each witness and the weight to be given to the witness's testimony. In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or an innocent lapse of memory; the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. The testimony of a

single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field—he is called an expert witness—is permitted to state his opinions on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from the evidence that he testifies regularly as an expert witness and whether his income from such testimony represents a significant portion of his income.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

There are two types of evidence you may consider in properly finding the truth as to the facts in the case. One is direct evidence. A fact is established by direct evidence when proved by witnesses who saw the act done or heard the words spoken or by

documentary evidence. The other is indirect or circumstantial evidence—the proof of a chain of circumstances indicating the existence or nonexistence of certain other facts. Direct proof of a state of mind is almost never available and is not required. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life.

There are six separate cases, involving ten plaintiffs. You must give separate consideration to each claim and each party in each case. Although there are ten plaintiffs, it does not follow that if one is successful as to a particular claim, the others should prevail on that claim, too. You must decide each plaintiff's case solely on the evidence that applies to that plaintiff.

A medical device manufacturer, like DePuy Orthopaedics, Inc., owes a duty to adequately warn a patient's orthopedic surgeon about the device's risks. The manufacturer does not owe a duty to warn patients directly.

The plaintiffs' implanting surgeons and surgery dates were as follows:

Plaintiff	Date of Implant	Date of Revision
Marvin Andrews	2/9/2005 by Dr. Bobby Tay	8/18/2015
Kathleen Davis	1/19/2010 by Dr. Barry Rose	10/29/2014
Rosa Metzler	3/23/2010 by Dr. Daniel Woods	8/21/2012
Judith Rodriguez	Left: 8/8/2009 and Right: 9/9/2009 by Dr. Alexander Miric	Both: 5/14/2013
Linda Standerfer	Right: 8/3/2009 and Left: 10/29/2009 by Dr. Kevin Howe	Right: 11/28/2012 Left: 1/25/2013
Michael Weiser	8/18/2009 by Dr. Herbert Huddleston	8/21/2013

Question 1: Negligence (Design Defect)

Were Defendants negligent in designing the Pinnacle Ultamet and, if so, was such negligence a substantial factor in causing harm to the persons listed below?

Plaintiffs claim they were harmed by Defendants' negligence and that they should be held responsible for that harm. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants designed the Pinnacle Ultamet;
- (2) That Defendants were negligent in designing the Pinnacle Ultamet;
- (3) That Plaintiffs were harmed; and
- (4) That Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

A designer is negligent if it fails to use the amount of care in designing the product that a reasonably careful designer would use in similar circumstances to avoid exposing others to a foreseeable risk of harm.

In determining whether Defendants used reasonable care, you should balance what Defendants knew or should have known about the likelihood and severity of potential harm from the product against the burden of taking safety measures to reduce or avoid the harm.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

A person's negligence may combine with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiffs' harm, then Defendants are responsible for the harm. Defendants cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Plaintiffs' harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 2: Strict Liability (Failure to Warn)

Did the Pinnacle Ultamet lack sufficient instructions or warnings of potential risks and, if so, was the lack of such warnings or instructions a substantial factor in causing harm to the persons listed below?

Plaintiffs claim that they were harmed by a product distributed, manufactured, and/or sold by Defendants that did not include sufficient instructions or warning of potential risks or safety hazards. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants manufactured, distributed, and/or sold the Pinnacle Ultamet, or played an integral role in the producing and marketing enterprise for the Pinnacle Ultamet;
- (2) That the Pinnacle Ultamet had potential risks that were known or knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time of its manufacture, distribution, or sale;
- (3) That the potential risks presented a substantial danger when the Pinnacle Ultamet is used or misused in an intended or reasonably foreseeable way;
- (4) That the prescribing orthopedic community would not have recognized the potential risks;
- (5) That Defendants failed to adequately warn or instruct of the potential risks;
- (6) That Plaintiffs were harmed; and
- (7) That the lack of sufficient instructions or warnings was a substantial factor in causing Plaintiffs' harm.

In order to establish that a Defendant played an integral role in the producing and marketing enterprise of the Pinnacle Ultamet, Plaintiffs must prove all of the following:

- (1) That a Defendant received a direct financial benefit from its activities and from the sale of the Pinnacle Ultamet;

(2) That a Defendant's role was integral to the business enterprise such that its conduct was a necessary factor in bringing the Pinnacle Ultamet to the initial consumer market; and

(3) That a Defendant had control over, or a substantial ability to influence, the manufacturing or distribution process for the Pinnacle Ultamet.

The warning must be given to the prescribing physician and must include the potential risks, side effects, or allergic reactions that may follow the foreseeable use of the Pinnacle Ultamet.

Defendants had a continuing duty to warn physicians as long as the Pinnacle Ultamet was in use.

In considering whether warnings given by Defendants were adequate, you may consider the manner in which the Pinnacle Ultamet was promoted or advertised. Warnings that are otherwise adequate may be rendered inadequate by advertising or promotional efforts which minimize the warnings or encourage them to be disregarded.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 3: Negligence (Failure to Warn)

Did Defendants fail to use reasonable care to warn or instruct about the dangers of the Pinnacle Ultamet, and, if so, was such failure to warn or instruct a substantial factor in causing harm to the persons listed below?

Plaintiffs claim that Defendants were negligent by not using reasonable care to warn or instruct about the Pinnacle Ultamet's dangerous condition or about facts that made the Pinnacle Ultamet likely to be dangerous. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants manufactured, distributed, sold, and/or supplied the Pinnacle Ultamet, or played an integral role in the producing and marketing enterprise for the Pinnacle Ultamet;
- (2) That Defendants knew or reasonably should have known that the Pinnacle Ultamet was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;
- (3) That Defendants knew or reasonably should have known that the prescribing orthopedic community would not realize the danger;
- (4) That Defendants failed to adequately warn of the danger or instruct on the safe use of the Pinnacle Ultamet;
- (5) That a reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of the Pinnacle Ultamet;
- (6) That Plaintiffs were harmed; and
- (7) That Defendants' failure to warn or instruct was a substantial factor in causing Plaintiffs' harm.

In order to establish that a Defendant played an integral role in the producing and marketing enterprise of the Pinnacle Ultamet, Plaintiffs must prove all of the following:

- (1) That a Defendant received a direct financial benefit from its activities and from the sale of the Pinnacle Ultamet;
- (2) That a Defendant's role was integral to the business enterprise such that its conduct was a necessary factor in bringing the Pinnacle Ultamet to the initial consumer market; and

(3) That a Defendant had control over, or a substantial ability to influence, the manufacturing or distribution process for the Pinnacle Ultamet.

The warning must be given to the prescribing physician and must include the potential risks, side effects, or allergic reactions that may follow the foreseeable use of the Pinnacle Ultamet.

