

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MELISA ARBINO  
510 Rentz Place  
Cincinnati, OH 45238

Plaintiff,

v.

JOHNSON & JOHNSON  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

ORTHO-McNEIL  
PHARMACEUTICAL, INC.  
1000 US Hwy. 2002  
Raritan, NJ 08869-0602

JOHNSON & JOHNSON PHARMACEUTICAL:  
RESEARCH AND DEVELOPMENT, LLC  
920 Rte., 202 South  
Raritan, NJ 08869-1420

Defendants

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Civil Action No. 1:05CV534

Judge Michael H. Watson

PLAINTIFF'S FIRST AMENDED  
COMPLAINT AND JURY  
DEMAND AND CLAIM FOR  
UNCONSTITUTIONALITY

Plaintiff, by and through counsel, and for her complaint against Defendants,  
alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action for tort damages based upon personal injuries which Plaintiff alleges to have received as a result of the proper and intended use of Defendants' product, in which Plaintiff also challenges the constitutionality of a new Ohio statute, known as Senate Bill 80. Senate Bill 80 purports, *inter alia*, to limit the damages that may be awarded in certain tort actions and permit defendants to receive the benefits of

any collateral sources received by the plaintiff. Because Senate Bill 80 may be interpreted as controlling some aspects of Plaintiff's claims herein, Plaintiff seeks a declaratory judgment in her Ninth Cause of Action that the allegedly applicable provisions of Senate Bill 80 violate the United States Constitution and the Ohio Constitution and indeed such provisions are duplicative of those that have already been held unconstitutional by the Ohio Supreme Court.

### **PARTIES AND JURISDICTION**

2. Plaintiff Melisa Arbino is a resident and citizen of Hamilton County, Ohio. Plaintiff alleges an amount in controversy in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.
3. Defendant Johnson & Johnson is a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. Defendant Johnson & Johnson is the parent company of Defendant Ortho-McNeil Pharmaceutical, Inc. and Defendant Johnson & Johnson Pharmaceutical Research and Development, LLC.
4. At all times relevant, Defendant Johnson & Johnson was engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the prescription drug Ortho Evra.
5. Defendant Ortho-McNeil Pharmaceutical, Inc. is a Delaware corporation with its principal place of business in Raritan, New Jersey. Defendant Ortho-McNeil Pharmaceutical, Inc. is a subsidiary of Johnson & Johnson.
6. At all times relevant, Defendant Ortho-McNeil was engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing

into interstate commerce, either directly or indirectly through third parties or related entities, the prescription drug Ortho Evra.

7. Defendant Johnson & Johnson Pharmaceutical Research and Development, LLC is a New Jersey corporation with its principal place of business in Raritan, New Jersey. Defendant Johnson & Johnson Pharmaceutical Research and Development, LLC is a subsidiary of Johnson & Johnson, and was previously known as R.W. Johnson Pharmaceutical Research Institute.

8. At all times relevant, Defendant Johnson & Johnson Pharmaceutical Research and Development, LLC was engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the prescription drug Ortho Evra.

9. This court has jurisdiction over this action pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

10. Venue in this district is appropriate under 28 U.S.C. §1391 because a substantial part of the events giving rise to this claim occurred in the district as Plaintiff was prescribed and used Ortho Evra in this district, and because Plaintiff has at all times relevant resided in this district.

### **FACTUAL BACKGROUND**

11. Plaintiff Melisa Arbino suffered four blood clots—a thrombosis in the transverse sinus, a thrombosis in the central sinus, and two pulmonary emboli—at the age of 24 as a direct result of her use of the birth control patch Ortho Evra.

12. Defendants market Ortho Evra as the first and only once-a-week birth control patch.

13. Defendants market Ortho Evra as providing the same efficacy as birth control pills in preventing pregnancy, but with more convenience than birth control pills because it is worn on the skin for three consecutive weeks, with the fourth week being “patch free.”

