

Defective Hip Implant Litigation Global Update

By Hadley L. Matarazzo

A lot has happened in the world of the defective hip litigation in the year since I wrote the last article on this topic. In my prior article, I focused on metal-on-metal hip implant Multidistrict Litigations.¹ Briefly, Multidistrict Litigation (“MDL”) is created when a special federal legal procedure is used to centralize cases pending in federal district courts throughout the country involving one or more common questions of fact before one federal district court judge to handle all general pre-trial proceedings and discovery. As discussed below specific to New Jersey, a number of states have a similar centralization procedure. As of April 2014, there were five pending metal-on-metal hip implants MDLs based on manufacturer and model. This article focuses on the trend of global settlement in centralized hip implant litigation and discusses three of those five pending metal on metal hip implant MDLs as well as other centralized hip implant litigations involving dual modular hips.



MDL 2197: *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation*

As of February 17, 2015, the Judicial Panel on Multidistrict Litigation (the “Panel”) reported a total of 9,362 filed cases with 7,116 cases then pending in the Northern District of Ohio.² On November 19, 2013, within weeks following the postponement of the bellwether or lead trial case in this MDL, a global settlement was announced. DePuy Orthopaedics, Inc. (“DePuy”) agreed to pay nearly \$2.5 billion to compensate all individuals who were implanted with an ASR hip that was removed by August 31, 2013, subject to certain exceptions.³ The Master Settlement Agreement was published to the public via the ASR hip settlement website maintained by the claims administrator.⁴

On February 3, 2015, a jury in Tulsa County, Oklahoma awarded \$2.5 million to a woman who was implanted with ASR hips on both sides of her body in 2006 and 2007. Both ASR hips were revised within six years of implantation due to significantly elevated metal ions in her bloodstream. The jury found that the ASR hip was defectively designed, but found for DePuy on the negligence and failure to warn claims. The jury did not award punitive damages.

On February 20, 2015, the parties filed a Joint Status Report with the MDL court stating they “are pleased to announce to the Court an agreement which would effectively extend the existing U.S. Settlement Program to U.S. citizens/residents with ASR™ hips, who had revision surgery on or before January 31, 2014, subject to the terms and conditions of the Program.”⁵ According to the report, detailed information regarding this second settlement program was to be available on the claims administrators’ website in late March 2015.

MDL 2244: *In re DePuy Orthopaedics, Inc. Pinnacle Hip Implant Products Liability Litigation*

As of February 17, 2015, the Panel reported a total of 7,133 filed cases with 7,045 cases then pending in the Northern District of Texas involving DePuy’s Pinnacle metal on metal hip implant. The Panel issued the MDL transfer order on May 24, 2011.⁶ On September 10, 2013, the court began the discussion with counsel of selection of bellwether or lead cases for trial in the MDL.⁷ Shortly thereafter, the court issued an Order staying all cases pending bellwether trials.⁸

On September 2, 2014, a jury was selected for one of the bellwether cases, *Herlihy-Paoli v. DePuy Orthopaedics, Inc.*, and opening statement commenced on September 3, 2014.⁹ Prior to trial, the judge denied all of DePuy’s motions to dismiss and for summary judgment and motions to exclude expert testimony.¹⁰ After many weeks of trial and little more than a day of deliberations, the jury returned a defense verdict.¹¹

On February 18, 2015, the court issued an order selecting 10 additional bellwether cases to be prepared for trial.¹² As of the writing of this article, no trial dates had been set for these 10 cases. The stay remained in place for all of the other cases in the MDL.¹³

MDL 2391: *In re Biomet M2a Magnum Hip Implant Products Liability Litigation*

As of February 17, 2015, the Panel reported a total of 2,451 filed cases with 1,963 cases pending in the Northern District of Indiana involving Biomet’s metal-on-metal hip implant.¹⁴ The Panel began the transfer of cases from federal district courts throughout the country to this MDL on October 2, 2012.¹⁵ In a little more than two years, the parties reached an agreement on a global settlement.¹⁶ Unlike the ASR settlement discussed above, the terms of the Biomet settlement are confidential.