Defendants had a continuing duty to warn physicians as long as the Pinnacle Ultamet was in use.

In considering whether warnings given by Defendants were adequate, you may consider the manner in which the Pinnacle Ultamet was promoted or advertised. Warnings that are otherwise adequate may be rendered inadequate by advertising or promotional efforts which minimize the warnings or encourage them to be disregarded.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

A person's negligence may combine with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiffs' harm, then Defendants are responsible for the harm. Defendants cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Plaintiffs' harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 4: Negligence (Failure to Recall)

Were Defendants negligent in failing to recall the Pinnacle Ultamet and was such negligence, if any, a substantial factor in causing harm to the persons listed below?

Plaintiffs claim that Defendants were negligent because they failed to recall the Pinnacle Ultamet. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants manufactured, distributed, and/or sold the Pinnacle Ultamet, or played an integral role in the producing and marketing enterprise for the Pinnacle Ultamet;
- (2) That Defendants knew or reasonably should have known that the Pinnacle Ultamet was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;
- (3) That Defendants became aware of this defect after the Pinnacle Ultamet was sold;
- (4) That Defendants failed to recall the Pinnacle Ultamet;
- (5) That a reasonable manufacturer, distributor, or seller under the same or similar circumstances would have recalled the Pinnacle Ultamet;
- (6) That Plaintiffs were harmed; and
- (7) That Defendants' failure to recall was a substantial factor in causing Plaintiffs' harm.

In order to establish that a Defendant played an integral role in the producing and marketing enterprise of the Pinnacle Ultamet, Plaintiffs must prove all of the following:

- (1) That a Defendant received a direct financial benefit from its activities and from the sale of the Pinnacle Ultamet;
- (2) That a Defendant's role was integral to the business enterprise such that its conduct was a necessary factor in bringing the Pinnacle Ultamet to the initial consumer market; and

(3) That a Defendant had control over, or a substantial ability to influence, the manufacturing or distribution process for the Pinnacle Ultamet.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

A person's negligence may combine with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiffs' harm, then Defendants are responsible for the harm. Defendants cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Plaintiffs' harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 5: Negligent Misrepresentation - Plaintiffs

Did Defendants make a false representation, without reasonable grounds to believe such representation was true, to the persons listed below, upon which such persons reasonably relied and, if so, was such reliance a substantial factor in causing such person's harm?

Plaintiffs claim they were harmed because Defendants negligently misrepresented a fact. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants represented to Plaintiffs that a fact was true;
- (2) That Defendants' representation was not true;
- (3) That although Defendants may have honestly believed that the representation was true, Defendants had no reasonable grounds for believing the representation was true when they made it;
- (4) That Defendants intended that Plaintiffs rely on this representation;
- (5) That Plaintiffs reasonably relied on Defendants' representation;
- (6) That Plaintiffs were harmed; and
- (7) That Plaintiffs' reliance on Defendants' representation was a substantial factor in causing Plaintiffs' harm.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, Defendants' opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs did not have; or
- (2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or
- (3) Defendants had a relationship of trust and confidence with Plaintiffs; or

(4) Defendants had some other special reason to expect that Plaintiffs would rely on their opinion.

Defendants are responsible for a representation that was not made directly to Plaintiffs if they made the representation to a group of persons including Plaintiffs or to another person, intending or reasonably expecting that it would be repeated to Plaintiffs.

Plaintiffs relied on Defendants' misrepresentation if:

- (1) The misrepresentation substantially influenced them to consent to be implanted with the Pinnacle Ultamet; and
- (2) They probably would not have consented to be implanted with the Pinnacle Ultamet without the misrepresentation.

In determining whether Plaintiffs' reliance on the misrepresentation was reasonable, Plaintiffs must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs to rely on the misrepresentation. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs.

However, it is not reasonable for anyone to rely on a misrepresentation that is preposterous. It is also not reasonable for anyone to rely on a misrepresentation if facts that are within his or her observation show that it is obviously false.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a misrepresentation to be the only reason for Plaintiffs' conduct.

A person's negligence may combine with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiffs' harm, then Defendants are responsible for the harm. Defendants cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Plaintiffs' harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 6: Negligent Misrepresentation – Plaintiffs’ Physicians

Did Defendants make a false representation, without reasonable grounds to believe such representation was true, to the implanting physicians of the persons listed below, upon which such physicians reasonably relied and, if so, was such reliance a substantial factor in causing such person’s harm?

Plaintiffs claim they were harmed because Defendants negligently misrepresented a fact. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants represented to Plaintiffs’ implanting physicians that a fact was true;
- (2) That Defendants’ representation was not true;
- (3) That although Defendants may have honestly believed that the representation was true, Defendants had no reasonable grounds for believing the representation was true when they made it;
- (4) That Defendants intended that Plaintiffs’ implanting physicians rely on this representation;
- (5) That Plaintiffs’ implanting physicians reasonably relied on Defendants’ representation;
- (6) That Plaintiffs were harmed; and
- (7) That Plaintiffs’ implanting physicians’ reliance on Defendants’ representation was a substantial factor in causing Plaintiffs’ harm.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person’s belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, Defendants’ opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs’ implanting physicians did not have; or
- (2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or
- (3) Defendants had a relationship of trust and confidence with Plaintiffs’ implanting physicians; or

(4) Defendants had some other special reason to expect that Plaintiffs' implanting physicians would rely on their opinion.

Defendants are responsible for a representation that was not made directly to Plaintiffs' physicians if they made the representation to a group of persons including Plaintiffs' physicians or to another person, intending or reasonably expecting that it would be repeated to Plaintiffs' physicians.

Plaintiffs' implanting physicians relied on Defendants' misrepresentation if:

- (1) The misrepresentation substantially influenced them to implant Plaintiffs with the Pinnacle Ultamet; and
- (2) They probably would not have implanted Plaintiffs with the Pinnacle Ultamet without the misrepresentation.

In determining whether Plaintiffs' implanting physicians' reliance on the misrepresentation was reasonable, Plaintiffs must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs' implanting physicians to rely on the misrepresentation. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs' implanting physicians.

However, it is not reasonable for anyone to rely on a misrepresentation that is preposterous. It is also not reasonable for anyone to rely on a misrepresentation if facts that are within his or her observation show that it is obviously false.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a misrepresentation to be the only reason for Plaintiffs' implanting physicians' conduct.

A person's negligence may combine with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiffs' harm, then Defendants are responsible for the harm. Defendants cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Plaintiffs' harm.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 7: Intentional Misrepresentation - Plaintiffs

Did Defendants knowingly or recklessly make a false representation regarding the Pinnacle Ultamet to the persons listed below upon which such persons reasonably relied and, if so, was such reliance a substantial factor in causing such person's harm?