14. Defendants claim that Ortho Evra helps prevent pregnancy the same way birth control pills do by preventing ovulation, by thickening the cervical mucus, and by changing the endometrium to reduce the chance of implantation.

15. Unlike birth control pills, the Ortho Evra birth control patch is transdermal, meaning continuous levels of the hormones norelgestromin and ethinyl estradiol (progestin and estrogen, respectively) are delivered through the skin into the bloodstream.

16. In response to the question of whether there are any side effects associated with Ortho Evra, Defendants claim that the most frequent adverse event leading to discontinuation include nausea and/or vomiting, application site reaction, breast symptoms, headache, and emotional lability.

17. Defendants failed to warn consumers and/or their health care providers that the transdermal birth control patch Ortho Evra is more likely to cause blood clots than oral contraceptives, particularly those classified as second generation oral contraceptives.

18. Indeed, upon information and belief, adverse event records from the Food and Drug Administration show that a significantly higher number of women using the birth control patch reportedly suffered injury or death due to venous thromboembolism,

compared to women using oral contraceptives. Further, Defendants own clinical trials revealed a higher rate of venous thromboembolism in women on the patch compared to those using oral contraceptives in the study.

19. As a result of Defendants' claim regarding the effectiveness and safety of Ortho Evra, Plaintiff Melisa Arbino's medical provider prescribed and Plaintiff began using the Ortho Evra patch in late June 2005. Plaintiff Arbino used the Ortho Evra patch for approximately two weeks before developing serious and near fatal adverse effects due to thrombosis.

20. On or about July 9, 2005, Plaintiff Arbino suffered from a severe headache with pain so intense that she was taken to the hospital emergency room. Emergency Room physicians diagnosed Plaintiff Arbino with two blood clots to her brain – specifically, thrombosis in the transverse sinus and the central sinus.

21. On or about July 10, 2005, Plaintiff Arbino underwent an emergency neurological procedure to drain fluid from her brain as a result of the two thrombi. After approximately one week, Plaintiff Arbino was discharged from the hospital and instructed to take Coumadin, a blood thinner.

22. On or about July 20, 2005, Plaintiff went back to the hospital emergency room complaining of chest pains and painful breathing. A chest CT scan was positive for bilateral pulmonary emboli in her lower lobes. After several days in the hospital, Plaintiff Arbino was discharged and instructed to remain on the Coumadin.

23. As a direct and proximate result of using Ortho Evra, Plaintiff Melisa Arbino suffered the near fatal injuries described above at the age of 24.

24. Further, Plaintiff Arbino faces long term or even lifetime dependence on Coumadin, a blood thinner, is high risk for any future pregnancy, and cannot use oral contraceptives or hormone therapy at any time.

25. Prior to July, 2005 Defendants knew or should have known that use of the transdermal birth control patch Ortho Evra created a higher risk of thrombosis and pulmonary embolism than oral contraceptives, including but not limited to second generation oral contraceptives, and that, when taken as directed, such use was unreasonably dangerous to consumers.

26. Therefore, at the time Plaintiff used Ortho Evra in June 2005, Defendants knew or should have known that the use of Ortho Evra created an increased risk to consumers of serious personal injury, including deep vein thrombosis, pulmonary embolism, thrombi, and even death.

27. Despite the fact that Defendants knew or should have known of the serious health risks associated with the use of Ortho Evra, Defendants failed to warn Plaintiff and/or her health care providers of said serious risks before she used the product.

28. Had Plaintiff Melisa Arbino and/or her health care providers known the risks and dangers associated with Ortho Evra, she would not have used Ortho Evra and would not have suffered the effects of thrombosis in the transverse sinus and central sinus and pulmonary emboli.

29. As a direct and proximate result of Plaintiff's use of Ortho Evra, Plaintiff has suffered significant harm, conscious pain and suffering, physical injury and bodily impairment, including but not limited to suffering from four blood clots, which has

caused permanent physical effects, and which will continue in the future to cause her physical effects and damage which will effect her throughout her lifetime.

