

## Product Liability MVP: Faegre Baker Daniels' Joe Price

By **Sindhu Sundar**

*Law360, New York (November 23, 2015, 7:07 PM ET)* -- Faegre Baker Daniels' Joe Price is a veteran of mass torts litigation that took wing in the 1970s and his recent key victories for device maker Zimmer Inc. in the first bellwether trials over its allegedly defective Durom Cup hip replacement device have put him among Law360's Product Liability MVPs.

Price led Zimmer to its victory in the first bellwether trial over the hip implant, which took place in the reputedly plaintiff-friendly jurisdiction of St. Clair County, Illinois. The nearly month-long trial, in which plaintiff John Pugliese targeted the Durom Acetabular Cup, ended in a win in November 2014 for Zimmer, after Price and his team argued that the implant may have come loose because of a post-surgery infection, rather than any alleged defect in the device.

"Technically we didn't have to show anything, because the burden of proof is on the plaintiff," Price said. "But practically speaking, we had to show one, that the implant was not defective, two, that the warnings to the implanting doctor were adequate and three, we did show alternative causation, which was that there was a significant infection that the plaintiff developed."

The win was hailed as a positive sign for Zimmer, which at the time was facing more than 300 suits over the device, including in the federal multidistrict litigation in New Jersey. Price then followed that victory with another important win for the company, this time against plaintiff Harold Mullin in August, also in St. Claire County state court.

The victory in the weeks-long trial in the Mullin case was significant not only because of the venue but also because it happened to be a case chosen for trial by the plaintiffs. Mullin, like many other implant patients, had accused Zimmer of design and manufacturing defects, failure to warn recipients about the implant's risks and failing to properly test a coating that they claimed doesn't properly bond with the body. But Price helped Zimmer win the case by persuading the jury that the implant at issue was not loose.

The main challenge posed by both those cases was the fact that they were both tried in St. Claire, Illinois, Price said, calling that a venue where defendants often "do not fare well with courts and juries."

"It took pretty significant good work to be able to convince two juries, let alone one," Price said. "And in a product liability situation in a mass tort, these are difficult cases to win. So we had to concentrate on



Joe Price  
Faegre Baker Daniels

establishing that this was a good product, and that it didn't cause the claimed injury.”

Price got his start in mass tort litigation roughly in the mid-1970s, representing defendants in the litigation in Minnesota over the Dalkon Shield intrauterine device, which allegedly caused problems including pelvic inflammatory disease. A few years after that, he was enlisted by 3M Co. to represent it as national counsel in the Silicone gel breast implant litigation, in which patients who had undergone breast implant surgery had alleged the implants caused illnesses including fatigue and neurological and autoimmune diseases. The breast implant cases, which targeted several other defendants including Dow Corning, settled for a total of more than \$2 billion in the mid-1990s.

But Price said that his approach to handling mass tort cases is to always prepare the cases as if they would be to go to trial, even if the eventual goal may often be to seek a resolution.

“You need to be looking at these cases as though they are ultimately going to trial, and how you can best posture these cases to win at trial,” he said. “If you're not willing to try these cases, then you can become a target for an attempt to leverage you, by the sheer numbers of these suits, into a mass settlement.”

--Additional reporting by Shannon Henson and Joe Van Acker. Editing by Emily Kokoll.

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