Plaintiffs claim that Defendants made a false representation that harmed them. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants represented to Plaintiffs that a fact was true;
- (2) That Defendants' representation was false;
- (3) That Defendants knew that the representation was false when they made it, or that they made the representation recklessly and without regard for its truth;
- (4) That Defendants intended that Plaintiffs rely on the representation;
- (5) That Plaintiffs reasonably relied on Defendants' representation;
- (6) That Plaintiffs were harmed; and
- (7) That Plaintiffs' reliance on Defendants' representation was a substantial factor in causing Plaintiffs' harm.

A Defendant who does not personally participate in the fraud can still be held liable if such Defendant profited or accepted the benefits of the fraud with knowledge of the misrepresentations by which the fraud was perpetrated.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, Defendants' opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs did not have; or
- (2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or

(3) Defendants had a relationship of trust and confidence with Plaintiffs; or

(4) Defendants had some other special reason to expect that Plaintiffs would rely on their opinion.

Defendants are responsible for a representation that was not made directly to Plaintiffs if they made the representation to a group of persons including Plaintiffs or to another person, intending or reasonably expecting that it would be repeated to Plaintiffs.

Plaintiffs relied on Defendants' misrepresentation if:

(1) The misrepresentation substantially influenced them to consent to be implanted with the Pinnacle Ultamet; and

(2) They probably would not have consented to be implanted with the Pinnacle Ultamet without the misrepresentation.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a misrepresentation to be the only reason for Plaintiffs' conduct.

In determining whether Plaintiffs' reliance on the misrepresentation was reasonable, Plaintiffs must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs to rely on the misrepresentation. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs.

However, it is not reasonable for anyone to rely on a misrepresentation that is preposterous. It is also not reasonable for anyone to rely on a misrepresentation if facts that are within his or her observation show that it is obviously false.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 8: Intentional Misrepresentation – Plaintiffs’ Physicians

Did Defendants knowingly or recklessly make a false representation regarding the Pinnacle Ultamet to the implanting physicians of the persons listed below, upon which such physicians reasonably relied and, if so, was such reliance a substantial factor in causing such person’s harm?

Plaintiffs claim that Defendants made a false representation that harmed them. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants represented to Plaintiffs’ implanting physicians that a fact was true;
- (2) That Defendants’ representation was false;
- (3) That Defendants knew that the representation was false when they made it, or that they made the representation recklessly and without regard for its truth;
- (4) That Defendants intended that Plaintiffs’ implanting physicians rely on the representation;
- (5) That Plaintiffs’ implanting physicians reasonably relied on Defendants’ representation;
- (6) That Plaintiffs were harmed; and
- (7) That Plaintiffs’ implanting physicians’ reliance on Defendants’ representation was a substantial factor in causing Plaintiffs’ harm.

A Defendant who does not personally participate in the fraud can still be held liable if such Defendant profited or accepted the benefits of the fraud with knowledge of the misrepresentations by which the fraud was perpetrated.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person’s belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, Defendants’ opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs’ implanting physicians did not have; or
- (2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or

(3) Defendants had a relationship of trust and confidence with Plaintiffs' implanting physicians; or

(4) Defendants had some other special reason to expect that Plaintiffs' implanting physicians would rely on their opinion.

Defendants are responsible for a representation that was not made directly to Plaintiffs' physicians if they made the representation to a group of persons including Plaintiffs' physicians or to another person, intending or reasonably expecting that it would be repeated to Plaintiffs' physicians.

Plaintiffs' implanting physicians relied on Defendants' misrepresentation if:

(1) The misrepresentation substantially influenced them to implant Plaintiffs with the Pinnacle Ultamet; and

(2) They probably would not have implanted Plaintiffs with the Pinnacle Ultamet without the misrepresentation.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a misrepresentation to be the only reason for Plaintiffs' implanting physicians' conduct.

In determining whether Plaintiffs' implanting physicians' reliance on the misrepresentation was reasonable, Plaintiffs must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs' implanting physicians to rely on the misrepresentation. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs' implanting physicians.

However, it is not reasonable for anyone to rely on a misrepresentation that is preposterous. It is also not reasonable for anyone to rely on a misrepresentation if facts that are within his or her observation show that it is obviously false.

Answer "Yes" or "No" with respect to each of the following:

DePuy Orthopaedics, Inc.

Johnson & Johnson

a. Marvin Andrews

YES

YES

b. Kathleen Davis

YES

YES

c. Rosa Metzler

YES

YES

d. Judith Rodriguez

YES

YES

e. Linda Standerfer

YES

YES

f. Michael Weiser

YES

YES

Question 9: Fraudulent Concealment - Plaintiffs

Did Defendants intentionally fail to disclose facts about the Pinnacle Ultamet with the intent to deceive the persons listed below and, if so, was such concealment a substantial factor in causing such person's harm?

Plaintiffs claim that they were harmed because Defendants concealed certain information. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants either
 - (a) disclosed some facts to Plaintiffs but intentionally failed to disclose other facts, making the disclosure deceptive, or
 - (b) intentionally failed to disclose certain facts that were known only to them and that Plaintiffs could not have discovered, or
 - (c) Defendants prevented Plaintiffs from discovering certain facts;
- (2) That Plaintiffs did not know of the concealed fact[s];
- (3) That Defendants intended to deceive Plaintiffs by concealing the fact[s];
- (4) That had the omitted information been disclosed, Plaintiffs reasonably would have behaved differently;
- (5) That Plaintiffs were harmed; and
- (6) That Defendants' concealment was a substantial factor in causing Plaintiffs' harm.

A Defendant who does not personally participate in the fraud can still be held liable if such Defendant profited or accepted the benefits of the fraud with knowledge of the concealments by which the fraud was perpetrated.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, Defendants' opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs did not have; or

(2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or

(3) Defendants had a relationship of trust and confidence with Plaintiffs; or

(4) Defendants had some other special reason to expect that Plaintiffs would rely on their opinion.

Plaintiffs relied on Defendants' concealment if:

(1) The concealment substantially influenced them to consent to be implanted with the Pinnacle Ultamet; and

(2) They probably would not have consented to be implanted with the Pinnacle Ultamet without the concealment.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a concealment to be the only reason for Plaintiffs' conduct.

In determining whether Plaintiffs' reliance on the concealment was reasonable, they must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs to rely on the concealment. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs.

However, it is not reasonable for anyone to rely on a concealment that is preposterous. It is also not reasonable for anyone to rely on a concealment if facts that are within his or her observation show that it is obviously false.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Question 10: Fraudulent Concealment – Plaintiffs' Physicians

Did Defendants intentionally fail to disclose facts about the Pinnacle Ultamet with the intent to deceive the implanting physicians of the persons listed below, and if so, was such concealment a substantial factor in causing such person's harm?