30. Further, as a direct and proximate result of Plaintiff's use of Ortho Evra, Plaintiff suffered significant mental anguish and emotional distress, was in fear for her life, and will continue to suffer physical limitations, pain, injury, damages, harm, and mental and emotional distress in the future.

31. Plaintiff Melisa Arbino has also incurred medical expenses and other economic harm including lost earnings, and will continue to incur expenses and lost earnings in the future, as a direct and proximate result of her use of Ortho Evra.

### **FIRST CAUSE OF ACTION**

#### **STRICT PRODUCTS LIABILITY DEFECTIVE MANUFACTURING**

32. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

33. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of Ortho Evra.

34. The Ortho Evra birth control patch manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Defendants, was defective in its manufacture and construction when it left the hands of Defendants in that it deviated from product specifications, posing a serious risk of injury and death.

35. As a direct and proximate result of Plaintiff's use of Ortho Evra as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

36. Defendants' actions and omissions as identified in this Complaint constitute a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

## **SECOND CAUSE OF ACTION**

### **STRICT PRODUCTS LIABILITY DESIGN DEFECT**

37. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

38. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of Ortho Evra.

39. The Ortho Evra birth control patch manufactured and supplied by Defendants was defective in design or formulation in that, when it left the hands of the Defendants, the foreseeable risks of the product exceeded the benefits associated with its design or formulation, or it was more dangerous than an ordinary consumer would expect.

40. The foreseeable risks associated with the design or formulation of the Ortho Evra birth control patch, include, but are not limited to, the fact that the design or formulation of Ortho Evra is more dangerous than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner.

41. As a direct and proximate result of Plaintiff's use of Ortho Evra as manufactured, designed, sold, supplied, marketed and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

42. Defendants' actions and omissions demonstrate a flagrant disregard for human life, warranting the imposition of punitive damages.

### **THIRD CAUSE OF ACTION**

#### **STRICT PRODUCTS LIABILITY DEFECT DUE TO INADEQUATE WARNING**

43. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

44. The Ortho Evra birth control patch manufactured and supplied by Defendants was defective due to inadequate warning or instruction because Defendants knew or should have known that the product created significant risks of serious bodily harm and death to consumers and they failed to adequately warn consumers and/or their health care providers of such risks.

45. The Ortho Evra birth control patch manufactured and supplied by Defendants was defective due to inadequate post-marketing warning or instruction because, after Defendants knew or should have known of the risk of serious bodily harm and death from the use of Ortho Evra, Defendants failed to provide an adequate warning to consumers and/or their health care providers of the product, knowing the product could cause serious injury and death.

46. As a direct and proximate result of Plaintiff's use of Ortho Evra as manufactured, designed, sold, supplied, marketed and introduced into the stream of commerce by Defendants, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

47. Defendants' actions and omissions demonstrate a flagrant disregard for human life, warranting the imposition of punitive damages.

## **FOURTH CAUSE OF ACTION**

### **STRICT PRODUCTS LIABILITY DEFECT DUE TO NONCONFORMANCE WITH REPRESENTATIONS**

48. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

49. Defendants are the manufacturers, designers, distributors, sellers or suppliers of Ortho Evra and made representations regarding the character or quality of Ortho Evra.

50. The Ortho Evra birth control patch manufactured and supplied by Defendants was defective in that, when it left the hands of Defendants, it did not conform to representations made by Defendants concerning the product.

51. Plaintiff justifiably relied upon Defendants' representations regarding the Ortho Evra birth control patch when she used Ortho Evra.

52. As a direct and proximate result of Plaintiff's use of Ortho Evra and her reliance on Defendants' representations regarding the character and quality of Ortho Evra, Plaintiff suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

53. Defendants' actions and omissions demonstrate a flagrant disregard for human life, warranting the imposition of punitive damages.

