S-240616
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

LKW

PLAINTIFF

and

LIFEGLOBAL GROUP LLC, THE COOPER COMPANIES, INC., COOPERSURGICAL, INC., AND COOPERSURGICAL CANADA, INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

(Class Action – Defective IVF Culture Media)

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. In vitro fertilization ("**IVF**") is an expensive and delicate procedure that affords a measure of hope for Canadians who wish to have children and who otherwise may not be able to conceive without this medical intervention. An important stage in the IVF process is the growth and development of a fertilized egg in a laboratory setting into an implantable or freezable embryo. Growth and viability during this development process requires the use of a culture medium with the proper mix of nutrients to facilitate embryo development. The combination of long wait times to access IVF, the cost of IVF and the time-sensitive nature of the process for Canadians who are dependent on IVF to have children make it critical that fertilized eggs be grown in culture media that supports healthy and viable cell development.

2. The Defendants designed, manufactured and sold growth culture media that was defective of certain nutrients critical to the growth and development of fertilized eggs, rendering Class Members' fertilized eggs non-viable. As a result, Class Members suffered damages including personal injuries, out of pocket expenses on unsuccessful IVF, and the potential necessity of further IVF.

The Plaintiff and Class Members

3. The Plaintiff is a resident of British Columbia.

4. The Plaintiff brings this claim on their own behalf and on behalf of all individuals in Canada who, for the purpose of preserving their fertility and/or becoming an intended parent of a child, underwent IVF treatment in which one or more fertilized eggs were cultured in the Recalled Culture Media (the "**Class**" or "**Class Members**").

The Defendants

5. The Defendant LifeGlobal Group LLC is a corporation incorporated pursuant to the laws of Connecticut with an address for service at 75 Corporate Drive, Trumbell, Connecticut, 06611, United States.

6. The Defendant The Cooper Companies, Inc. is a corporation incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States.

7. The Defendant CooperSurgical, Inc. is a corporation incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States.

8. The Defendant CooperSurgical Canada, Inc. is a corporation incorporated pursuant to the laws of Nova Scotia, Reg. Number 3320226, with a registered address Suite 1300 1969 Upper Water Street, McInnes Cooper Tower - Purdy's Wharf, Halifax, Nova Scotia, B3J 3R7 and a mailing address of PO BOX 730, Halifax, Nova Scotia, B3J 2V1.

9. The Defendants operate as a joint enterprise. Each of the Defendants is an agent of the other for the purposes of the design, manufacture, testing, quality control implementation, marketing, sale, distribution and/or placing of the Recalled Culture Media into the stream of commerce.

In Vitro Fertilization

10. Couples or individuals who cannot conceive a child naturally sometimes use assisted human reproduction procedures, also known as assisted reproductive technologies, to aid them in conceiving. One of the most common types of these procedures is IVF, which is performed at numerous fertility clinics across Canada.

11. IVF is the procedure of fertilizing an egg with sperm outside of the human body. The fertilized egg is then left in a culture media which helps promote development until it is ready to be implanted into the uterus for gestation.

12. The first three days of the fertilized egg being left in culture media are known as the cleavage stage. This stage is characterized by the fertilized egg beginning to undergo cell division. At the end of the cleavage stage, the egg will consist of between 2 to 128 cells. After five to seven days, the rapidly dividing fertilized egg becomes known as a blastocyst. The inner group of cells in the blastocyst become the embryo, while the outer group of cells nourish and protect it. Once the fertilized egg reaches the blastocyst stage, it can be frozen for future use or implanted into the uterus.

13. During the IVF process, eggs must be surgically extracted from the ovaries of the potential mother or a volunteer egg donor. The eggs are then fertilized by sperm that has been extracted. The mother or egg donor will undergo various testing, take medication, undergo ultrasound monitoring, and eventually have a surgical egg extraction procedure at a fertility clinic. The extraction process is invasive and physically demanding on the person. On average, the process from initial orientation to implementation of the fertilized egg into the uterus is around 4 to 6 weeks and can cost upwards of $10,000.

14. If an embryo fails to develop in IVF, it cannot be implanted into the uterus or frozen for future use. If all the embryos in an IVF cycle fail, or if only a very small number develop and later fail, the patient(s) must repeat the egg extraction and full IVF process again.