Plaintiffs claim that they were harmed because Defendants concealed certain information. To establish this claim, Plaintiffs must prove all of the following:

- (1) That Defendants either
 - (a) disclosed some facts to Plaintiffs' implanting physicians but intentionally failed to disclose other facts, making the disclosure deceptive, or
 - (b) intentionally failed to disclose certain facts that were known only to them and that Plaintiffs' implanting physicians could not have discovered, or
 - (c) Defendants prevented Plaintiffs' implanting physicians from discovering certain facts;
- (2) That Plaintiffs' implanting physicians did not know of the concealed fact[s];
- (3) That Defendants intended to deceive Plaintiffs' implanting physicians by concealing the fact[s];
- (4) That had the omitted information been disclosed, Plaintiffs' implanting physicians, reasonably would have behaved differently;
- (5) That Plaintiffs were harmed; and
- (6) That Defendants' concealment was a substantial factor in causing Plaintiffs' harm.

A Defendant who does not personally participate in the fraud can still be held liable if such Defendant profited or accepted the benefits of the fraud with knowledge of the concealments by which the fraud was perpetrated.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment

about quality, value, authenticity, or similar matters. However, Defendants' opinion is considered a representation of fact if Plaintiffs prove any of the following:

- (1) Defendants claimed to have special knowledge about the subject matter that Plaintiffs' implanting physicians did not have; or
- (2) Defendants made a representation, not as a casual expression of belief, but in a way that declared the matter to be true; or
- (3) Defendants had a relationship of trust and confidence with Plaintiffs' implanting physicians; or
- (4) Defendants had some other special reason to expect that Plaintiffs' implanting physicians would rely on their opinion.

Plaintiffs' implanting physicians relied on Defendants' concealment if:

- (1) The concealment substantially influenced them to implant Plaintiffs with the Pinnacle Ultamet; and
- (2) They probably would not have implanted Plaintiffs with the Pinnacle Ultamet without the concealment.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It is not necessary for a concealment to be the only reason for Plaintiffs' implanting physicians' conduct.

In determining whether Plaintiffs' implanting physicians' reliance on the concealment was reasonable, Plaintiffs must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Plaintiffs' implanting physicians to rely on the concealment. In making this decision, take into consideration the intelligence, knowledge, education, and experience of Plaintiffs' implanting physicians.

However, it is not reasonable for anyone to rely on a concealment that is preposterous. It is also not reasonable for anyone to rely on a concealment if facts that are within his or her observation show that it is obviously false.

Answer "Yes" or "No" with respect to each of the following:

	DePuy Orthopaedics, Inc.	Johnson & Johnson
a. Marvin Andrews	<u>YES</u>	<u>YES</u>
b. Kathleen Davis	<u>YES</u>	<u>YES</u>
c. Rosa Metzler	<u>YES</u>	<u>YES</u>
d. Judith Rodriguez	<u>YES</u>	<u>YES</u>
e. Linda Standerfer	<u>YES</u>	<u>YES</u>
f. Michael Weiser	<u>YES</u>	<u>YES</u>

Answer Question 11 only if you have answered "Yes" as to DePuy Orthopaedics, Inc., to Question 1. Otherwise, do not answer Question 11.

Question 11: Aiding and Abetting (Johnson & Johnson) – Negligence (Design Defect)

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the negligence (design defect) of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligence (design defect) and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the negligence (design defect).

If you find that DePuy Orthopaedics, Inc. committed negligence (design defect) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the negligence (design defect) was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson's conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that the negligence (design defect) was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- a. Marvin Andrews YES
- b. Kathleen Davis YES
- c. Rosa Metzler YES
- d. Judith Rodriguez YES
- e. Linda Standerfer YES
- f. Michael Weiser YES

Answer Question 12 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 3. Otherwise, do not answer Question 12.

Question 12: Aiding and Abetting (Johnson & Johnson) – Negligence (Failure to Warn)

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the negligence (failure to warn) of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s negligence (failure to warn) and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the negligence (failure to warn).

If you find that DePuy Orthopaedics, Inc. committed negligence (failure to warn) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the negligence (failure to warn) was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that the negligence (failure to warn) was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- a. Marvin Andrews YES
- b. Kathleen Davis YES
- c. Rosa Metzler YES
- d. Judith Rodriguez YES
- e. Linda Standerfer YES
- f. Michael Weiser YES

Answer Question 13 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 4. Otherwise, do not answer Question 13.

Question 13: Aiding and Abetting (Johnson & Johnson) – Negligence (Failure to Recall)

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the negligence (failure to recall) of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s negligence (failure to recall) and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the negligence (failure to recall).

If you find that DePuy Orthopaedics, Inc. committed negligence (failure to recall) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the negligence (failure to recall) was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that the negligence (failure to recall) was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 14 only if you have answered "Yes" as to DePuy Orthopaedics, Inc., to Question 5. Otherwise, do not answer Question 14.

Question 14: Aiding and Abetting (Johnson & Johnson) – Negligent Misrepresentation - Plaintiffs

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the negligent misrepresentation to Plaintiffs of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligent misrepresentation and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the negligent misrepresentation.

If you find that DePuy Orthopaedics, Inc. committed negligent misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the negligent misrepresentation was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson's conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that the negligent misrepresentation was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 15 only if you have answered "Yes" as to DePuy Orthopaedics, Inc., to Question 6. Otherwise, do not answer Question 15.

Question 15: Aiding and Abetting (Johnson & Johnson) – Negligent Misrepresentation – Plaintiffs' Physicians

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the negligent misrepresentation to Plaintiffs' implanting physicians of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligent misrepresentation and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the negligent misrepresentation.

If you find that DePuy Orthopaedics, Inc. committed negligent misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the negligent misrepresentation was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson's conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that the negligent misrepresentation was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 16 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 7. Otherwise, do not answer Question 16.

Question 16: Aiding and Abetting (Johnson & Johnson) – Intentional
Misrepresentation - Plaintiffs

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the intentional misrepresentation to Plaintiffs of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s intentional misrepresentation and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the intentional misrepresentation.

If you find that DePuy Orthopaedics, Inc. committed an intentional misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the intentional misrepresentation was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that an intentional misrepresentation was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- a. Marvin Andrews YES
- b. Kathleen Davis YES
- c. Rosa Metzler YES
- d. Judith Rodriguez YES
- e. Linda Standerfer YES
- f. Michael Weiser YES

Answer Question 17 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 8. Otherwise, do not answer Question 17.

Question 17: Aiding and Abetting (Johnson & Johnson) – Intentional
Misrepresentation – Plaintiffs’ Physicians

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the intentional misrepresentation to Plaintiffs’ implanting physicians of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s intentional misrepresentation and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the intentional misrepresentation.

