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2010-02-05
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PRETORIA 0001
GRIETJH VAN DER BOUTE GATENG
HOE HOE, PRETORIA

COMBINED SUMMONS

2010-02-05
IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NUMBER:

7661/10

In the matter between:

MICHAEL DOUGLAS HOSKING

and

PROF. FRANS ANDRIES WEBER

SHERIFF SANDTON
- MIDRAND
PLAINTIFF

2010-02-05
TEL: 011 781 3445

DEFENDANT

TO THE SHERIFF OR HIS DEPUTY: BRYANSTON

INFORM: **PROF. FRANS ANDRIES WEBER**, an Orthopaedic Surgeon who practises as such of address Suite 26, 2nd Floor, Sandton Medi Clinic c/o Peter Place & Main Road, Bryanston, Gauteng.

(Hereinafter called the Defendant) that

MICHAEL DOUGLAS HOSKING, a professional engineer born of address 6 Cheetah Springs, Cheetah Crescent, Rivonia, Gauteng.

(Hereinafter called the Plaintiff); and

hereby institutes action against him in which action the Plaintiffs claims the relief and on the grounds set out in the particulars annexed hereto.

SHERIFF SANDTON
- MIDRAND

2010-02-05

TEL: 011 781 3445

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INFORM the Defendant further that if Defendant disputes the claim wishes to defend the action, the Defendant shall -

- (i) Within 10 (TEN) days of the service upon the Defendant of this summons, file with the Registrar of this Court at VERMEULEN STREET PRETORIA, notice of Defendant's intention to defend and serve a copy thereof on the attorneys of the Plaintiff, which notice shall give an address (not being post office or post restante) referred to in Rule 19(3) for the service upon the Defendant of all notices and documents in action.
- (ii) Thereafter and within 20 (TWENTY) days after filing and service notice of intention to defend as aforesaid, file with the registrar upon the Plaintiff a Plea, Exception, Notice to strike out, with or without a counter claim.

INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to the Defendant, or if having filed and served such notice, the Defendant fails to plead, except make application to strike out or counter claim, judgment may be given against the Defendant.

AND immediately thereafter serve on the Defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

PARTICULARS OF CLAIM

1.

The Plaintiff is **MICHAEL DOUGLAS HOSKING**, a professional engineer born on 30th July 1947 of address 6 Cheetah Springs, Cheetah Crescent, Rivonia, Gauteng.

2.

The Defendant is **PROFESSOR FRANS ANDRIES WEBER**, an Orthopaedic Surgeon who practises as such of address Suite 26, 2nd Floor, Sandton Medi-Clinic, c/o Peter Place and Main Road, Sandton, Gauteng.

3.

3.1 On 23 October 2006 the Plaintiff consulted the Defendant at the Defendant's rooms in Sandton with orthopaedic complaints.

3.2 Pursuant to the foregoing, and on the aforesaid date, the Defendant advised the Plaintiff to undergo a total right hip replacement operation ("the procedure"), to which the Plaintiff assented, and which was

arranged to be carried out at the Sandton Medi-Clinic ("the hospital") on 5 February 2007.

4.

4.1 Pursuant to the foregoing:

4.1.1 A relationship of patient and doctor arose between the Plaintiff and the Defendant.

4.1.2 The Defendant, pursuant to the relationship, incurred towards the Plaintiff a duty to take reasonable care of the Plaintiff and to act with the degree of skill, care and diligence to be expected of an Orthopaedic Surgeon specialising in procedures such as the procedure, without negligence.

4.2 Cumulatively with, alternatively in the alternative to, the allegations contained in paragraph 4.1 above:

4.2.1 The Plaintiff and the Defendant entered into an oral agreement on 23 October 2006.

4.2.2 The terms of the oral agreement that are material hereto are the following:

- (a) It was an express term that the Defendant would perform the procedure upon the Plaintiff in the hospital on 5 February 2007.
- (b) It was a tacit, alternatively an implied, term that in treating the Plaintiff the Defendant would exercise the degree of care, skill and diligence to be expected of an Orthopaedic Surgeon specialising in procedures such as the procedure, without negligence.

5.

- 5.1 The Defendant performed the procedure on the Plaintiff in the hospital on 5 February 2007.
- 5.2 The Defendant discharged the Plaintiff from the hospital home on 16 February 2007.
- 5.3 On 17 February 2007 the Plaintiff's operation wound burst open and he was returned to the hospital, where emergency surgery was carried out to open and clean the wound, which was found, together with the bone, to be seriously infected.
- 5.4 The Plaintiff was discharged from the hospital home on 21 February 2007.

