Products Liability Law Daily Wrap Up, DAMAGES—MEDICAL DEVICES—E.D. Mo.: Biomet ordered to pay $21M in hip implant injury case, (Nov. 30, 2020)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

The judgment was rendered in favor of a patient who had undergone multiple revision surgeries after being implanted with the M2a-Magnum™ Hip Implant System.

A Missouri federal court ordered judgment against Biomet, Inc., Biomet Orthopedics, LLC, Biomet U.S. Reconstruction, LLC, and Biomet Manufacturing Corp. (collectively, Biomet), jointly and severally, for actual damages in the amount of $20,000,000, plus post-judgment interest and costs, in favor of a patient who sustained injuries after having both hips replaced with Biomet's hip implant system. Her husband was awarded actual damages in the amount of $1,000,000, plus post-judgment interest and costs (*Bayes v. Biomet, Inc.*, November 24, 2020, Clark, S.).

Complaint. In their complaint, the patient and her husband asserted that Biomet's M2a-Magnum™ Hip Implant System was defective because it was a monoblock system that did not have an acetabular liner. As such, metal rubbed against metal with the full weight and pressure of the human body. Because of this defective design, the complaint maintained, hundreds of patients, including the plaintiff, were forced to undergo surgeries to replace the failed hip implant.

The complaint also alleged that the at-issue system had a design or manufacturing defect that caused excessive amounts of cobalt and chromium to wear and corrode from the surface of the acetabular cup, from the femoral head, and from the taper adapter. Those cobalt and chromium fragments prompted the body to react by rejecting the hip implant. This rejection often manifested with symptoms of pain, looseness, dislocation, and squeaking and popping sounds. Inside the hip joint, the metal reaction often caused fluids to accumulate and soft tissues and bone to die.

The patient asserted that Biomet did not sufficiently test the system's design and had sold the implant to her despite knowing that it was defective, that it had injured others, and that it would injure her. To date, more than 350 reports of adverse events associated with the implant system have been filed with the Food and Drug Administration, the patient maintained. She contended that Biomet should have recalled the system before it was sold to her and should have stopped selling it when the company became aware that the device had failed catastrophically in several patients. The manufacturer actively concealed the known defect from doctors and patients and misrepresented that the system was a safe and effective medical device, the patient alleged.

Causes of action. The complaint asserted strict products liability claims for manufacturing defect, design defect, defect due to nonconformance with representations, and failure to warn. It also asserted causes of action for negligence, breach of express and implied warranties, negligent misrepresentation, fraudulent misrepresentation, fraudulent concealment, and loss of consortium. The couple sought compensatory and punitive damages, attorney fees, and costs.

Judgment. The court dismissed some of the claims, and other claims were withdrawn by the patient and her husband. The matter then was tried before a jury, which rendered its verdict on all remaining claims. The verdict was sealed. The court thereafter ordered Biomet to pay $20,000,000 to the patient and $1,000,000 to her husband, plus post-judgment interest and costs.

The case is No. 4:13-cv-00800-SRC.

Attorneys: Darin L. Schanker (Bachus & Schanker, LLC) for Mary Bayes and Philip Bayes. Adrienne Busby (Faegre Drinker Biddle & Reath LLP) for Biomet, Inc., Biomet Orthopedics, LLC, Biomet U.S. Reconstruction, LLC and Biomet Manufacturing Corp.

Companies: Biomet, Inc.; Biomet Orthopedics, LLC; Biomet U.S. Reconstruction, LLC; Biomet Manufacturing Corp.

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