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NJ Stryker Hip Implant Suits Consolidated In State Court

By **Bill Wichert**

Law360, Clifton, N.J. (June 1, 2017, 7:49 PM EDT) -- The New Jersey Supreme Court has approved a bid from consumers to consolidate state court lawsuits against a Stryker Corp. unit over an allegedly defective hip replacement device that, when connected to another component, has caused corrosion and required patients to undergo corrective surgeries.

In a notice published Thursday, the state judiciary said the Supreme Court has granted the application to designate all pending and future actions against Stryker's New Jersey-based unit Howmedica Osteonics Corp. as multicounty litigation in connection with Stryker LFIT Anatomic Cobalt Chromium V40 femoral heads.

The court has assigned the MCL to Bergen County for centralized case management by Superior Court Judge Rachelle Harz, who also is overseeing multicounty litigation over the Stryker Rejuvenate Hip Stem and ABG II Modular Hip Stem components.

The designation comes less than a year after Stryker in August issued a voluntary recall of certain lots of the device manufactured before March 2011, citing "higher than expected" complaints about the failure of the femoral head to fully lock onto the stem at the stem-head taper junction, also referred to as "taper lock failure."

In April, the U.S. Judicial Panel on Multidistrict Litigation signed off on a request by plaintiffs to consolidate federal court lawsuits against Howmedica over the femoral heads in Massachusetts federal court.

Ellen Relkin of Weitz & Luxenberg PC, whose firm represents some of the state court plaintiffs and who submitted the MCL application, told Law360 on Thursday, "While preliminary disclosures occurred following an informal coordination in Bergen County, it is appropriate that there be a formal MCL so that there can be coordinated discovery within the NJ MCL and with the new MDL."

The plaintiffs are pleased that the Supreme Court did not limit the MCL to specifically recalled lot numbers — which Stryker had advocated for — as there are numerous device failures of non-recalled femoral heads, according to Relkin.

"We believe the problem is not just due to the femoral head design, but also its intersection with the Stryker Accolade, Meridian and Citation titanium alloy femoral stems. Plaintiffs look forward to prompt production of documents in response to long standing discovery demands," Relkin added.

Kim M. Catullo of Gibbons PC, an attorney representing Stryker in the matter, declined to comment Thursday. Stryker spokeswoman Jo K. Hawk said Thursday that the company declined to comment.

In her Jan. 24 application for the MCL, Relkin said the problem with the devices involves fretting and corrosion in the junction where the femoral head connects to the femoral stem. Corrosion at that junction has led to the systematic release of metal particles into surrounding tissue and bone, putting patients at risk of certain medical conditions and possibly requiring revision surgery, she said.

The device also has been associated with "sudden and catastrophic disassociation of the femoral head from the femoral stem," Relkin said.

"Excessive corrosion at the head-neck junction causes the femoral head to break off from the neck of the stem, become loose in the body, and depart from the acetabular cup where it is supposed to articulate as part of the joint requiring immediate revision surgery and replacement of the entire femoral stem and femoral head," Relkin said.

In seeking MCL status, Relkin argued in part that the litigation involves recurrent legal issues of design defect, failure to warn, breach of warranty and possibly manufacturing defect. She also said there are significant overlapping factual liability issues, such as those relating to the nature of the metals in the product and how it was cast or forged, and the nature of the defect.

Relkin said in her application that the MCL designation would apply to at least 85 pending cases.

But in a March 6 response to the application, Catullo argued that the designation is unnecessary, saying the pending lawsuits are already assigned to Judge Harz and steps have been taken to effectively coordinate the matters.

If an MCL designation is granted, it should only include cases involving recalled LFIT V40 femoral heads where the claims are for injuries relating to taper lock failure, Catullo said.

Catullo said the plaintiffs' requested designation for all LFIT V40 femoral head cases in New Jersey "would incorrectly capture cases involving varied and dissimilar issues of liability, causation, and damages focused on other components or combinations of components, merely because an LFIT V40 femoral head happened to be one of the several hip system components."

"Given the inevitable and fundamental dissimilarities in the cases that would be lumped together, an MCL designation that simply captures all cases involving an LFIT V40 femoral head would be impossible to manage effectively," Catullo added.

The case is In re: Stryker LFIT Anatomic CoCr V40 Femoral Heads Litigation, case number 624, in the Superior Court of the State of New Jersey, County of Bergen.

--Editing by Breda Lund.