- 5.5 On 7 March 2007, the Plaintiff was readmitted to the hospital, where the Defendant carried out further surgery, opening and cleaning the wound. The Plaintiff was again discharged on 12 March 2007.
- 5.6 On 16 March 2007, the Plaintiff was readmitted to the hospital, where further surgery was carried out. The Plaintiff was discharged from the hospital home on 23 March 2007.
- 5.7 On 19 April 2007, the wound was surgically drained at the hospital.
- 5.8 On 4 March 2009, the Plaintiff underwent further surgery to remove the prosthesis inserted into the hip by the Defendant.
- 5.9 A further total hip replacement operation was carried out on the Plaintiff on 1 April 2009.
- 5.10 The Plaintiff still suffers from infection of the right hip which set in after the procedure.

6.

The failure of the procedure, the infection which set in after the procedure and from which the Plaintiff still suffers, and the consequences of both failure and infection as outlined in paragraph 5 above, are the result of the Defendant's negligent breach of his duty of care to the Plaintiff aforesaid, and/or alternatively of his breach of his contractual obligations to the Plaintiff as aforesaid, the Defendant having been so negligent and/or alternatively having breached his

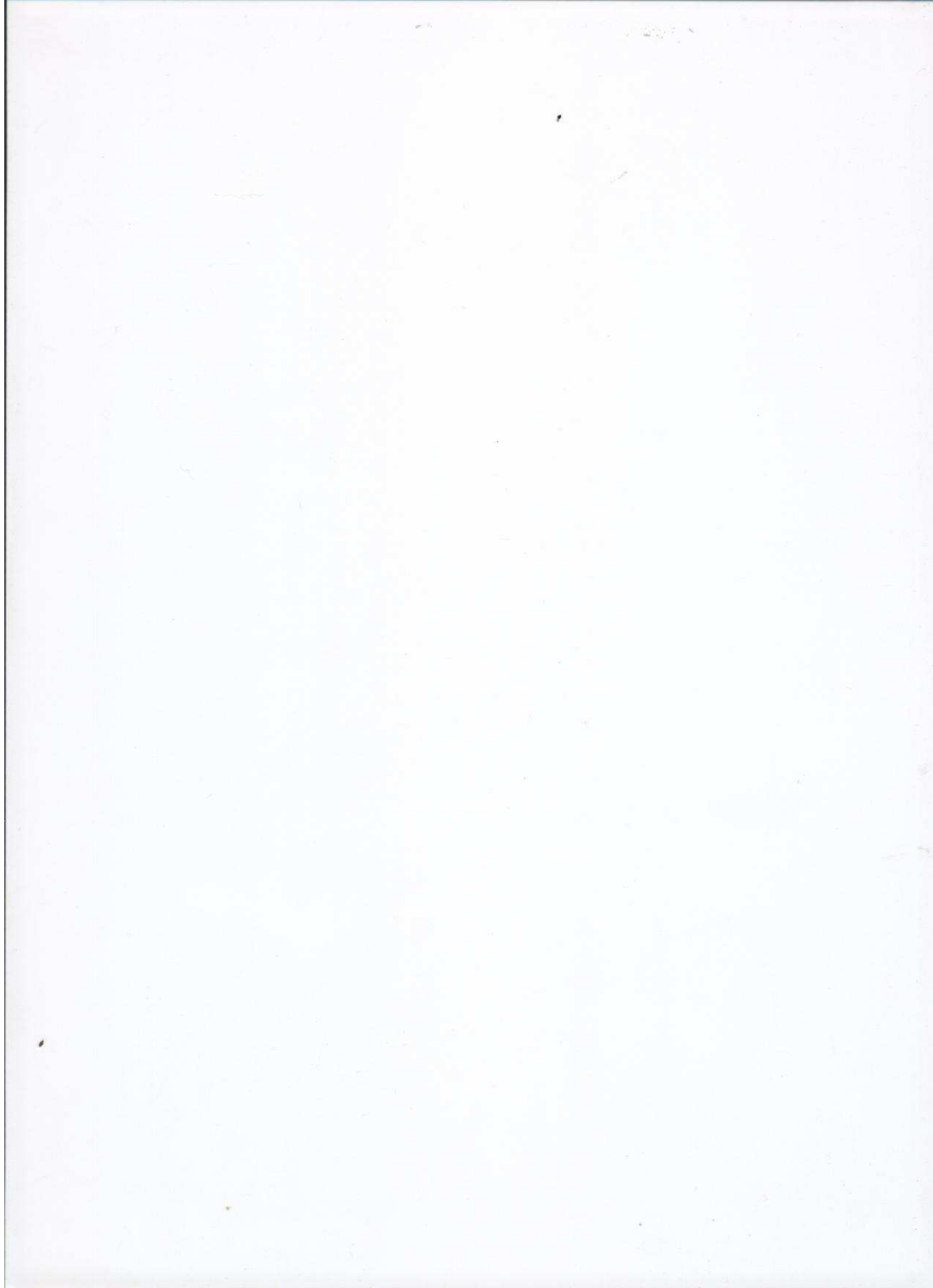
aforesaid contractual obligations in all, a number or one of the following respects:

- 6.1 In failing to take due care in carrying out the procedure.
- 6.2 In inserting, in the course of the procedure, a prosthesis which was infected and which the Defendant had not taken sufficiently care to ensure was not so infected.
- 6.3 In failing to respond when, within a day after the procedure, the Plaintiff reported systems that were indicative of the onset of infection.
- 6.4 In failing to respond appropriately, alternatively at all, alternatively timeously, to the onset of infection, once the signs thereof should reasonably have been detected.

7.

As a result of the foregoing, the Plaintiff:

- 7.1 Has experienced pain, suffering and discomfort, and will continue to do so in future.
- 7.2 Has experienced severe emotional shock and trauma, and will continue to do so.
- 7.3 Has been permanently disabled and disfigured.



- 7.4 Has suffered a loss of the ability to earn an income, and a reduction in his earning capacity.
- 7.5 Has suffered a loss of the enjoyment and of the amenities of life, which is permanent.
- 7.6 Required treatment as outlined above and incurred expenditure in connection therewith and will, in future, require further such treatment.

8.

The Plaintiff has, in the premises, suffered damage in the amount of R9 500 000,00, which amount is comprised as follows:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <p>8.1 Past hospital, medical and related expenditure that would not have been incurred in the absence of the Defendant's aforesaid negligence and/or alternatively contractual breach</p> | R500 000,00 |
| <p>8.2 Estimated future hospital, medical and related expenditure from the date of institution of this action onward, which would not have been required in the absence of the Defendant's aforesaid negligence and/or alternatively contractual breach</p> | R2 000 000,00 |

8.3	Loss of income and of earning capacity	R6 000 000,00
8.4	General damage	<u>R1 000 000,00</u>
	TOTAL	R9 500 000,00

9.

- 9.1 The amount claimed in paragraph 8.1 above in respect of past hospital, medical and related expenditure is an estimated figure only, the Plaintiff not presently being in a position to furnish a more specific calculation.
- 9.2 The amount claimed in paragraph 8.2 above in respect of future hospital, medical and related expenditure is an estimated figure only, the Plaintiff not presently being in a position to furnish a more specific calculation.
- 9.3 The amount claimed in paragraph 8.3 above in respect of loss of income and of earning capacity is an estimated figure only, the Plaintiff not presently being in a position to furnish a more specific calculation.
- 9.4 9.4.1 The amount claimed in paragraph 8.4 above in respect of general damage is a global figure in respect of pain, suffering and discomfort, emotional shock and trauma, loss of the

enjoyment and of the amenities of life, disfigurement and the non-pecuniary aspects of disability.

9.4.2 It is not reasonably practicable for the Plaintiff to apportion the amount claimed in respect of general damage amongst the components thereof.

10.

In the premises, the Defendant is indebted to the Plaintiff in the aforesaid amount.

WHEREFORE the Plaintiff prays for judgment against the Defendant in the following terms:

1. Payment of R9 500 000,00.
2.
 - 2.1 Interest on the amount claimed in paragraph 8.1 above at the rate of 15,5% per annum calculated from and including the date of service of this Summons to and including the date of payment thereof.
 - 2.2 Interest on the amounts claimed in paragraphs 8.2, 8.3 and 8.4 above, at the rate of 15,5% per annum calculated from and including the date of judgment to and including the date of payment thereof.