## **FIFTH CAUSE OF ACTION**

### **NEGLIGENCE**

54. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

55. Defendants had a duty to exercise reasonable care in the design, manufacture, sale and/or distribution of Ortho Evra into the stream of commerce, including a duty to

assure that its product did not pose a significantly increased risk of bodily harm and adverse events.

56. Defendants failed to exercise ordinary care in the design, formulation, manufacture, sale, testing, quality assurance, quality control, labeling, marketing, promotions and distribution of Ortho Evra into interstate commerce in that Defendants knew or should have known that the product caused such significant bodily harm or death and was not safe for use by consumers.

57. Defendants also failed to exercise ordinary care in the labeling of Ortho Evra and failed to issue to consumers and/or their health care providers adequate warnings of the risk of serious bodily injury or death due to the use of the Ortho Evra birth control patch.

58. Despite the fact that Defendants knew or should have known that Ortho Evra posed a serious risk of bodily harm to consumers, Defendants continued to manufacture and market Ortho Evra for use by consumers.

59. Defendants knew or should have known that consumers such as 24 year old Plaintiff Melisa Arbino would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care as described above.

60. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

61. Defendants' conduct as described above, including but not limited to its failure to adequately test Ortho Evra, to provide adequate warnings, and its continued manufacture, sale and marketing of the product when it knew or should have known of

the serious health risks it created, evidences a flagrant disregard of human life so as to warrant the imposition of punitive damages.

### **SIXTH CAUSE OF ACTION**

#### **BREACH OF EXPRESS WARRANTY**

62. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

63. Defendants expressly warranted that Ortho Evra was a safe and effective prescription contraceptive.

64. The Ortho Evra birth control patch manufactured and sold by Defendants did not conform to these express representations because it caused serious injury to consumers when taken in recommended dosages.

65. As a direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

### **SEVENTH CAUSE OF ACTION**

#### **BREACH OF IMPLIED WARRANTY**

66. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

67. At the time Defendants designed, manufactured, marketed, sold, and distributed Ortho Evra for use by Plaintiff, Defendants knew of the use for which Ortho Evra was intended and impliedly warranted the product to be of merchantable quality and safe for such use.

68. Plaintiff Melisa Arbino reasonably relied upon the skill and judgment of Defendants as to whether Ortho Evra was of merchantable quality and safe for its intended use and upon Defendants' implied warranty as to such matters.

69. Contrary to such implied warranty, Ortho Evra was not of merchantable quality or safe for its intended use, because the product was unreasonably dangerous as described above.

70. As a direct and proximate result of Defendants' breach of warranty, Plaintiff has suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

### **EIGHTH CAUSE OF ACTION**

#### **NEGLIGENT MISREPRESENTATION AND FRAUD**

71. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

72. Defendants had actual knowledge based upon studies, published reports and clinical experience that its product Ortho Evra created an unreasonable risk of serious bodily injury and death to consumers, or should have known such information.

73. Defendants intentionally or negligently omitted this information in its product labeling, promotions and advertisements and instead labeled, promoted and advertised its product as safe in order to avoid losses and sustain profits in its sales to consumers.

74. Plaintiff Melisa Arbino reasonably relied to her detriment upon Defendants' fraudulent actions and omissions in its labeling, advertisements, and promotions concerning the serious risks posed by the product. Plaintiff reasonably relied upon Defendants' representations to Plaintiff and/or her health care providers that Ortho Evra

was safe for human consumption and/or use and that Defendants' labeling, advertisements and promotions fully described all known risks of the product.

75. As a direct and proximate result of Defendants' fraudulent and/or negligent actions and omissions, Plaintiff Melisa Arbino used Ortho Evra and has suffered harm, damages and economic loss and will continue to suffer such harm, damages and economic loss in the future.

76. Defendants' actions and omissions as identified in this Complaint demonstrate a flagrant disregard for human life, so as to warrant the imposition of punitive damages.

