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$1B Settlement Reached in Stryker Hip-Implant Mass Tort

By Mary Pat Gallagher

Thousands of plaintiffs in New Jersey and around the country who had surgery to remove failed hip implants settled their claims Nov. 3 in a deal that is expected to pay out more than $1 billion.

The global settlement with Howmedica Osteonics Corporation, a Mahwah, N.J., corporation that does business as Stryker Orthopaedics, resolves the claims of about 3,000 individuals who were implanted with Stryker Rejuvenate and ABG II Modular hip stems.

New Jersey alone has more than 2,100 cases and there are another 1,700 or so federal suits centralized in the U.S. District Court for the District of Minnesota, as well as cases scattered among other state courts.

The agreement, announced in the Bergen County courthouse by Superior Court Judge Brian Martinotti will pay a base award of $300,000 per failed implant, with additional compensation for those who suffered complications as a result of surgery to remove the implant, a procedure known as revision.

Stryker voluntarily recalled the hip stems on July 3, 2012, and since then, lawsuits have been mounting.

Those filed in New Jersey state court were centralized in Bergen County before Martinotti, in January 2013. Five months later, the Judicial Panel on Multi-District Litigation consolidated the federal actions before U.S. District Judge David Frank in Minnesota, the home state of parent company Stryker Corp.

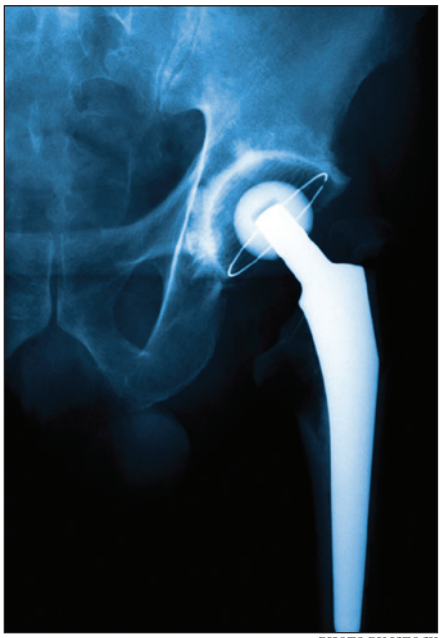
On the morning of Nov. 3, Martinotti scheduled an emergent conference for 4 p.m., and ordered liaison counsel and other interested lawyers to show up in his courtroom, where the settlement was announced and signed.

A similar order from Frank summoned lawyers to his St. Paul courtroom at the same hour, 3 p.m., central time, for a parallel proceeding.

Lawyers for both sides appeared and laid out the terms of the settlement, including a time line that requires claimants to register by Dec. 14 and enroll by Jan. 16, 2015, and should see the first payouts in the summer of 2015.

To qualify for payment, claimants must be U.S. citizens or residents and must have had both surgeries—first to implant and then to take out the failed device —at a hospital in the U.S. or a U.S. military hospital. The revision surgery had to occur at least 180 days after the implant process and before the Nov. 3 date of settlement.

The failure of the implant must be shown by evidence such as a blood test showing elevated cobalt or an abnormal diagnostic scan.



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People who take out an implant because of an auto accident or other trauma do not qualify, while those with failed implants who need a revision but cannot have one for medical reasons are eligible.

The $300,000 base amount is subject to a 15 percent reduction—$45,000—if the Rejuvenate or ABG II was put in after a preexisting total hip replacement and is also adjusted downward five percent for those over the age of 70 on the date they got the implant, increasing by five percent increments until the age of 85, where the reduction is 20 percent.

For patients who died before

the settlement's Nov. 4 execution date, the base award shrinks by 30 percent, to $210,000.

Enhanced payments are available for a variety of complications.

For example, those who require additional revisions following removal of an implant will get an added $175,000, while those whose bones must be cut to remove the implant—an osteotomy—are entitled to $75,000 more, which rises to $100,0000 if cabling is required to secure the femur.

More serious complications—foot drop, heart attack, stroke and death—can result in enhancements as high as $288,000, $360,000, $516,000 and $600,000, respectively.

Smaller enhancements are also available for some nonsurgical complications, such as infections.

There is no fixed fund for the settlement nor a cap on Stryker's liability.

Stryker's press release about the settlement said it had "recorded charges to earnings totaling $1.425 billion representing the actuarially determined low end of the range of probable loss to resolve these matters and no additional charge to earnings is being recorded in connection with entering into the settlement agreement. The ultimate cost to entirely resolve these matters will depend on many factors that are difficult to predict and may be materially different than the amounts accrued to date. Further charges to earnings may need to be recorded in the future as additional information related to patient enrollment in the settlement program becomes available."

The release quoted Bill Huffnagle, president of Stryker's Reconstructive Division as stating "Following our voluntary recall and our patient support program for recall-related care, this settlement program provides patients compensation in a fair, timely and efficient manner."

There is no sum set aside for legal fees, which are to be paid case-by-case in accordance with the retainer agreements and state law.

Claimants will have to kick in to fund the process, including lien administration expenses, costs associated with the special masters and claims administrator and reimbursement of counsel costs.

Those who sued in New Jersey will have to pay 0.5 percent, while those in the MDL will have to pay 4 percent—one percent towards costs and three percent toward fees.

The Garden City Group, based in Lake Success, N.Y., will administer the settlement.

Appeals from awards will be heard by three special masters: C. Judson Hamlin, a retired N.J. state court judge, now with Keefe Bartels in Red Bank, N.J.; Arthur Boylan, who was the chief Magistrate Judge for the District of Minnesota until his retirement earlier this year; and Edgar Gentle, of Gentle Turner Sexton Debrosse & Harbison in Hoover, Ala.

Their determinations will be subject to final review by Diane Welsh, a U.S. Magistrate Judge for the Eastern District of Pennsylvania from 1994 to 2005, now with JAMS in Philadelphia.

Welsh mediated the settlement, in a series of sessions that began in July.

Martinotti and counsel credited Welsh for the agreement, along with an early mediation program that facilitated it by establishing a framework for valuing the claims and a groundwork of trust among the attorneys.

Ellen Relkin of Weitz & Luxenberg in New York, liaison counsel in New Jersey, said it's "virtually unprecedented to globally resolve a litigation less than one-and-a-half years from the formation of mass tort litigation."

Relkin said the individual mediations allowed the parties "to recognize specific damage endpoints which became the building blocks for the matrix used for the numerous enhancements in the settlement program. "

Of the 21 bellwether cases selected for mediation, 20 settled.

Martinotti lauded the process that led to the settlement as "historic" and "unprecedented," without a single case going to trial. The first trial in New Jersey was scheduled for June 2015.

In recalling the implants, Stryker referred to the potential risk of "fretting and/or corrosion" of the metal components of the implants, deterioration that can allegedly produce metal debris and metal ions leading to such symptoms as pain, swelling and the death of tissue and bone.

The Plaintiff Steering Committee for the New Jersey litigation consisted of chairwoman Relkin, Thomas Anapol of Anapol Schwartz in Philadelphia, C. Calvin Warriner III of Searcy, Denney, Scarola Barnhart & Shipley in West Palm Beach, Fla., Tara Sutton of Robins, Kaplan, Miller & Ciresi in Minneapolis, David Buchanan of Seeger Weiss in New York, and Tobias Millrood of Pogust, Braslow & Millrood in Conshohocken, Pa.

The MDL had a separate Plaintiff Steering Committee.

Stryker is represented by Kim Catullo and other lawyers from the Gibbons firm in New York and Newark. Also present at the New Jersey conference was Stryker in-house counsel Ethan York. ■

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