15. The waitlist for IVF in Canada can be many months or years. For individuals or couples who cannot conceive using their own reproductive material, the process of finding

egg or sperm donors and surrogates adds additional time, making it critical that fertilized eggs be given the best chance to thrive so that the IVF process can be successful.

Culture Media

16. Culture media is used in microbiology to create an environment that fosters the growth and development of embryos outside of the uterus. This culture media is crucial to the success of the IVF process.

17. After the eggs are retrieved and fertilized with sperm, they are left in the culture media for development for around 5 to 7 days to develop into the blastocyst stage.

18. Embryologists in fertility clinics closely monitor developing embryos to determine which embryos are developing properly. When it is determined that one or more embryos have developed into the blastocyst stage, they are either implanted into the uterus or frozen for future use.

Magnesium in Culture Media

19. A key component of IVF culture media is magnesium. If the culture media contains deficient magnesium levels, it can delay or prevent the development of an embryo prior to the blastocyst stage. Magnesium is one of the most important ions in culture media and is an important mineral involved in the growth and overall metabolic function of cells.

20. Magnesium in IVF growth culture media plays a dominant role in the polymerization of the mitotic spindle. The miotic spindle is a structure inside the egg that is responsible for distributing genetic information during cell division. Proper magnesium concentration optimizes the spindle fibre rate of formation. Given the development to the blastocyst stage is characterized by cell division, proper magnesium concentration in culture media is critical to the development of the embryo in the IVF process.

The Contaminated Culture and Recall

21. On December 5, 2023, the Defendants issued an urgent recall to their customers and distributors of the following lots of growth culture media, which are the "**Recalled Culture Media**":

Recalled Culture Media	
Lot Numbers	**Model Numbers**
231020-018741	LGGG-050
231020-018742	LGGG-100
231020-018743	LGGG-020

22. On December 8, 2023, Health Canada published a recall of the Recalled Culture Media. The stated basis for the recall was higher than predicted reports of impaired embryo development prior to the blastocyst stage for fertilized eggs.

23. In January 2024, fertility clinics in Canada began sending letters to their patients, including the Plaintiff, bringing the recall of the Recalled Culture Media to their attention and confirming that the Recalled Culture Media had been used in Class Members' IVF treatments.

24. At a time unknown to the Plaintiff but well known to the Defendants, the Defendants conducted testing which confirmed that the Recalled Culture Media were deficient in magnesium, limiting or preventing embryos from developing to the blastocyst stage (the "**Culture Media Defect**").

The Plaintiff's Experience

25. The Plaintiff is a resident of British Columbia.

26. The Plaintiff is unable to conceive naturally and sought to use IVF to conceive a child. In November of 2023 the Plaintiff began the process of egg retrieval. For three or more weeks the Plaintiff took prescribed medication and self-administered injections

every day to prepare her body for egg retrieval. As part of this process the Plaintiff underwent two treatments in clinic.

27. On November 18, 2023, the Plaintiff attended Olive Fertility Centre in Vancouver to undergo surgical egg retrieval. The procedure successfully retrieved eggs from the Plaintiff's body for use in IVF. Olive Fertility Center did not set a date for implantation of viable embryos, instead counselling that all viable embryos would be frozen and a date for implantation would then be discussed.

28. In January 2024, a physician from Olive Fertility Centre called the Plaintiff to advise her that only one of her 15 fertilized eggs had developed into viable embryos. After the contact from Olive Fertility Clinic the Plaintiff received a form letter telling her that there was a problem with the growth culture media which had affected the embryos. The Plaintiff does not know if she will be capable of undergoing another round of IVF.

The Defendants' Design and Manufacture of the Recalled Culture Media

29. Laboratory microbiology product design and/or manufacturing specifications and procedures for growth culture media require that growth culture media be manufactured in such a manner that it includes the right mix of nutrients, chemicals and pH level to promote growth of laboratory culture in accordance with its intended and foreseeable use.

30. The Defendants manufactured the Recalled Culture Media in a manner that was inconsistent with industry standard manufacturing specifications and procedures, resulting in the Culture Media Defect. Due to the presence of the Culture Media Defect, the Defendants should not have distributed, sold and/or placed the Recalled Culture Media into the stream of commerce.

31. Further or in the alternative, if the Recalled Culture Media were manufactured according to industry standard manufacturing specifications and procedures, the Recalled Culture Media was designed in a way that failed to promote embryo development when used in IVF due to the deficient magnesium levels in the formula for the Recalled Culture Media. The Defendants could have designed their culture media

using a formula with sufficient magnesium concentrations to promote and foster embryo development when used in IVF (the "**Alternative Design**").

