

Johnson & Johnson Offers \$2.5 Billion Hip Device Settlement

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Published: November 19, 2013

Johnson & Johnson and lawyers for patients injured by a flawed hip implant announced a multibillion-dollar deal Tuesday to settle thousands of lawsuits, but it was not clear whether the deal would satisfy enough claimants.

Under the agreement, the medical products giant will pay some \$2.475 billion in compensation to an estimated 8,000 patients who have been forced to have the all-metal artificial hip removed and replaced with another device.

Separately, the company has agreed to pay all medical costs related to such procedures, expenses that could raise the deal's cost to Johnson & Johnson to some \$3 billion, said people familiar with the proposal.

The typical patient payment for pain and suffering caused by the device will be about \$250,000 before legal fees, under the plan. Based on standard agreements, plaintiffs' lawyers would receive about one-third of the overall payout, or more than \$800 million, with those who negotiated the plan emerging as big winners.

The settlement plan, which was submitted to a federal judge in Toledo, Ohio, on Tuesday, must receive the support of 94 percent of eligible claimants to go forward. Whether it will reach that goal is unclear. Under the deal, some patients will receive relatively small payouts and others will see payments reduced because the plan imposes a user's fee on awards based on how long a patient had the implant.

Some patients, many of whom who suffered severe pain and injury from metallic debris generated by the debris, spent years trying to convince doctors there was a problem Johnson & Johnson was denying one.

The now-recalled device, known as the Articular Surface Replacement, or A.S.R., ranks as one of the most-flawed medical implants sold in recent decades. The DePuy Orthopaedics division of Johnson & Johnson estimated in an internal document in 2011 that the device would fail within five years in 40 percent of the patients who received it.

Traditional artificial hips, which are made of metal and plastic, typically last 15 years or more before requiring replacement. DePuy recalled its device in mid-2010 amid rising failure rates.

The A.S.R. was sold in two versions, one for use in traditional hip replacement and the other for use in an alternative procedure known as hip resurfacing. Beginning in 2003, it was implanted in about 93,000 patients, about one-third of them in the United States.

The A.S.R., which had a metal ball and a metal cup, sheds metallic debris as it wears, generating particles that have damaged tissue in some patients or caused crippling injuries.

The precise value of the settlement is not known because it will vary based on the number

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of plaintiffs who qualify for it.

DePuy faces some 12,000 A.S. R-related legal claims in the United States. Lawyers estimate that about 8,000 of those claims involve patients who underwent operations to have an A.S.R. removed and replaced.

The remaining plaintiffs, about 4,000 patients, will not receive any compensation, though there is a provision to add \$250,000 to the deal for each patient who undergoes a replacement procedure before the plan is finalized. The lawyers believe that Johnson & Johnson will probably have to make a subsequent settlement with added patients as the device fails in them.

Thus far, only two A.S.R. lawsuits have gone to trial. In March, a Los Angeles jury ordered DePuy to pay \$8 million in damages to a Montana man after finding that the A.S.R. was defectively designed. Then in August, a Chicago jury sided with DePuy and rejected claims that it had inappropriately marketed the implant.

Under the plan announced Tuesday, the \$2.475 billion payment by Johnson & Johnson would be divided into two pots.

The deal would create a \$2 billion pool to cover basic awards and a separate \$475 million pool to cover additional payments to compensate those patients who sustained more significant injuries related to the device or its removal and replacement.

The average basic award of \$250,000 will be affected by a variety of factors. Under the plan, plaintiffs who smoke, are overweight or are older will see their payments reduced.

In addition, patients who had the device longer will also see reductions. For example, the average payment to a patient who had the device for five to six years would fall to \$225,000 and be reduced to \$200,000 for a patient who had the device six to seven years.

For patients who qualify for the special pool, their payouts would increase based on the severity of their injuries. Lawyers do not know what the number of patients would be to qualify for the pool but they estimate that the figure might be about 10 percent of claimants.

Some of the patients included in the pool would be individuals who had A.S.R.'s on both hips or who had a hip so badly damaged by the device that a procedure to replace it was not completely successful.

Johnson & Johnson's decision to separately pay all medical costs related to a device replacement is unusual, lawyers said. Typically, such costs are part of a settlement award and a claimant is then liable for paying back an insurer or Medicare for their medical costs.

If the deal is approved, the biggest single payment will probably go to a group of lawyers who negotiated the plan. Under the plan they could receive a 6 percent fee, or about \$150 million.

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