

Hip implant manufacturer ordered to pay \$8.3 million judgement

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By BILL HETHERMAN

The manufacturer of a hip implant that was later the subject of a voluntary recall was ordered today by a Los Angeles jury to pay an \$8.3 million judgment, concluding the first of thousands of scheduled trials concerning the device.

The Los Angeles Superior Court jury deliberated for a week in plaintiff Loren Kransky's case before finding that DePuy Orthopaedics Inc. was negligent and produced a device with a defective design when it put the ASR XL on the market.

Most of the money, \$8 million, will compensate Kransky for emotional distress.

The jury found that DePuy did not act with malice, which bars Kransky from collecting any punitive damages.

Attorney Brian Panish, on behalf of Kransky, praised the jury verdict, predicting it will be the first of many to come against DePuy.

He said the next trial against DePuy is scheduled in San Francisco and that another one is scheduled in Los Angeles in August.

Defense attorney Alexander Calfo declined to comment on the verdict, but a DePuy representative said an appeal is planned.

"We believe ASR XL was properly designed and that DePuy's actions concerning the product were appropriate and responsible," said DePuy spokeswoman Lorie Gawreluk. "We plan to appeal the jury's decision on design defect pending the outcome of post-trial motions. We believe we have a number of valid grounds for appeal, notably that the court didn't let the company tell the jury about the Food and Drug Administration's review and clearance of the device."

Opening statements in the trial began Jan. 25, when attorney Michael Kelly, also on behalf of Kransky, told jurors that his client's doctor never would have implanted the device if he had been informed that other doctors worldwide were complaining about its safety.

"They patently failed to share with the doctors what they knew so they could make a fair choice for their patients," Kelly said. Calfo told jurors that Kransky's lawyers were trying to blame their 65-year-old client's health problems — attributable in part to a smoking habit that began when the plaintiff was 12 — on the ASR XL.

"Mr. Kransky did not get worse because of the ASR and did not get better later because it was later taken out," he said.

Kransky and his wife, Sheryl, sued Johnson & Johnson and DePuy in Feb. 2011, alleging the company knew it produced a faulty product. Johnson & Johnson was later dropped as a defendant.

Kelly played for the jury deposition testimony from one of Kransky's physicians, Dr. Thomas Trotsky, who explained why the ASR XL implanted in the man's left hip needed to be removed.

"We felt we were dealing with a man who was slowly dying from being poisoned," Trotsky said.

DePuy made a "perfectly suitable alternative device" to the ASR XL that sold for \$800 less, Kelly told jurors.

But according to Calfo, Kransky's medical concerns before he had surgery to have the DePuy implanted in Dec. 2007 included smoking, diabetes and high blood pressure.

Calfo criticized Kelly's description of a gray area on hip tissue in a photo of Kransky's open wound during surgery. Kelly said it depicted metal poisoning from metallosis.

Calfo downplayed the significance of the gray area and said Kelly gave a wrong assessment of metallosis.

"Metallosis is not metal poisoning," Calfo said.

The ASR XL caused Kransky various medical problems, including metal poisoning from the metal-on-metal grinding of the device's components, according to Kelly.

The attorney said metal debris and ions reached Kransky's hip tissue and bloodstream and that alternative materials, such as plastic, would have been safer.

Doctors in Europe were among the first to complain about the ASR XL, and DePuy's own analysis showed company officials knew that about 37 percent of those receiving the device would experience a failure within 4 1/2 years, Kelly said.

Kelly said he and Kransky's other lawyers do not blame their clients' prior health problems on the ASR XL.

There are currently about 10,000 DePuy ASR lawsuits pending in the United States and about 37,000 people in the country with ASR XL implants, according to reports.

Defense attorneys also maintained that Kransky was aware of the risks involved in hip replacement surgeries and that there is no evidence the ASR was defectively designed.

Loren Kransky testified during a deposition that the ASR XL device was removed last February and replaced with another implant that has restored his hip to its normal state.



(Flickr: steakpinball)

The Food and Drug Administration cleared the use of the ASR XL in 2005.

DePuy's voluntary recall occurred in August 2010.

Kransky is a former North Dakota prison guard and a longtime resident of Montana, where he had the surgery for the ASR XL implant.

The trial took place in Los Angeles because two of the doctors involved in developing the implant were from this city and San Francisco.