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J.&J. Loses First Case Over Faulty Hip Implant

By BARRY MEIER

A jury in Los Angeles on Friday ordered Johnson & Johnson to pay more than $8.3 million in damages to a Montana man in the first of more than 10,000 lawsuits pending against the medical products maker in connection with a now-recalled artificial hip.

The 12-member panel, however, declined to issue punitive damages, saying the company's DePuy orthopedics unit, which made and marketed the all-metal device, did not act with fraud or malice. The implant, known as the Articular Surface Replacement, or A.S.R., was recalled in mid-2010.

In a statement, the company described the verdict as "mixed" and said that it planned to appeal the damage award. It disputed the finding by the jury that the A.S.R. was defectively designed.

It was impossible to say what the verdict, which came in a Los Angeles state court, would mean for other A.S.R.-related cases. A trial on a second lawsuit is scheduled to begin Monday in Chicago, with other cases expected to proceed later this year.

In its decision, the panel ordered Johnson & Johnson to pay the case's plaintiff, a retired Montana prison guard, Loren Kransky, $338,000 to cover his medical expenses. It also ordered him to be paid $8 million to cover his pain and emotional suffering.

Some lawyers and industry analysts have estimated that the suits ultimately would cost Johnson & Johnson billions of dollars to resolve.

Thousands of the individual cases have been consolidated into a large proceeding in a Federal District Court in Ohio and a resolution of that action could provide a framework for settling the bulk of the cases and determining awards to patients.

The A.S.R. belonged to a class of once widely used hip replacements whose cup and ball components were both made of metal.

It was first sold by DePuy in 2003 outside the United States for use in an alternative hip replacement procedure called resurfacing. Two years later, DePuy started selling another version of the A.S.R. for use in the United States in standard hip replacements that used the same cup component as the resurfacing device.

However, the A.S.R.'s design caused the cup and ball to strike against each other as a patient moved, resulting in the shedding of metallic debris. That debris inflamed and damaged tissue and bone, causing

pain and, in some cases, permanent injuries to patients.

Today, all-metal hips like the A.S.R. are rarely used by surgeons because most models suffered from similar problems. But data from orthopedic registries suggests that the A.S.R. was far worse than many competing products.

An internal Johnson & Johnson document introduced at the Los Angeles trial estimated that close to 40 percent of patients who received an A.S.R. will need to undergo a second operation within five years of the first to have the implant removed and replaced. In a recent filing with the Securities and Exchange Commission, Johnson & Johnson said that there are 10,750 A.S.R. lawsuits.

Traditional artificial hips, which are made of metal and plastic, are expected to last 15 years or more before needing to be replaced, and the normal replacement rate for early unexpected failures is about 5 percent after five years.

The lawsuit heard in Los Angeles was not originally scheduled to be the first over the A.S.R. but it was moved up because Mr. Kransky was found to have terminal cancer. Before the start of the Los Angeles trial, which began in late January, Mr. Kransky's lawyers had not expected him to live through it.

Internal Johnson & Johnson documents that became public during the trial indicated that company executives were told by surgeons, who were also paid consultants to the device maker, that the design of A.S.R. was flawed. In addition, some surgeons also urged the device maker to slow sales of the implant or stop them completely, records show.

In the case, evidence was also presented that showed that Johnson & Johnson considered redesigning the A.S.R. to reduce its problems, but then abandoned the project because the implant's sales did not justify the costs of the redesign. One of the DePuy executives involved in that decision was Andrew Ekdahl, who now heads Johnson & Johnson's orthopedics division.

Johnson & Johnson executives like Mr. Ekdahl have said throughout the A.S.R. episode that they acted responsibly and moved to recall the device in 2010 when data from an orthopedic registry in Britain showed that its failure rate was higher than normal.

Before reaching its verdict Friday, the jury that heard Mr. Kransky's case deliberated for more than five days. Mr. Kransky's lawyers, citing what they described as the unethical behavior of DePuy executives in failing to warn doctors and patients of the device's defects, asked jurors to punish Johnson & Johnson by awarding their client $36 million to $144 million. Jurors declined to do so.

Nonetheless, lawyers representing Mr. Kransky hailed the verdict.

“This is a victory for Mr. Kransky and thousands of other badly damaged A.S.R. patients who have yet to get their day in court,” Brian Panish, one of Mr. Kransky's lawyers, said in a statement. “Jurors across the country will return similar verdicts until J.&J. takes full responsibility.”

A DePuy spokeswoman, Lorie Gawreluk, said in the company's statement that it planned to appeal Friday's verdict, contending that the A.S.R.'s design was not defective.