

Stryker To Pay \$1B To Settle Hip Implant MDL Claims

By **Emily Field**

Law360, New York (November 03, 2014, 7:46 PM ET) -- Stryker Corp. and its subsidiary Howmedica Osteonics Corp. said Monday that the company has agreed to pay at least \$1 billion to settle thousands of claims in litigation in New Jersey and Minnesota related to its allegedly defective metal hip replacement parts.

The company recalled its Rejuvenate and ABG II modular-neck stems in June 2012, saying they could fret or corrode, harm body tissue, and cause pain or swelling. Litigation for the thousands of claims stemming from the recalled parts was centralized in multidistrict litigation in Minnesota federal court and multicounty litigation in New Jersey state court.

Under the terms of the global settlement, signed by Minnesota U.S. District Judge Donovan W. Frank, Stryker will provide an unlimited fund account to pay out to qualified plaintiffs in the litigation to end their claims.

"What really sets this settlement apart is that there's no cap on the fund," Tara Sutton, a Robins Kaplan Miller & Ciresi LLP partner who was a member of the plaintiffs' steering committee in the New Jersey litigation, told Law360 Monday. "What's unique is also an ability to get further payment for future complications. It's a unique feature of a mass tort settlement."

The settlement was reached after four months of negotiations with Stryker mediated by retired U.S. Magistrate Judge Diane Welsh, Sutton told Law360.

Charles Zimmerman, a partner at Zimmerman Reed PLLP and a member of the MDL lead counsel committee, told Law360 Monday that the billion-dollar settlement was based on an estimate of the number of claims and the estimated average settlement offer.

Stryker agreed to a base payment of \$300,000 to compensate plaintiffs who had to have a Rejuvenate or an ABG II hip implant device surgically removed before Nov. 3, according to counsel. The payment will be doubled for plaintiffs who had devices removed from both hips, the attorneys said, and there will be additional payments for complications arising from the removal surgeries.

"Everyone agrees that it can easily top \$1 billion," Zimmerman said. "It's a very fair and well-conceived resolution, given that it occurred almost two years from the beginning of the resolution."

About 20,000 people were implanted in the U.S. with the Rejuvenate and ABG II hip products, according

to a statement from Beasley Allen Crow Methvin Portis & Miles PC, one of the firms that represented the plaintiffs in the New Jersey litigation.

Since the recalled devices were the “stem” part of the hip implants and had to be removed from the femur, there was a higher rate of post-surgical problems, Sutton said.

“The surgeries were very difficult to perform,” Sutton said. “There were femur fractures ... many people suffered high rates of infection, also damaged adductor muscles.”

Sutton added that there were no payment reductions based on obesity or smoking.

Sutton said that plaintiffs will have two years after the date of their last surgery to file claims for subsequent medical complications. After the first year, the payments will be reduced by 30 percent, Sutton said.

“It’s a recognition that there are high rates of complications and complications that are ongoing,” Sutton said. “They’re stepping up to the plate.”

Stryker is represented by Rafael A. Campillo and Karen E. Woodward of Sedgwick LLP and Timothy P. Griffin of Stinson Leonard Street LLP.

The plaintiffs are represented by Zimmerman Reed PLLP, Meyers & Flowers and Aylstock Witkin Kreis & Overholtz PLLC, among other firms.

The MDL is In re: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation, MDL number 2441, before the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Greg Ryan. Editing by Philip Shea.

Correction: A previous story misidentified the New Jersey court venue that is part of the settlement. The error has been corrected.