MCL Docket No. BER-L-936-13: *In re Stryker Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation*

As of January 13, 2015, the New Jersey Multicounty Litigation (MCL) Center reported a total of 2,185 filed cases involving Stryker Rejuvenate and ABG II dual modular hip implants.¹⁷ The New Jersey Supreme Court ordered centralization of these cases on January 15, 2013.¹⁸ Within the federal court system, the Panel established a MDL approximately six months after New Jersey established its MCL.¹⁹ Unlike the metal-on-metal hip implants discussed above, these hip implants were voluntarily recalled by Stryker in June 2012 “due to the potential for fretting and corrosion at the modular-neck junction that may result in ALTR (adverse local tissue reactions), as well as possible pain and/or swelling at or around the hip.”²⁰

The New Jersey court adopted a novel bellwether approach and instead of setting bellwether trials at the outset, Hon. Brian R. Martinotti, along with counsel for the parties, established a bellwether mediation process with bellwether trials to follow if the mediations were not successful. On April 2, 2013, the court entered an Initial Mediation Consent Order directing the parties to choose six mediators and to identify eligible plaintiffs who intended to participate in the mediation process.²¹ The mediation proceeded in three phases. As of October 8, 2014, all Phase I cases settled, 20 out of 21 Phase II cases settled and 10 Phase III cases were selected for mediation.²²

Shortly after the Phase II mediation concluded on November 3, 2014, the parties entered into a Settlement Agreement pertaining to all plaintiffs and claimants who had a Stryker Rejuvenate or ABGII implanted in the United States that was revised prior to November 3, 2014.²³ In this case, it was clear that the bellwether mediation process was a more cost effective and faster way of bringing about global resolution of the cases. It will be interesting to see if this approach is adopted by other MCL and MDL courts in the future.

Endnotes

1. Matarazzo, H., *Defective Metal on Metal Hip Implant Claims in Federal Multidistrict Litigation: More than 8,500 Filed Cases*, The Senior Lawyer, NYSBA, Vol. 6; No. 1 (Spring 2014).
2. http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-February-17-2015.pdf (last visited February 25, 2015).
3. https://www.usasrhipsettlement.com/Un-Secure/Docs/FINAL_ASR_SETTLEMENT.pdf (last visited February 25, 2015).
4. <https://www.usasrhipsettlement.com/> (last visited February 26, 2015).

5. <http://www.ohnd.uscourts.gov/assets/Joint-Status-Report-Re-Settlement-Program.pdf> (last visited February 25, 2015).
6. http://www.txnd.uscourts.gov/pdf/mdl/311-md-2244_1.pdf (last visited February 26, 2015).
7. http://www.txnd.uscourts.gov/pdf/mdl/3-11-md-2244_325.pdf (last visited February 26, 2015).
8. <http://www.txnd.uscourts.gov/pdf/mdl/2244-348.pdf> (last visited February 26, 2015).
9. <http://www.txnd.uscourts.gov/judges/MDL/depuy.html> (last visited February 26, 2015).
10. <http://www.txnd.uscourts.gov/pdf/mdl/3-12-cv-04975-92.pdf> and <http://www.txnd.uscourts.gov/pdf/mdl/3-12-cv-04975-91.pdf> (last visited February 26, 2015).
11. <http://www.txnd.uscourts.gov/judges/MDL/depuy.html> (last visited February 26, 2015).
12. http://www.txnd.uscourts.gov/pdf/mdl/2244_491.pdf (last visited February 26, 2015).
13. *Id.*
14. http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-February-17-2015.pdf (last visited February 25, 2015).
15. <http://www.innd.uscourts.gov/sites/innd/files/MDL%202391%20transfer%20ord.pdf> (last visited February 26, 2015).
16. <http://www.innd.uscourts.gov/sites/innd/files/Biomet%20Common%20Benefit%20Settlement%20Agreement.pdf> (last visited February 26, 2015).
17. <http://www.judiciary.state.nj.us/mass-tort/abgstryker/caselist.pdf> (last visited February 27, 2015).
18. <http://www.judiciary.state.nj.us/notices/2013/n130130a.pdf> (last visited February 27, 2015).
19. <http://www.mnd.uscourts.gov/MDL-Stryker/introduction.shtml> (last visited February 27, 2015).
20. <http://www.stryker.com/en-us/products/Orthopaedics/modularneckstems/index.htm> (last visited February 27, 2015).
21. <http://www.judiciary.state.nj.us/mass-tort/abgstryker/mediation-order.pdf> (last visited February 27, 2015).
22. <http://www.judiciary.state.nj.us/mass-tort/abgstryker/cmo19.pdf> (last visited February 27, 2015).
23. http://strykermodularhipsettlement.com/docs/master_settlement_agreement.pdf (last visited February 27, 2015).

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