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Implant case was quick and lucrative

Judges actively encouraged settlement

By **Barbara L. Jones**

barbara.jones@minnlawyer.com

Stryker hip implant litigation is a cottage industry, if one judges by the results of a Google search. It turns up Strykerlawyers.com, strykerlawsuits.org, and metalhiplawsuits.us, to name a few.

But what has been called a bellwether settlement that covers two lawsuits and is valued at \$1.4 billion may empty some of those cottages.

“It is a groundbreaking settlement for at least two reasons,” said Tara Sutton, chair of the mass tort litigation group at Robins, Kaplan, Miller & Ciresi and plaintiff’s counsel in the state court litigation.

“First, the settlement provides significant additional compensation for patients who suffered complications during their revision surgeries as well as payments for future complications that occur over the next two years. Second, there is no overall cap on Stryker’s liability under the settlement program,” she said.

One lawsuit was venued in New Jersey and covered about 3,000 patients. Meanwhile, a multi-district litigation also proceeded in federal court in Minnesota before Judge Donovan Frank and Magistrate Judge Franklin Noel. Genevieve Zimmerman is on the lead counsel committee and Anthony Nemo is plaintiff’s liaison in the federal case. Both lawyers are from Meshbesh and Spence.

Bones, tissue damaged

Thousands have been affected by Rejuvenate and ABGII modular hip implants manufactured by a Stryker subsidiary. The implants have modular pieces, called a stem and a neck, that are fitted together. They also come apart. The neck is cobalt chrome and the stem is titanium. They have a galvanic reaction and essentially start to

man said.

‘Bellwether mediation’

Sutton said that the state cases in New Jersey were consolidated in January 2013 and the MDL panel cases were consolidated about six months later. Sutton credits the New Jersey judge with designing and supervising a process that worked for the participants and then went global.

“It is virtually unheard of to reach a global resolution in less than two years from the formation of the mass tort litigation. Because of the speed to resolution, the total costs of the litigation are relatively low, which will further increase net recoveries to plaintiffs who participate.”



Tara Sutton

— Tara Sutton, chair of the mass tort litigation group at Robins, Kaplan, Miller & Ciresi

rust inside the body, Zimmerman said.

That causes damage to the bones and soft tissues, she said. Plaintiffs had to undergo surgery to have the stem removed. In some cases, the femur had grown around it.

“It is like driving a piece of rebar out of concrete,” Zimmerman said.

To promote healing and help make sure the patient can walk, the doctors may install a cerclage which is a cable around the outside of the femur to hold the pieces together. “It’s awful,” Zimmer-

“Judge Brian Martinotti ... from the beginning proactively encouraged settlement of the litigation. He quickly established an innovative bellwether mediation process that resulted in the settlement of 20 out of 21 mediated cases. These mediation results precipitated the global settlement negotiations between New Jersey counsel, that MDL counsel later joined, and became the building blocks for the global settlement program,” Sutton said in an email to Minnesota Lawyer.

"Stryker met with the clients and heard their stories," Sutton said. "We worked through the process."

Because that process went smoothly it became clear that it was time to talk about resolution of the New Jersey cases, Sutton said.

Frank decided there should be communication and cooperation between the two cases. Zimmerman was in the group of four lawyers appointed by the court as "settlement" counsel for the MDL.

No cap on damages

The settlement covers any plaintiff who had a hip "revision" before Nov. 3, 2014. The term revision means any of the corrective measures that were necessary. Plaintiffs will receive a base payment of \$300,000, which is the largest base payment in any hip settlement to date, Sutton said. They should start in the summer of 2015, and they are subject to a reduction for age, starting at age 70.

The settlement will cover any "enhancement" damages for complications from the revision process. There is no cap on damages, and Stryker will pay certain future damages that occur with two years of the revision procedure.

One of the reasons the cases moved

as well as they did was that Stryker was very interested in a quick resolution, Zimmerman said. "I think they had some concerns that various depositions and discovery were going to be completed that would be potentially embarrassing," she said.

The lawyers wouldn't identify a smoking gun piece of evidence but "the documents collectively were all smoldering," Nemo said.

Zimmerman said that she had expected to bring a punitive damages motion if the case hadn't settled.

Another reason the case in Minnesota moved the way it did was that the judges wanted it to, Zimmerman said. Both judges used case management orders that kept the case moving and had monthly status conferences.

"If you've got to be in court once a month and say what you did, you've got to do something," Zimmerman said.


"It is virtually unheard of to reach a global resolution in less than two years from the formation of the mass tort litigation," Sutton pointed out. "Because of the speed to resolution, the total costs of the litigation are relatively low, which will further increase net recoveries to plaintiffs who participate."

Nemo said there are two lessons

Liaison counsel: Keeping track and massaging data

Anthony Nemo is liaison counsel for the MDL, which he said meant he was the conduit between the lawyers across the country and the district court. "If any lawyer has a question about procedure, or anything, what wine to drink with steak, they call me or email me, or both," he said. He also keeps track of all the data. "I know every case in the MDL, which firm filed it, where they filed it, where the plaintiff resides," he said. "I keep track of when their discovery is due so I can remind people," he added. It sounds like a really hard job, Nemo said, but "it's actually quite fun."

from the litigation for lawyers. One is the importance of an experienced and committed district court judge. "Judge Frank told us he cleared next summer to try five cases, back to back," Zimmerman said. Frank and Noel impressed upon the lawyers the importance of efficiency and moving forward, Nemo said.

Also key is assembling a group of people who know how to try cases and are committed to the litigation, Nemo said. 

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