

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

NOTICE OF FILING AND HEARING

This application was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/02/2011.

DETAILS OF FILING

Document Lodged: Application under Part IVA of the Federal Court of Australia Act 1976:
Federal Court Rules form 129
File Number: NSD213/2011
File Title: Tammy Maree Stanford v DePuy International Limited & Anor
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: First Directions
Time and date for hearing: 23/03/2011, 9:30 AM
Place: To Be Advised



Warwick Soden

Dated: 28/02/2011

Registrar

NOTES

1. This Notice forms part of the application and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the application served on each party to the proceeding.
2. The 'reason for listing' is descriptive and does not limit the issues that might be dealt with, or orders that might be made, at the hearing.



**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION**

No. of 2011

TAMMY MAREE STANFORD
Applicant

DEPUY INTERNATIONAL LIMITED
First Respondent

JOHNSON & JOHNSON MEDICAL PTY LIMITED
ACN 000 160 403
Second Respondent

APPLICATION

1. This application is brought by the applicant (**Mrs Stanford**) as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The group members to whom this proceeding relates are those persons (**Group Members**) in whom one or more components of the DePuy ASR Articular Surface Replacement System, DePuy ASR Hip Resurfacing System or DePuy ASR XL Acetabular System (**Affected Implants**) were surgically implanted within Australia.
3. Mrs Stanford claims that the respondents each contravened section 74B and section 74D of the *Trade Practices Act 1974* (Cth) (**TPA**) and were negligent, and claims relief as follows:
 - (a) Declarations that:
 - (i) each Affected Implant acquired by Mrs Stanford and Group Members is not reasonably fit for its purpose within the meaning of section 74B of the TPA;
 - (ii) each Affected Implant acquired by Mrs Stanford and Group Members is not of merchantable quality within the meaning of section 74D of the TPA;
 - (iii) the first respondent (**DePuy**) was negligent;



- (iv) the second respondent (**Johnson & Johnson**) was negligent;
 - (b) Compensation from DePuy and Johnson & Johnson:
 - (i) pursuant to section 74B and Part VIB of the TPA;
 - (ii) pursuant to section 74D and Part VIB of the TPA.
 - (c) Damages from DePuy and Johnson & Johnson at common law;
 - (d) Interest;
 - (e) Costs; and
 - (f) Such further or other orders as the Court thinks fit.
4. The questions of law or fact common to the claims of the Group Members are:
- (a) Whether the Affected Implants are goods within the meaning of section 4 of the TPA;
 - (b) Whether the Affected Implants were manufactured by or on behalf of DePuy outside Australia;
 - (c) Whether the Affected Implants were imported into Australia by or on behalf of Johnson & Johnson;
 - (d) Whether, at the time that the Affected Implants were imported into Australia by Johnson & Johnson, DePuy did not have a place of business in Australia;
 - (e) Whether Johnson & Johnson is deemed pursuant to section 74A(4) of the TPA to have manufactured the Affected Implants;
 - (f) Whether DePuy, in trade or commerce, supplied the Affected Implants to Johnson & Johnson, which acquired the Affected Implants for re-supply to hospitals and/or doctors;
 - (g) Whether Johnson & Johnson, in trade or commerce, supplied the Affected Implants to hospitals, including treating hospitals, which acquired the Affected Implants for re-supply to persons who may have the Affected Implants surgically implanted;
 - (h) Whether the supply of the Affected Implants to persons in whom they were intended to be surgically implanted was a supply to those persons as consumers within the meaning of section 4B of the TPA;
 - (i) Whether the Affected Implants acquired by Mrs Stanford and Group Members had the Fault (as defined in the statement of claim);



- (j) Whether the Affected Implants were acquired by Mrs Stanford and Group Members for the Particular Purpose (as defined in the statement of claim);
 - (k) Whether the Particular Purpose had either expressly or by implication been made known to DePuy and Johnson & Johnson;
 - (l) Whether the Affected Implants acquired by Mrs Stanford and Group Members were not reasonably fit for their purpose within the meaning of section 74B of the TPA;
 - (m) Whether the Affected Implants acquired by Mrs Stanford and Group Members were not of merchantable quality within the meaning of section 74D(1)(c) of the TPA in that they were not as fit for the purpose or purposes for which components of total hip replacement, hip arthroplasty and hip resurfacing systems are commonly bought as it is reasonable to expect;
 - (n) Whether DePuy owed a duty of care to Mrs Stanford and Group Members;
 - (o) Whether Johnson & Johnson owed a duty of care to Mrs Stanford and Group Members;
 - (p) Whether DePuy was negligent; and
 - (q) Whether Johnson & Johnson was negligent.
5. Mrs Stanford does not claim interlocutory relief.

Date: 28 February 2011

A handwritten signature in black ink that reads 'Ben Slade'.

Ben Slade
MAURICE BLACKBURN PTY LTD
Solicitor for the applicant



TO THE RESPONDENTS

First Respondent DePuy International Limited
 St Anthonys Road
 Beeston, Leeds
 West Yorkshire LS11 8DT
 UNITED KINGDOM

Second Respondent Johnson & Johnson Medical Pty Limited
 1-5 Khartoum Road
 Macquarie Park NSW 2113

A directions hearing in this application will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or a lawyer representing you, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time, you must file an appearance in the Registry.

Time:

Place:

Date:

Registrar

The applicant's address for service is care of her solicitor, Maurice Blackburn Pty Limited, Level 20, 201 Elizabeth Street, Sydney NSW 2000.

The applicant's address is 44 Glebe Hill Road, Howrah TAS 7018.