The Defendants' Misconduct

32. At all material times the Defendants designed, manufactured, tested, exerted quality control processes and procedures, marketed, sold, distributed and/or placed the Recalled Culture Media into the stream of commerce.

33. At all materials times the Defendants knew that the Recalled Culture Media were necessary to, and would be used in, the IVF process.

34. At all material times the Recalled Culture Media contained the Culture Media Defect. At all material times the Culture Media Defect posed a real and substantial danger to the viability of fertilized eggs grown in the Recalled Culture Media.

35. At all material times the Defendants knew or ought to have known that:

a) the Recalled Culture Media contained the Culture Media Defect;

b) the Recalled Culture Media was not suitable for use in IVF; and

c) the Culture Media Defect posed a real and substantial danger to the viability of fertilized eggs growing and developing in the Recalled Culture Media.

36. At all material times the Defendants failed to adequately implement sufficient or any quality control measures to detect and ensure the quality and suitability of the Recalled Culture Media for use in IVF. Had the Defendants implemented sufficient quality control measures, the Recalled Culture Media would not have entered the stream of commerce.

37. Further, and in the alternative, if the Defendants intended for the Recalled Culture Media to enter the stream of commerce with deficient magnesium levels, they should have instead employed the Alternative Design.

38. The Plaintiff and Class Members relied on the safety and efficacy of the Recalled Culture Media to enable the successful growth and development of fertilized eggs extracted from the Plaintiff and Class Members' bodies into viable embryos before having those embryos implanted in the bodies of the Plaintiff Class Members, or surrogates.

39. The Defendants have been enriched by the receipt of some, or all, of the price paid by the Plaintiff and Class Members for the IVF procedures, and the Plaintiff and Class Members have suffered a corresponding deprivation of this same amount.

40. The Defendants failed to warn the Plaintiff and Class Members of the presence of the Culture Media Defect in the Recalled Culture Media in time to prevent the Recalled Culture Media from being used in IVF that the Plaintiff and Class Members were undergoing.

Harm to the Plaintiff and Class Members

41. As a result of the Defendants' misconduct, the Plaintiff and Class Members have suffered loss and/or damage including but not limited to:

a) Personal injuries arising from:

   i. undergoing unsuccessful IVF;

   ii. undergoing additional IVF procedures made necessary by the failure of the IVF caused by the Culture Media Defect; and/or

   iii. the loss of the opportunity to become a parent;

b) Past out of pocket expenses associated with unsuccessful IVF using the Recalled Culture Media; and/or

c) Past or future out of pocket expenses associated with additional IVF made necessary by the presence of the Culture Media Defect in the Recalled Culture Media.

42. The Plaintiff and Class Members' injuries have and will continue to cause suffering, loss of enjoyment of life, permanent disability, and loss of past and future earning capacity.

43. The Plaintiff and Class Members have sustained damages for the cost of medical treatment, including pasts and future cost of health care services provided by the Province of British Columbia and the heath care systems of other provinces and territories. The Plaintiff and Class Members continue to undergo medical care and treatment and continue to sustain damages. As a result of their injuries, Class Members have received and in the future will continue to receive care and services from family members.

44. The loss and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of the Defendants' negligence and/or failure to warn.

Part 2: RELIEF SOUGHT

45. The Plaintiff claims on their own behalf and on behalf of the Class Members:

a) an order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 (the "***Class Proceedings Act***");

b) a declaration that the Defendants have each been unjustly enriched by the receipt of some, or all, of the price paid by the Plaintiff and Class Members and received by the Defendants, directly or indirectly, for the Recalled Culture Media;

c) general and special damages;

d) punitive damages and aggravated damages;

e) an order that the Defendants account for and make restitution to the Plaintiff and Class Members equal to the amount by which they have been found to be unjustly enriched, or alternatively disgorgement;

f) recovery of health care costs pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 (the "***HCCRA***"), and equivalent legislation in other provinces and territories throughout Canada;

g) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79 (the "***Court Order Interest Act***"); and/or

h) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

46. The Plaintiff and Class Members plead and rely on the *Class Proceedings Act*; the *Limitation Act*, SBC 2012, c 13; the *Court Order Interest Act*; the *Negligence Act*, RSBC 1996, c 318; the *Food and Drugs Act*, RSC 1985, c F-27; the *Medical Devices Regulations*, SOR/98-282; the *Safety of Human Cells, Tissues and Organs for Transplantation Regulations*, SOR/2007-118; the *Assisted Human Reproduction Act*, SC 2004, c 2; the *Safety of Sperm and Ova Regulations*, SOR/2019-192; the *Health Care Cost Recovery Act* and related extra-provincial enactments; and the *Supreme Court Civil Rules*, BC Reg 168/2009 and related enactments.