If you find that DePuy Orthopaedics, Inc. committed an intentional misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the intentional misrepresentation was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that an intentional misrepresentation was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 18 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 9. Otherwise, do not answer Question 18.

Question 18: Aiding and Abetting (Johnson & Johnson) – Fraudulent Concealment - Plaintiffs

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the fraudulent concealment from Plaintiffs of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s fraudulent concealment and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the fraudulent concealment.

If you find that DePuy Orthopaedics, Inc. committed a fraudulent concealment that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the fraudulent concealment was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that a fraudulent concealment was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 19 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 10. Otherwise, do not answer Question 19.

Question 19: Aiding and Abetting (Johnson & Johnson) – Fraudulent Concealment – Plaintiffs’ Physicians

Did Johnson & Johnson knowingly give substantial assistance or encouragement to the fraudulent concealment from Plaintiffs’ implanting physicians of DePuy Orthopaedics, Inc., if any, related to the Pinnacle Ultamet and, if so, was such assistance or encouragement a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s fraudulent concealment and that Johnson & Johnson is responsible for the harm because it aided and abetted DePuy Orthopaedics, Inc. in committing the fraudulent concealment.

If you find that DePuy Orthopaedics, Inc. committed a fraudulent concealment that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible as an aider and abetter if Plaintiffs prove all of the following:

- (1) That Johnson & Johnson knew that the fraudulent concealment was being, or was going to be, committed by DePuy Orthopaedics, Inc. against Plaintiffs;
- (2) That Johnson & Johnson gave substantial assistance or encouragement to DePuy Orthopaedics, Inc.; and
- (3) That Johnson & Johnson’s conduct was a substantial factor in causing harm to Plaintiffs.

Mere knowledge that a fraudulent concealment was being, or was going to be, committed and the failure to prevent it do not constitute aiding and abetting.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- a. Marvin Andrews YES
- b. Kathleen Davis YES
- c. Rosa Metzler YES
- d. Judith Rodriguez YES
- e. Linda Standerfer YES
- f. Michael Weiser YES

Answer Question 20 only if you have answered “Yes” as to DePuy Orthopaedics, Inc. to Question 1. Otherwise, do not answer Question 20.

Question 20: Conspiracy (Johnson & Johnson) – Negligence (Design Defect)

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit negligence (design defect) related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s negligence (design defect) related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such negligence (design defect). A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed negligence (design defect) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the negligence (design defect); and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the negligence (design defect) be committed.

Mere knowledge of negligence (design defect) without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed negligence (design defect) or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit negligence (design defect) related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

a. Marvin Andrews	<u>NO</u>
b. Kathleen Davis	<u>NO</u>
c. Rosa Metzler	<u>NO</u>
d. Judith Rodriguez	<u>NO</u>
e. Linda Standerfer	<u>NO</u>
f. Michael Weiser	<u>NO</u>

Answer Question 21 only if you have answered "Yes" as to DePuy Orthopaedics, Inc. to Question 3. Otherwise, do not answer Question 21.

Question 21: Conspiracy (Johnson & Johnson) – Negligence (Failure to Warn)

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit negligence (failure to warn) related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligence (failure to warn) related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such negligence (failure to warn). A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed negligence (failure to warn) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the negligence (failure to warn); and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the negligence (failure to warn) be committed.

Mere knowledge of negligence (failure to warn) without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed negligence (failure to warn) or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit negligence (failure to warn) related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 22 only if you have answered "Yes" as to DePuy Orthopaedics, Inc. to Question 4. Otherwise, do not answer Question 22.

Question 22: Conspiracy (Johnson & Johnson) – Negligence (Failure to Recall)

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit negligence (failure to recall) related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligence (failure to recall) related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such negligence (failure to recall). A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed negligence (failure to recall) that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the negligence (failure to recall); and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the negligence (failure to recall) be committed.

Mere knowledge of negligence (failure to recall) without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed negligence (failure to recall) or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit negligence (failure to recall) related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 23 only if you have answered "Yes" as to DePuy Orthopaedics, Inc. to Question 5. Otherwise, do not answer Question 23.

Question 23: Conspiracy (Johnson & Johnson) – Negligent Misrepresentation - Plaintiffs

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit negligent misrepresentation to plaintiffs related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligent misrepresentation related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such negligent misrepresentation. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed negligent misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the negligent misrepresentation; and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the negligent misrepresentation be committed.

Mere knowledge of negligent misrepresentation without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed negligent misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit negligent misrepresentation related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 24 only if you have answered "Yes" as to DePuy Orthopaedics, Inc. to Question 6. Otherwise, do not answer Question 24.

Question 24: Conspiracy (Johnson & Johnson) – Negligent Misrepresentation –
Plaintiffs' Physicians

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit negligent misrepresentation to plaintiffs' implanting physicians related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s negligent misrepresentation related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such negligent misrepresentation. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed negligent misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the negligent misrepresentation; and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the negligent misrepresentation be committed.

Mere knowledge of negligent misrepresentation without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed negligent misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit negligent misrepresentation related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 25 only if you have answered “Yes” as to DePuy Orthopaedics, Inc. to Question 7. Otherwise, do not answer Question 25.

Question 25: Conspiracy (Johnson & Johnson) – Intentional Misrepresentation - Plaintiffs

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit intentional misrepresentation to Plaintiffs related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s intentional misrepresentation related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such intentional misrepresentation. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed an intentional misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

(1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the intentional misrepresentation; and

(2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the intentional misrepresentation be committed.

Mere knowledge of an intentional misrepresentation without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed an intentional misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit an intentional misrepresentation related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 26 only if you have answered “Yes” as to DePuy Orthopaedics, Inc. to Question 8. Otherwise, do not answer Question 26.

Question 26: Conspiracy (Johnson & Johnson) – Intentional Misrepresentation – Plaintiffs’ Physicians

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit intentional misrepresentation to Plaintiffs’ implanting physicians related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s intentional misrepresentation related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such intentional misrepresentation. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed an intentional misrepresentation that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the intentional misrepresentation; and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the intentional misrepresentation be committed.

Mere knowledge of an intentional misrepresentation without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed an intentional misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit an intentional misrepresentation related to the Pinnacle Ultamet, then it is responsible for all acts

done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 27 only if you have answered "Yes" as to DePuy Orthopaedics, Inc., to Question 9. Otherwise, do not answer Question 27.

Question 27: Conspiracy (Johnson & Johnson) –Fraudulent Concealment - Plaintiffs

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit fraudulent concealment from Plaintiffs related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.'s fraudulent concealment related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such fraudulent concealment. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed a fraudulent concealment that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the fraudulent concealment; and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the fraudulent concealment be committed.

