

Jury Clears Zimmer Of Design Defect In 1st Knee Implant Trial

By Jessica Corso

Law360, Chicago (November 6, 2015, 4:00 PM ET) -- Zimmer survived its first test in sprawling multidistrict litigation alleging a design defect in its NexGen knee implant series, with an Illinois federal jury Friday rejecting claims brought by a bellwether plaintiff who said two poorly designed implants caused her irreparable harm.

Following deliberations that began late Thursday afternoon, a 12-person jury found that Zimmer Inc. had not acted negligently in designing the NexGen devices and had not failed to warn the surgeon performing bellwether plaintiff Kathy Batty's double knee-replacement surgery that the devices were susceptible to loosening.

Batty was the first person to challenge the NexGen series in front of a jury after thousands of claims were centralized in a Chicago federal court in 2011. She claimed that both of her knee implants came loose just two years after undergoing the surgeries, but in the course of the monthlong trial, Zimmer insisted that Batty's operating surgeon hadn't properly secured the implants in place.

At closing arguments Thursday, Zimmer attorney Jim O'Neal said Batty lacked evidence that her problems were caused by poor design, saying that the device is a "very good, very important implant and it needs to be defended."

O'Neal pointed to dozens of studies that demonstrated high success rates for those who have been using the device for a number of years. The NexGen knees were marketed as providing a higher degree of flexibility than competing implants, capable of reaching the level of flexibility of a natural human knee, according to MDL plaintiffs.

While O'Neal didn't contest the high-flexibility claims, both he and his fellow Faegre Baker Daniels attorney Andrea Pierson said the problem wasn't that Batty overtested the flexibility of the device but that she performed too much activity too soon.

Batty testified two weeks ago that within months of undergoing double knee-replacement surgery, she was doing daily exercise and back to working full time as a post office custodian, carrying heavy loads up and down staircases.

This was in spite of package inserts on NexGen products that warned of the danger of loosening in cases of "excessive activities," Pierson said. She said Batty's doctor never warned her of that risk or bothered to restrict her activities.

Batty's attorney Jim Ronca argued that Zimmer was trying to pass the blame onto a physician who "is not a billion-dollar company" and suggested that the company's motive in pushing out a dangerous product was greed.

"This is not a company that is looking out for the patients," he told the jury.

In a statement to Law360 on Friday, Ronca said it was too early to say what Batty's next move would be.

"Judge [Rebecca] Pallmeyer is a fantastic judge and the hardest-working judge we have ever seen but naturally there were some rulings against us," he said. "We must carefully consider what type of post-trial motions we will file."

A representative for Zimmer couldn't be reached for immediate comment Friday.

Batty was 54 when she underwent a double knee replacement in 2009 due to severe arthritis that destroyed all of the cartilage in both her knees. She had to have new devices implanted in 2011 after her original knees came loose.

Batty told the jury she is now in constant pain and will likely have to have a third revision in six years because her new implants, made by Zimmer competitor DePuy, don't have the 20-year life expectancy that the Zimmer implants supposedly had.

Batty is represented by Jim Ronca of Anapol Weiss, Tim Becker of Johnson Becker PLLC, Tobias Millrood of Pogust Braslow & Millrood LLC and Peter Flowers of Foote Meyers Mielke & Flowers PC.

Zimmer is represented by Andrea Roberts Pierson, James A. O'Neal, Bruce Jones, Amy R. Fiterman, James Stephen Bennett and Abigail M. Butler of Faegre Baker Daniels.

The case is Batty et al. v. Zimmer Inc. et al., case number 1:12-cv-06279, in the U.S. District Court for the Northern District of Illinois.

The MDL is In re: Zimmer Nexgen Knee Implant Products Liability Litigation, case number 1:11-cv-05468, in the same court.

--Editing by Mark Lebetkin.