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J&J Must Pay \$8.3 Million Over Defective Hip, Jury Says

By Maurice Possley, David Voreacos and Edvard Pettersson - Mar 8, 2013

Johnson & Johnson (JNJ)'s DePuy unit defectively designed a metal-on-metal hip implant and was negligent, a California jury decided in the first of 10,750 lawsuits over the device to go to trial.

The Los Angeles jury awarded \$8.3 million in compensatory damages to Loren "Bill" Kransky, a retired prison guard from Montana, after finding that the design of the ASR XL hip caused his injuries. Jurors also found DePuy properly warned of the risks and didn't owe punitive damages to punish the company.

J&J, the world's largest seller of health-care products, recalled 93,000 of the implants in August 2010, when it said 12 percent failed within five years. Last year, 44 percent failed in Australia within seven years. Analysts say the lawsuits could cost J&J billions of dollars to resolve.

"This is not an imperfect hip, this is a public health disaster," Kransky's attorney Michael Kelly said in closing arguments on Feb. 28 after a five-week trial. "Somebody needs to tell them, 'Don't make Bill Kransky come to court. Build these things right. Don't let this happen again.'"

Patients such as Kransky, 65, complain in lawsuits of dislocations, pain and follow-up surgeries known as revisions. Kransky's lawyers argued that DePuy failed to test the device adequately before selling it in the U.S. in 2005, buried surgeon complaints of mounting failures, and studied a redesign of the ASR before scrapping that effort in 2008.

Punitive Damages

"I wanted punitive damages," juror David Vega said after the verdict. He cited evidence that DePuy took too long to correct problems found with the device.

DePuy, a unit of New Brunswick, New Jersey-based J&J, intends to appeal the jury's decision on design defect, said spokeswoman Lorie Gawreluk.

"We believe ASR XL was properly designed, and that DePuy's actions concerning the product were appropriate and responsible," Gawreluk said in a statement. One reason for appeal, she said, is jurors weren't allowed to hear of the Food and Drug Administration's review and clearance of the device.

Kransky's lawyer Brian Panish had asked for compensatory damages of \$5.3 million and punitive damages, indicating "fraud or malice," of as much as \$179 million.

The verdict, which came on the sixth day of deliberations, included \$338,136 for Kransky's medical expenses and \$8 million for his physical pain and emotional suffering.

The panel awarded no damages for negligence, saying it didn't cause injury to Kransky.

"This is the first day of reckoning for DePuy," Panish said after the verdict. "We've learned a lot from this trial. We'll get punitive damages in the next trial."

'Starting Price'

The verdict will set a "starting price" for other plaintiffs in settlement discussions, said Erik Gordon, a University of Michigan business professor.

"Most plaintiffs will get more sympathy from jurors than Mr. Kransky elicited," Gordon said in an e-mail. "A jury somewhere is going to hit the company with huge punitive damages to send a message that J&J refuses to hear."

At trial, J&J's attorneys emphasized the health problems of Kransky, who had his ASR implanted in December 2007 and removed in February 2012.

Kransky's "diabetes, cancer, kidney disease, heart disease, vascular disease and his many other health problems are unrelated" to his hip, J&J's attorney Michael Zellers said in his summation. J&J lawyers said he was a vasculopath, which means he has diseased blood vessels throughout his body.

Constant Pain

"The evidence is clear that Mr. Kransky's injuries were not caused by a defect in the ASR XL hip or by any conduct of DePuy," Zellers said. "This case is just about Mr. Kransky and what caused his ASR XL to be replaced. It's not a case about a recall. It's not about revision rates."

Kransky testified that he dreaded the revision surgery he had to remove his hip. Kransky said he

was in constant pain, couldn't walk and believed debris from the chromium and cobalt device was poisoning him.

"I didn't want to have the hip done because I had 25 surgical procedures done prior to that," Kransky told jurors. "I thought that surgery was going to kill me. I thought I was going to die."

Kransky said he had no choice but to get the revision.

"I came to believe that I was going to have to do it because I was told that something in my body was poisoning me," Kransky said. "I was told it could be the hip. I thought, 'I'm going to die either way.' One way would be slow and one would be fast. I took the lesser of two evils."

Wheelchair 'Humiliating'

Before then, he said, he experienced "a kind of stabbing type of pain. It was debilitating. I couldn't do anything, couldn't walk long distances."

Kransky said he couldn't rehabilitate properly after a stroke, couldn't use the bathroom freely, and couldn't sleep at night. He temporarily needed a wheelchair, which was "humiliating."

J&J faces its second trial over the ASR on March 11 in state court in Chicago. Carol Strum, a nurse from Illinois, had an ASR implanted on Jan. 29, 2008, and removed on Jan. 6, 2011.

The case is Kransky v. DePuy, BC456086, California Superior Court, Los Angeles County (Los Angeles).

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