Negligent Manufacture and Design

47. At all material times the Defendants were in a close and proximate relationship with the Plaintiff and Class Members, and the losses and/or damage suffered by the Plaintiff and Class Members would not have occurred but for the negligence of the Defendants.

48. At all material times the Defendants owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Recalled Culture Media to design and manufacture the Recalled Culture Media so that it was free of the Culture Media Defect and was suitable for use in IVF procedures. The Defendants knew or ought reasonably to have known that the Recalled Culture Media would pose a real and substantial danger to the viability of fertilized eggs used by the Plaintiff and Class Members in IVF.

49. The Defendants were negligent and failed to meet the requisite standard of care in manufacturing the Recalled Culture Media, including:

a) Failing to manufacture the Recalled Culture Media so that it was free of the Culture Media Defect;

b) Failing to test and/or apply appropriate quality control measures to the Recalled Culture Media; and

c) Releasing the Recalled Culture Media into the stream of commerce notwithstanding the presence of the Culture Media Defect.

50. Further, and in the alternative, the Defendants were negligent in not implementing the Alternative Design in their design of their growth culture media designed and sold for use in IVF. The Alternative Design is an economically feasible design that is safer and more effective for use in IVF than the Recalled Culture Media.

51. As a result of the Defendants' negligence, the Plaintiff and Class Members' IVF was unsuccessful due to the presence of the Culture Media Defect in the Recalled Culture Media.

52. As a result of the Defendants' negligent manufacture and/or design of the Recalled Culture Media the Plaintiff and Class Members have suffered loss and/or damage including but not limited to:

a) personal injury;

b) loss of past and future income earning capacity;

c) cost of future care; and

d) out of pocket expenses.

53. On behalf of Class Members that are residents of Québec, with respect to liability, the Plaintiff further relies on article 1457, of the Civil Code of Québec. For Class Members

that are residents of Québec, with respect to damages, the Plaintiff relies on articles 1607, 1611 and 1613 of the Civil Code of Québec.

Failure to Warn

54. Further and in the alternative, at all material times the Defendants were in a close and proximate relationship with the Plaintiff and Class Members, and the loss and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of the Defendants' failure to warn.

55. At all material times the Defendants owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Recalled Culture Media to warn that the Recalled Culture Media contained the Culture Media Defect, rendering it not fit for use in IVF.

56. By not warning the Plaintiff and Class Members, the Defendants were negligent.

57. As a result of the Defendants' negligent failure to warn, the Plaintiff and Class Members have suffered loss and/or damage as set out above.

58. On behalf of Class Members that are residents of Québec, with respect to liability, the Plaintiff pleads that the Defendants actions and the omissions of necessary warnings constitute a fault contrary to articles 1468-1469 and in the alternative article 1457, of the Civil Code of Québec. The. Plaintiff further pleads that on behalf of Class Members that are residents of Québec, have suffered injury as a result of the Defendants fault and are entitled to claim with respect to damages under, articles 1590, 1607, 1611 and 1613 of the Civil Code of Québec

Unjust Enrichment

59. The Recalled Culture Media is a Class II non-invasive medical device intended for channelling or storing tissues for the purpose of introduction into the body by means of infusion or other means of administration under the *Canada Medical Devices Regulations*, SOR/98-282, Schedule 1 – Classification Rules for Medical Devices and/or an in vitro diagnostic device under the *Canada Medical Devices Regulations*, SOR/98-282, sections

1, 3, and 6.The foregoing are regulations made under the *Food and Drugs Act* RSC, 1985, c F-27.

60. The Defendants failed to ensure the Recalled Culture Media was safe and effective in breach of the *Canada Medical Devices Regulations*, SOR/98-282, sections 9, 10, 12(1), 13, 14, 15, and 18.

