

[Products Liability Law Daily Wrap Up, STATUTES OF LIMITATIONS AND REPOSE—MEDICAL DEVICES—E.D. Pa.: Claims against hip implant maker filed too late by one day, \(Aug. 16, 2018\)](#)

Products Liability Law Daily Wrap Up

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By David Yucht, J.D.

A federal district court in Pennsylvania found that a personal injury claim against Zimmer US, Inc., the manufacturer of a metal hip prosthesis, was time-barred because, more than two years prior to filing suit, the injured patient possessed or should have possessed the requisite knowledge that the hip device caused her injury, thereby triggering the commencement of Pennsylvania's two-year statute of limitations. Because no reasonable juror could conclude otherwise, the manufacturer's summary judgment motion dismissing the suit was granted (*Adams v. Zimmer US, Inc.*, August 14, 2018, Smith, E.).

Metal hip prosthesis. An orthopedic patient was implanted with a metal hip prosthesis in 2011. For several years following her surgery, she suffered pain and complications related to the implant. In 2015, she underwent a second surgery to remove and replace the device. She asserted that the metals used in manufacturing the prosthesis, combined with an unreasonably dangerous design, generated toxic levels of metal-wear debris that injured the tissue surrounding her right hip and required her doctor to remove the device. The patient sued the hip prosthesis manufacturer, which brought a summary-judgment motion contending that Pennsylvania's statute of limitations barred the claims because the patient had failed to file suit within two years from the date on which she should have discovered that she was injured by the metal prosthesis.

Statute of limitations. Finding that reasonable minds could not disagree that the patient knew or should have known of her injury and its connection to the hip implant more than two years prior to the date she brought the current action, the court agreed that the patient's claims were time-barred and granted the manufacturer's motion for summary judgment. The patient's claim that she could not have been aware of her injury before her replacement surgery on February 12, 2015, was not substantiated. The patient testified that after a November 28, 2014 dislocation, she began to experience persistent pain in her right hip—a new type of pain that she had not previously suffered. She also testified that by January 30, 2015, she knew she had a hip problem because of constantly increasing pain. For the statute of limitations to run, the patient did not have to know the full extent of her injury, the court remarked, noting that her deposition testimony was more than sufficient to establish that she should have known of at least some form of significant harm.

Moreover, the court determined that the patient knew or should have known of a connection between her injury and her hip implant by the time she decided to proceed with hip revision surgery on January 30, 2015. She testified that when her right hip dislocated in November 2014, she thought this was abnormal, and that she began to experience pain that she had not experienced previously. At her next orthopedic appointment on January 7, 2015, her physician sent her for a CT scan and explained that she might require a new implant device if tissue damage was confirmed. She knew or should have known that if she needed to replace her implant, it was because the implant was a cause of the problem.

Informed consent form imputed knowledge. The court also noted that the patient signed an informed consent form on February 9, 2015, which stated that the purpose of the upcoming hip-revision surgery was to treat her right hip metallosis. After she signed the consent form, she had or should have had the requisite knowledge to link her injury to the metal implant device, which her orthopedist needed to remove. The patient contended that she did not read the form prior to signing it and did not recall being told she had metallosis.

The court found that it had to impute to her the knowledge that a reasonable person in her situation would have had after signing the form. Regardless of what she knew or did not know about her surgery, Pennsylvania's discovery rule is based on an objective view of what a person in the injured person's situation should have known. The statute of limitations is tolled only until the injured person should have, through the exercise of reasonable diligence, actual or constructive knowledge that another individual's conduct caused her injury. Reasonable diligence in this case required the patient to be aware of the purpose of her surgery. Accordingly, the very latest conceivable date by which the patient should have known that the device caused her injury was February 9, 2015, i.e., two years and one day before she had filed her lawsuit.

The case is No. [5:17-cv-00621-EGS](#).

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Companies: Zimmer US, Inc.; Zimmer Holdings, Inc.; Zimmer, Inc.

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