### **NINTH CAUSE OF ACTION**

#### **DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. §2201 AND 28 U.S.C. § 2202 REGARDING UNCONSTITUTIONALITY OF SENATE BILL 80**

77. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

78. Senate Bill 80 became effective in April of 2005. Included in its provisions is R.C. § 2315.18, which purports to limit non-economic damages in tort actions to the greater of two hundred fifty thousand dollars (\$250,000), or an amount equal to three times the economic damages, not to exceed three hundred fifty thousand dollars (\$350,000). R.C. § 2315.18 includes an exception for statutorily defined catastrophic injuries, which are those that cause permanent and substantial physical deformity, loss of use of limb, or loss of a bodily organ system, or a permanent physical functional injury that permanently prevents the injured person from being able to independently care for herself and perform life-sustaining activities. Plaintiff anticipates that Defendants will allege that her injuries do not meet the statutory definition for catastrophic injury.

79. In addition to the caps on non-economic damages described above, Senate Bill 80 also enacted R.C. § 2315.19, which requires the trial court, upon post judgment motion, to review the appropriateness of the evidence presented or the arguments made to support an award of non-economic damages, and to enter findings, including a finding of whether the verdict is in excess of verdicts involving similarly situated plaintiffs with comparable injuries. Further, Senate Bill 80, through R.C. § 2315.19, requires an appellate court to review the trial court's findings concerning non-economic damages on a *de novo* basis in order to determine if the verdict is "excessive."

80. Senate Bill 80 also enacts R.C. §2315.21, which limits the amount of punitive damages that can be awarded against a large employer to an amount equal to two times the allowable compensatory damages, meaning that punitive damages are subject to both the cap on non-economic damages, and to a second cap on punitive damages.

81. Senate Bill 80 further enacts R.C. § 2315.20, which permits a defendant to introduce into evidence both the amount and type of benefits that the plaintiff received in connection to the disputed injury, anticipating that jurors will reduce the compensatory award on the basis of these collateral benefits. Plaintiffs anticipates that Defendants will invoke R.C. § 2315.20 to attempt to present the jury with information about Plaintiff's collateral sources.

82. Plaintiff has alleged non-economic damages in amounts that exceed the limits contained in R.C. § 2315.18 and reasonably anticipates that Defendants will claim that her injuries are non-catastrophic. Further, Plaintiff alleges that Defendants engaged in

sufficiently egregious misconduct to warrant an award of punitive damages in excess of the limits imposed by Senate Bill 80.

83. Plaintiff seeks a declaratory judgment, that R.C. § 2315.18, R.C. § 2315.19, R.C. § 2315.20, and R.C. § 2315.21, which purport to be applicable to her claims, as well as any other portions of Senate Bill 80 that Defendants may assert in this action, violate numerous provisions of the Constitution of the State of Ohio and the Constitution of the United States, including but not limited to:

(a) Article 1, Section 5 of the Ohio Constitution, which guarantees an inviolate right to a trial by jury as it existed at common law at the time the Ohio Constitution was ratified;

(b) The Seventh Amendment to the United States Constitution, which similarly guarantees the right to trial by jury and further provides that "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law;"

(c) Article 1, Section 16 of the Ohio Constitution, which guarantees the right to a remedy that is complete and not artificially limited;

(d) Article II, Section 32 of the Ohio Constitution, which prohibits the General Assembly from exercising judicial powers;

(e) Article IV, Section 1 of the Ohio Constitution, which vests superintending authority over the court system in the Ohio Supreme Court;

(f) Article IV, Section 5, of the Ohio Constitution, which vests in the courts the exclusive authority over the rules governing judicial practice and procedure;

(g) Article I, Section 16 of the Ohio Constitution and Amendment XIV, Section 1 of the United States Constitution, which guarantee due process of law;

(h) Article 1, Section 2 of the Ohio Constitution and Amendment XIV, Section 1 of the United States Constitution, which guarantee equal protection of the laws

(i) Article 2, Section 15(D) of the Ohio Constitution which limits legislation to a single subject.