Mere knowledge of a fraudulent concealment without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed an intentional misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit a fraudulent concealment related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 28 only if you have answered “Yes” as to DePuy Orthopaedics, Inc., to Question 10. Otherwise, do not answer Question 28.

Question 28: Conspiracy (Johnson & Johnson) –Fraudulent Concealment – Plaintiffs’
Physicians

Did Johnson & Johnson conspire with DePuy Orthopaedics, Inc. to commit fraudulent concealment from Plaintiffs’ implanting physicians related to the Pinnacle Ultamet that was a substantial factor in causing injury to the persons listed below?

Plaintiffs claim that they were harmed by DePuy Orthopaedics, Inc.’s fraudulent concealment related to the Pinnacle Ultamet and that Johnson & Johnson is responsible for the harm because it was part of a conspiracy to commit such fraudulent concealment. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that DePuy Orthopaedics, Inc. committed a fraudulent concealment that harmed Plaintiffs, then you must determine whether Johnson & Johnson is also responsible for the harm. Johnson & Johnson is responsible if Plaintiffs prove both of the following:

- (1) That Johnson & Johnson was aware that DePuy Orthopaedics, Inc. planned to commit the fraudulent concealment; and
- (2) That Johnson & Johnson agreed with DePuy Orthopaedics, Inc. and intended that the fraudulent concealment be committed.

Mere knowledge of a fraudulent concealment without cooperation or an agreement to cooperate is insufficient to make Johnson & Johnson responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. Plaintiffs are not required to prove that Johnson & Johnson personally committed an intentional misrepresentation or that it knew all the details of the agreement or the identities of all the other participants.

If you decide that Johnson & Johnson joined the conspiracy to commit a fraudulent concealment related to the Pinnacle Ultamet, then it is responsible for all acts done as part of the conspiracy, whether the acts occurred before or after it joined the conspiracy.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Answer "Yes" or "No" with respect to each of the following:

- | | |
|---------------------|------------|
| a. Marvin Andrews | <u>YES</u> |
| b. Kathleen Davis | <u>YES</u> |
| c. Rosa Metzler | <u>YES</u> |
| d. Judith Rodriguez | <u>YES</u> |
| e. Linda Standerfer | <u>YES</u> |
| f. Michael Weiser | <u>YES</u> |

Answer Question 29 as to a particular Plaintiff if you answered “Yes” to any of the preceding Questions with respect to such Plaintiff. Otherwise, do not answer the subpart of Question 29 pertaining to such Plaintiff.

Question 29: Personal Injury Damages of Plaintiffs Marvin Andrews, Kathleen Davis, Rosa Metzler, Judith Rodriguez, Linda Standerfer, and Michael Weiser

What are the damages of the persons listed below?

If you decide that Plaintiff has proved his or her claim against Defendants, you also must decide how much money will reasonably compensate him or her for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by Defendants’ wrongful conduct, even if the particular harm could not have been anticipated.

Plaintiff does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

In this case, Plaintiffs seek damages from more than one Defendant. You must determine the liability of each Defendant to each Plaintiff separately. If you determine that more than one Defendant is liable to a Plaintiff for damages, you will be asked to find Plaintiff’s total damages. In deciding on the amount of damages, consider only Plaintiff’s claimed losses. Do not attempt to divide the damages between or among Defendants. The allocation of responsibility for payment of damages among multiple Defendants is to be done by the Court after you reach your verdict.

The damages claimed by Plaintiffs for the harm caused by Defendants fall into two categories called economic damages and noneconomic damages. You will be asked to state the two categories of damages separately.

The following are the specific items of economic damages claimed by Plaintiffs:

(1) Past and Future Medical Expenses. To recover damages for past medical expenses, Plaintiff must prove the reasonable cost of reasonably necessary medical care that he or she has received. To recover damages for future medical expenses, Plaintiff must prove the reasonable cost of reasonably necessary medical care that he or she is reasonably certain to need in the future.

The following are the specific items of noneconomic damages claimed by Plaintiffs:

- (1) Past and future physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and/or emotional distress.

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future noneconomic damages, Plaintiff must prove that he or she is reasonably certain to suffer that harm. You must determine the amount in current dollars paid at the time of judgment that will compensate Plaintiff for future noneconomic damages. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

Plaintiffs seek damages from Defendants under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

You will be asked to decide whether DePuy Orthopaedics, Inc. is liable to each Plaintiff under the following legal theories:

- (1) Negligent Design Defect
- (2) Strict Liability – Failure to Warn
- (3) Negligent Failure to Warn
- (4) Negligent Failure to Recall
- (5) Negligent Misrepresentation
- (6) Intentional Misrepresentation
- (7) Fraudulent Concealment

You will be asked to decide whether Johnson & Johnson is liable to each Plaintiff under the following legal theories:

- (1) Negligent Design Defect
- (2) Strict Liability – Failure to Warn

- (3) Negligent Failure to Warn
- (4) Negligent Failure to Recall
- (5) Negligent Misrepresentation
- (6) Intentional Misrepresentation
- (7) Fraudulent Concealment
- (8) Aiding and Abetting
- (9) Conspiracy

The following items of damages are recoverable only once under all of the above legal theories:

- (1) medical expenses
- (2) noneconomic damages, including physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress

Plaintiffs are not entitled to damages for any physical or emotional condition that they had before Defendants' conduct occurred. However, if a Plaintiff had a physical or emotional condition that was made worse by Defendants' wrongful conduct, you must award damages that will reasonably and fairly compensate him or her for the effect on that condition.

You must decide the full amount of money that will reasonably and fairly compensate Plaintiffs for all damages caused by the wrongful conduct of Defendants, even if the Plaintiff was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.

Answer in dollars and cents, if any, with respect to each of the following:

(a) Personal Injury Damages of Marvin Andrews

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 500,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 500,000

2. Past disfigurement:

Answer: \$ 500,000

Future disfigurement:

Answer: \$ 500,000

3. Past physical impairment:

Answer: \$ 500,000

Future physical impairment:

Answer: \$ 500,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

5. Past medical expenses:

Answer: \$ 118,324.74

(b) Personal Injury Damages of Kathleen Davis

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 500,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 500,000

2. Past disfigurement:

Answer: \$ 500,000

Future disfigurement:

Answer: \$ 500,000

3. Past physical impairment:

Answer: \$ 500,000

Future physical impairment:

Answer: \$ 500,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

5. Past medical expenses:

Answer: \$ 80,523.77

(c) Personal Injury Damages of Rosa Metzler

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 500,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 500,000

2. Past disfigurement:

Answer: \$ 500,000

Future disfigurement:

Answer: \$ 500,000

3. Past physical impairment:

Answer: \$ 500,000

Future physical impairment:

Answer: \$ 500,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

5. Past medical expenses:

Answer: \$ 25,045.103

(d) Personal Injury Damages of Judith Rodriguez

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 750,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 750,000

2. Past disfigurement:

Answer: \$ 750,000

Future disfigurement:

Answer: \$ 750,000

3. Past physical impairment:

Answer: \$ 750,000

Future physical impairment:

Answer: \$ 750,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 750,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 750,000

5. Past medical expenses:

Answer: \$ 61,415.45

(e) Personal Injury Damages of Linda Standerfer

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 750,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 750,000

2. Past disfigurement:

Answer: \$ 750,000

Future disfigurement:

Answer: \$ 750,000

3. Past physical impairment:

Answer: \$ 750,000

Future physical impairment:

Answer: \$ 750,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 750,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 750,000

5. Past medical expenses:

Answer: \$ 45,470.43

(f) Personal Injury Damages of Michael Weiser

1. Past physical pain and loss of enjoyment of life:

Answer: \$ 500,000

Future physical pain and loss of enjoyment of life:

Answer: \$ 500,000

2. Past disfigurement:

Answer: \$ 500,000

Future disfigurement:

Answer: \$ 500,000

3. Past physical impairment:

Answer: \$ 500,000

Future physical impairment:

Answer: \$ 500,000

4. Past mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

Future mental suffering, inconvenience, grief, anxiety, humiliation and/or emotional distress:

Answer: \$ 500,000

5. Past medical expenses:

Answer: \$ 30,8108.15

Answer Question 30 as to a particular Plaintiff if you answered “Yes” to any of the preceding Questions with respect to such Plaintiff’s spouse. Otherwise, do not answer the subpart of Question 30 pertaining to such Plaintiff.

Question 30: Loss of Consortium Damages of Plaintiffs Elizabeth Andrews, Pete Davis, Volkmar Metzler, and Randi Weiser

What are the damages to the persons listed below for loss of his or her spouse’s love, companionship, comfort, care, assistance, protection, affection, society, and moral support?

Each of the Plaintiffs listed below claims that he or she has been harmed by the injury to his or her spouse. If you decide that each of the below Plaintiff’s spouse has proved his or her claim against Defendants, you also must decide how much money, if any, will reasonably compensate the below Plaintiff for loss of his or her spouse’s companionship and services, including the loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support.

Plaintiff may recover for harm he or she proves he or she has suffered to date and for harm he or she is reasonably certain to suffer in the future.

For future harm, determine the amount in current dollars paid at the time of judgment that will compensate Plaintiff for that harm. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

Do not include in your award any compensation for the following:

- (1) The loss of financial support from the Plaintiff’s spouse;
- (2) Personal services, such as nursing, that Plaintiff has provided or will provide to his or her spouse;
- (3) Any loss of earnings that Plaintiff has suffered by giving up employment to take care of his or her spouse; or
- (4) The cost of obtaining domestic household services to replace services that would have been performed by his or her spouse.

Answer in dollars and cents, if any, with respect to each of the following:

(a) Elizabeth Andrews

Past Loss of Consortium Damages: \$ 500,000

Future Loss of Consortium Damages: \$ 500,000

(b) Pete Davis

Past Loss of Consortium Damages: \$ 500,000

Future Loss of Consortium Damages: \$ 500,000

(c) Volkmar Metzler

Past Loss of Consortium Damages: \$ 500,000

Future Loss of Consortium Damages: \$ 500,000

(d) Randi Weiser

Past Loss of Consortium Damages: \$ 500,000

Future Loss of Consortium Damages: \$ 500,000

Answer Question 31 only if you have answered “Yes” as to DePuy Orthopaedics, Inc. to Question 1 or Question 2 or Question 3 or Question 4 or Question 5 or Question 6 or Question 7 or Question 8 or Question 9 or Question 10. Otherwise do not answer Question 31.

Question 31: Punitive Damages for Conduct of DePuy Orthopaedics, Inc.

(a) Do you find by clear and convincing evidence that the harm to the persons listed below resulted from malice, oppression, or fraud by DePuy Orthopaedics, Inc.?

If you decide that DePuy Orthopaedics, Inc.’s conduct caused Plaintiff harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against DePuy Orthopaedics, Inc. only if Plaintiff proves that DePuy Orthopaedics, Inc. engaged in that conduct with malice, oppression, or fraud. To do this, Plaintiff must prove one of the following by clear and convincing evidence:

- (1) That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of DePuy Orthopaedics, Inc., who acted on behalf of DePuy Orthopaedics, Inc.; or
- (2) That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of DePuy Orthopaedics, Inc.; or
- (3) That one or more officers, directors, or managing agents of DePuy Orthopaedics, Inc. knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.

Clear and convincing evidence is a higher burden of proof. This means Plaintiffs must persuade you that it is highly probable that the fact is true.

“Malice” means that DePuy Orthopaedics, Inc. acted with intent to cause injury or that its conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with

knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that DePuy Orthopaedics, Inc.'s conduct was despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his or her rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that DePuy Orthopaedics, Inc. intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiff.

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Answer "Yes" or "No" with respect to each of the following:

Marvin Andrews	<u>YES</u>
Elizabeth Andrews	<u>YES</u>
Kathleen Davis	<u>YES</u>
Pete Davis	<u>YES</u>
Rosa Metzler	<u>YES</u>
Volkmar Metzler	<u>YES</u>
Judith Rodriguez	<u>YES</u>
Linda Standerfer	<u>YES</u>
Michael Weiser	<u>YES</u>
Randi Weiser	<u>YES</u>

(b) What amount of punitive damages, if any, do you award the persons listed below?

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors in determining the amount:

(a) How reprehensible was DePuy Orthopaedics, Inc.'s conduct? In deciding how reprehensible its conduct was, you may consider, among other factors:

(1) Whether the conduct caused physical harm;

(2) Whether DePuy Orthopaedics, Inc. disregarded the health or safety of others;

(3) Whether Plaintiff was financially weak or vulnerable and DePuy Orthopaedics, Inc. knew Plaintiff was financially weak or vulnerable and took advantage of him or her;

(4) Whether DePuy Orthopaedics, Inc.'s conduct involved a pattern or practice;

(5) Whether DePuy Orthopaedics, Inc. acted with trickery or deceit.

(b) Is there a reasonable relationship between the amount of punitive damages and Plaintiff's harm, or between the amount of punitive damages and potential harm to Plaintiff that DePuy Orthopaedics, Inc. knew was likely to occur because of its conduct?

(c) In view of DePuy Orthopaedics, Inc.'s financial condition, what amount is necessary to punish them and discourage future wrongful conduct? You may not increase the punitive award above an amount that it otherwise appropriate merely because DePuy Orthopaedics, Inc. has substantial financial resources.