61. The Defendants have been enriched by the amounts received from the Plaintiff and Class Members, directly or indirectly, through the sale of Recalled Culture Media. The Plaintiff and Class Members have suffered a corresponding deprivation of this same amount.

62. Due to their negligence and their violation of the applicable statutes and regulations, there is no juristic reason for the Defendants to retain these benefits.

63. Any and all contract between the Defendants and the Plaintiff and Class Members, or between the Defendant or Plaintiff and Class Members and any intermediaries who purchased the Recalled Culture Media for use in IVF procedures undergone by the Plaintiff and Class Members, are illegal, void and/or voidable due to the Defendants' breach of the *Food and Drugs Act* regulations.

64. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Class Members are entitled to restitution of the benefits received from them by the Defendants, directly or indirectly, on account of the sale of the Recalled Culture Media in Canada.

65. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the benefits received by them on account of the sale of the Recalled Culture Media in Canada.

Health Care Costs

66. The Province of British Columbia provides coverage for health care services to British Columbia residents through the Medical Services Plan and Health Insurance BC.

67. Class Members in British Columbia are each a "beneficiary" within the meaning of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 and any amendments.

68. Class Members have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. The Plaintiff pleads the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial and territorial governments: *Health Care Cost Recovery Act*, SBC 2008, c 27; *Medicare Protection Act*, RSBC 1996, c 286; *Pharmaceutical Services Act*, SBC 2012, c 22; *Hospital Act*, RSA 2000, c H-12; *Crown's Right of Recovery Act*, SA 2009, c C-35; *The Health Administration Act*, RSS 1978, c H-0.0001; *Health Services Insurance Act*, CSSM s H35; *Health Insurance Act*, RSO 1990, c H.6; *Home Care and Community Services Act*, 1994, SO 1994, c26; *Health Services Act*, RSNB 1973, c H-3; *Medical Services Payment Act*, RSNB 1973, c M-7; *Hospital Services Act*, RSNB 1973, c H-9; *Family Services Act*, SNB 1980, c F-2.2; *Health Insurance Act*, CQLR c A-29; and *Hospital Insurance Act*, RSQ c A-28; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8; *Health Services Payment Act*, RSPEI 1988, c H-2; *Health Services and Insurance Act*, RSNS 1989, c 197; *Hospital Insurance Agreement Act*, RSN 1990, c H-7; *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3; and the *Medical Care Act*, RSNWT (Nu) 1988, c M-8.

Punitive and Aggravated Damages

69. The Defendants' conduct in failing to ensure the quality, safety and suitability of the Recalled Culture Media when they knew it would be used as part of IVF procedures was high-handed, outrageous and reckless and the Defendants are liable to pay punitive and aggravated damages to the Plaintiff and Class Members as a result.

Joint and Several Liability

70. The Defendant are jointly and severally liable for the actions and damages allocable to any of them with respect to the allegations as set out above.

Limitation Periods

71. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability and fraudulent concealment. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by the acts of the Defendants or that a court proceeding would be an appropriate means to seek to remedy the injury until December 8, 2023 when the Defendants first issued a recall notice in Canada.

72. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular sections 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on section 30 of the *Limitation Act*, SBC 2012, c 13, and the *Limitation Act*, RSBC 1996, c 266.

Service on the Defendants

73. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "***CJPTA***"), because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to subsections 10(f), (g), (h) and/or (i) of the *CJPTA* as this action:

a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

b) concerns a tort carried on in British Columbia;

c) concerns a business carried on in British Columbia; and/or

d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: January 30, 2024

Signature of lawyer for plaintiff

James A. Richards
Sam J. Jaworski
Jaime M. Sarophim
Vivian Cheung

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

74. The plaintiff claims the right to serve this pleading on the Defendants LIFEGLOBAL GROUP LLC, THE COOPER COMPANIES, INC.,COOPERSURGICAL, INC., AND COOPERSURGICAL CANADA, INC outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (the "***CJPTA***") applies because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to subsections 10(f), (g), (h) and/or (i) of the *CJPTA* as this action:

a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

b) concerns a tort carried on in British Columbia;

c) concerns a business carried on in British Columbia; and/or

d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[*The following information is provided for data collection purposes only and is of no legal effect.*]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising from the negligent manufacture of IVF culture media.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[x] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[x] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[ ] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28

Court Order Interest Act, RSBC 1996, c 79