84. Specifically, by purporting to limit the amount of compensatory damages for non-economic injury that may be awarded in a non-catastrophic case, Senate Bill 80 infringes upon the right to trial by jury, unconstitutionally empowers a court to re-examine a jury's award, interferes with the constitutional right to a remedy, and violates due process.

85. Further, by purporting to limit the amount of punitive damages and basing that limit on the amount of compensatory damages, which is itself subject to unconstitutional limits as described herein, Senate Bill 80 infringes upon the right to trial by jury, unconstitutionally empowers a court to re-examine a jury's award, interferes with the constitutional right to a remedy, and violates due process.

86. Senate Bill 80 further unconstitutionally interferes with the judiciary's authority over the courts, by unconstitutionally purporting to permit the legislature to dictate procedure for the judicial review of jury verdicts.

87. Senate Bill 80 unconstitutionally denies certain tort victims, including Plaintiff, equal protection of the law, by arbitrarily permitting some injured persons to receive full compensation for non-economic damages, while denying full damages to persons who sustain greater injuries.

88. Senate Bill 80 unconstitutionally violates the right to trial by jury by permitting consideration of collateral sources to reduce compensatory damages, violates due process by injecting prejudicial information into the jury's consideration; violates the right to a remedy by impairing the completeness of the remedy, violates equal protection by treating similarly situated plaintiffs and defendants differently, and violates separation of powers by permitting the legislature to exercise powers reserved to the judiciary.

89. Senate Bill 80 unconstitutionally violates the one subject rule, by purporting to address multiple issues including but not limited to damages to be awarded in a wide variety of matters, such as products liability claims, employment claims, personal injury claims, business torts and civil rights claims; and by purporting to address such diverse topics as seat belts, FDA approval of drugs, and collateral benefits.

90. Based upon any of these violations of the United States Constitution and/or the Ohio Constitution, Plaintiff requests that this Court declare Senate Bill 80 unconstitutional.

**WHEREFORE**, Plaintiff prays for relief as follows:

1. Compensatory and punitive damages in excess of the jurisdictional amount, including, but not limited to non-economic damages in excess of \$350,000.00 and punitive damages in excess of twice the compensatory damages award;
2. Attorneys' fees, expenses, and costs of this action;

3. To the extent that any provision of Senate Bill 80 violates the U.S. Constitution or Ohio Constitution, that it be declared unconstitutional;  
and
4. Such further relief as this Court deems necessary, just, and proper.

Respectfully submitted,

/s/ Janet G. Abaray  
Janet G. Abaray (0002943)  
Calvin S. Tregre, Jr. (0073454)  
Melanie S. Bailey (0075821)  
LOPEZ, HODES, RESTAINO, MILMAN & SKIKOS  
312 Walnut Street, Suite 2090  
Cincinnati, OH 45202  
(513) 852-5600  
(513) 852-5611 (fax)

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

/s/ Janet G. Abaray  
Janet G. Abaray

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Amended Complaint and Jury Demand and Claim for Unconstitutionality was served by personal delivery as indicated on the return of service for the Summons and Complaint, with which documents it was included, upon the corporate defendants listed below and was served via certified mail on this 1st day of September, 2005, upon the Ohio Attorney General at the following addresses:

JOHNSON & JOHNSON  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

ORTHO-McNEIL  
PHARMACEUTICAL, INC.  
1000 US Hwy. 2002  
Raritan, NJ 08869-0602

JOHNSON & JOHNSON PHARMACEUTICAL  
RESEARCH AND DEVELOPMENT, LLC  
920 Rte., 202 South  
Raritan, NJ 08869-1420

Ohio Attorney General Jim Petro  
State Office Tower  
30 E. Broad St. 17th Floor  
Columbus, OH 43215-3428

/s/ Janet G. Abaray  
Janet G. Abaray

Dated: September 1, 2005