Punitive damages may not be used to punish DePuy Orthopaedics, Inc. for the impact of its alleged misconduct on persons other than Plaintiff.

Answer in dollars and cents, if any, with respect to each of the following:

Marvin Andrews	\$ <u>84 million</u>
Elizabeth Andrews	\$ <u>125,000</u>
Kathleen Davis	\$ <u>84 million</u>
Pete Davis	\$ <u>125,000</u>
Rosa Metzler	\$ <u>84 million</u>
Volkmar Metzler	\$ <u>125,000</u>
Judith Rodriguez	\$ <u>84 million</u>
Linda Standerfer	\$ <u>84 million</u>
Michael Weiser	\$ <u>84 million</u>
Randi Weiser	\$ <u>125,000</u>

Answer Question 32 only if you have answered "Yes" as to Johnson & Johnson to Question 1 or Question 2 or Question 3 or Question 4 or Question 5 or Question 6 or Question 7 or Question 8 or Question 9 or Question 10 or Question 11 or Question 12 or Question 13 or Question 14 or Question 15 or Question 16 or Question 17 or Question 18 or Question 19 or Question 20 or Question 21 or Question 22 or Question 23 or Question 24 or Question 25 or Question 26 or Question 27 or Question 28. Otherwise do not answer Question 32.

Question 32: Punitive Damages for Conduct of Johnson & Johnson

(a) Do you find by clear and convincing evidence that the harm to the persons listed below resulted from malice, oppression, or fraud by Johnson & Johnson?

If you decide that Johnson & Johnson's conduct caused Plaintiff harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against Johnson & Johnson only if Plaintiff proves that Johnson & Johnson engaged in that conduct with malice, oppression, or fraud. To do this, Plaintiff must prove one of the following by clear and convincing evidence:

- (1) That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of Johnson & Johnson, who acted on behalf of Johnson & Johnson; or
- (2) That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of Johnson & Johnson; or
- (3) That one or more officers, directors, or managing agents of Johnson & Johnson knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.

"Malice" means that Johnson & Johnson acted with intent to cause injury or that its conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that Johnson & Johnson’s conduct was despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his or her rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that Johnson & Johnson intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiff.

An employee is a “managing agent” if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Answer “Yes” or “No” with respect to each of the following:

Marvin Andrews	<u>YES</u>
Elizabeth Andrews	<u>YES</u>
Kathleen Davis	<u>YES</u>
Pete Davis	<u>YES</u>
Rosa Metzler	<u>YES</u>
Volkmar Metzler	<u>YES</u>
Judith Rodriguez	<u>YES</u>
Linda Standerfer	<u>YES</u>
Michael Weiser	<u>YES</u>
Randi Weiser	<u>YES</u>

(b) What amount of punitive damages, if any, do you award the persons listed below?

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors in determining the amount:

(a) How reprehensible was Johnson & Johnson's conduct? In deciding how reprehensible its conduct was, you may consider, among other factors:

(1) Whether the conduct caused physical harm;

(2) Whether Johnson & Johnson disregarded the health or safety of others;

(3) Whether Plaintiff was financially weak or vulnerable and Johnson & Johnson knew Plaintiff was financially weak or vulnerable and took advantage of him or her;

(4) Whether Johnson & Johnson's conduct involved a pattern or practice;

(5) Whether Johnson & Johnson acted with trickery or deceit.

(b) Is there a reasonable relationship between the amount of punitive damages and Plaintiff's harm, or between the amount of punitive damages and potential harm to Plaintiff that Johnson & Johnson knew was likely to occur because of its conduct?

(c) In view of Johnson & Johnson's financial condition, what amount is necessary to punish them and discourage future wrongful conduct? You may not increase the punitive award above an amount that it otherwise appropriate merely because Johnson & Johnson has substantial financial resources.

Punitive damages may not be used to punish Johnson & Johnson for the impact of its alleged misconduct on persons other than Plaintiff.

Answer in dollars and cents, if any, with respect to each of the following:

Marvin Andrews	\$ <u>84 million</u>
Elizabeth Andrews	\$ <u>125,000</u>
Kathleen Davis	\$ <u>84 million</u>
Pete Davis	\$ <u>125,000</u>
Rosa Metzler	\$ <u>84 million</u>
Volkmar Metzler	\$ <u>125,000</u>
Judith Rodriguez	\$ <u>84 million</u>
Linda Standerfer	\$ <u>84 million</u>
Michael Weiser	\$ <u>84 million</u>
Randi Weiser	\$ <u>125,000</u>

Question 33: Limitations

By what date did Michael Weiser acquire knowledge of facts which, in the exercise of reasonable diligence, would lead to the discovery of his injury?

08/21/2013

POST ARGUMENT INSTRUCTIONS

You are the sole and exclusive judges of fact. You should determine these facts without any bias, prejudice, sympathy, fear or favor, and this determination should be made from a fair consideration of all the evidence that you have seen and heard in this trial. Do not speculate on matters that are not in evidence. Keep constantly in mind that it would be a violation of your own sworn duty to base a verdict on anything but the evidence in the case. Your answers and verdict must be unanimous; that is, all of you must agree to each of your answers. You will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that I have given you instructions about a particular claim or defense, or that I have not so instructed you, should not be interpreted by you in any way as an indication that I believe a particular party should win or prevail in this case. Also, you should not interpret the fact that I have given instructions about the plaintiffs' damages as an indication in any way that I believe that plaintiffs should, or should not, win this case.

Remember any notes you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be

unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently or merely to finish the case.

Remember that in a very real way you are the judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case. You will now retire to the jury room. In a few minutes I will send you this charge and the exhibits the Court has admitted into evidence. Upon receiving the exhibits and charge, you should select a foreperson and commence deliberations. Do not deliberate unless all of you are present in the jury room. In other words, if one or more of you go to lunch together or are together outside the jury room, do not discuss the case.


If during the course of your deliberations you wish to communicate with the Court, you should do so only in writing by a note signed by the foreperson. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with respect to any message or question you might send that you should never state or specify your numerical division at the time.

During your deliberations you will set your own schedule, deciding for yourselves when and how frequently you wish to recess and for how long.

After you have reached your verdict, you will return this charge together with your written answers to the foregoing questions. Do not reveal your answers to anyone besides other members of the jury until such time as you are discharged, unless otherwise directed by me. After you have reached a verdict, you are not required to talk with anyone about the case.

Your foreperson will sign in the space provided on the following page after you have reached your verdict.

Signed November 30th, 2016.


ED KINKEADE
UNITED STATES DISTRICT JUDGE

VERDICT OF THE JURY

We, the jury, have answered the above and foregoing questions as indicated, and herewith return the same into Court as our verdict.

DATED: 12 - 1, 2016.


FOREPERSON