

J&J Hip Case Set for Maryland Trial Dropped by Plaintiff

Published: Jan 08 2013 17:18:14

(Updates with lawyer comments starting in 10th paragraph.)

By **Jef Feeley and David Voreacos**

Jan. 8 (Bloomberg) -- A former dancer withdrew her suit against Johnson & Johnson over defective hip implants on the eve of the first trial of more than 10,000 lawsuits claiming the devices left patients immobilized.

Lawyers for Moira Jackson today asked to drop claims in Maryland state court that J&J's DePuy unit didn't properly warn her about the ASR hip implants' risks. Judge Crystal Dixon Mittelstaedt approved the request, according to court papers.

The request came after a seven-woman, five-man jury was selected in Upper Marlboro, Maryland to consider Jackson's claims that the implants left the retired dancer immobilized, in pain and subject to numerous surgeries.

J&J in 2010 recalled its 93,000 ASR hips worldwide, including 37,000 in the U.S., saying more than 12 percent of them failed within five years. Patients suing J&J claim metal debris from the hips, made from a cobalt-chromium alloy, causes tissue death around the joint and may increase metal ions in the bloodstream to harmful levels.

Lorie Gawreluk, a spokeswoman for New Brunswick, New Jersey-based J&J, declined in a telephone interview to comment on the dismissal of the case. Brian Franciskato, one of Jackson's lawyers, also didn't return a call.

10,000 Cases

J&J faced 10,100 suits over the DePuy hips as of September, according to a November filing with the U.S. Securities and Exchange Commission. The company increased reserves "due to anticipated product liability litigation and costs associated with" the ASR hips, it said in a court filing. It didn't specify the amount of the increase.

The company said in January 2012 that it spent about \$800 million on hip recalls during the prior two years. J&J wouldn't estimate its product-liability costs.

Many of the hip suits have been consolidated before a federal judge in Ohio for pretrial information exchanges. U.S. District Judge David Katz in Toledo has set the first of those cases to go to trial in May, according to a December court filing. The second trial is set for July.

Cases Joined

Filings in Jackson's case indicate that Franciskato may refile his client's claims in the consolidated federal litigation.

Under an agreement between Jackson and J&J, the former dancer will drop her suit in Maryland and her claims will be "subject to refiling in federal court," Susan Sharko, a lawyer for the drugmaker, told Mittelstaedt today, according to a transcript of the hearing.

The agreement to shift Jackson's claims out of state court came as a result of talks between J&J and the plaintiff's lawyers, the judge said.

Moving Jackson's and other artificial-hip recipients' claims to federal court in Ohio puts the suits in "a good place for all the parties," Altom Maglio, another of the retired dancer's lawyers, told the judge. Maglio agreed to dismiss four other hip claims filed in Maryland along with Jackson's case.

The consolidated federal case is In re DePuy Orthopedics Inc., ASR Hip Implant Products Liability Litigation, 10-MD-2197, U.S. District Court, Northern District of Ohio (Toledo). The Maryland case is Jackson v. DePuy Orthopaedics Inc., CAL 10- 32147, Circuit Court, Prince George's County, Maryland (Upper Marlboro).

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