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Jury deliberations begin in first trial over DePuy's Pinnacle hips

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By Jessica Dye and Marice Richter

Oct 21 (Reuters) - A lawyer for a Montana woman on Tuesday urged jurors in a U.S. court to find Johnson & Johnson's DePuy Orthopaedics unit liable for failing to warn patients that metal-on-metal Pinnacle hip implants were defective at the close of the first trial over the device.

During the seven-week trial in Dallas, lawyers for Kathleen Herlihy-Paoli accused the company of concealing the safety risks of the metal-on-metal Pinnacle hip implants she received in 2009. They said the company failed to warn doctors and patients that the device could shed metal ions into the bloodstream, infecting surrounding tissue and causing the level of metals such as cobalt in the blood to soar.

DePuy has vigorously fought back against Herlihy-Paoli's claims and said the device did not fail and the plaintiffs' lawyers never identified a specific flaw that caused her injuries.

The jury began deliberating Tuesday evening and will continue Wednesday. The case is before U.S. District Judge Ed Kinkeade in the Northern District of Texas.

The outcome of Herlihy-Paoli's case will weigh on more than 6,000 other cases over Pinnacle hip implants that have been consolidated in the same Dallas federal court, and could impact Johnson & Johnson's willingness to settle the lawsuits or continue to try cases in hopes of beating plaintiffs' claims.

In his closing argument Tuesday, a lawyer for Herlihy-Paoli, Mark Lanier, said DePuy aggressively pushed the metal-on-metal devices for younger patients with active lifestyles, saying they could last longer than versions made with other materials such as ceramic or polyethylene, a type of plastic.

But in doing so, Lanier said, the company ignored years' worth of data suggesting that metal-on-metal hips failed at an abnormally high rate, putting thousands of patients at risk.

"Send a clear message that holds them accountable," Lanier told jurors. He asked them to award at least \$1.4 million for Herlihy-Paoli's medical costs and an additional, unspecified amount in punitive damages.

Throughout the trial, DePuy has maintained that the devices are safe when properly used, and that plaintiffs' lawyers unfairly tried to target Pinnacle for problems linked to different metal-on-metal hip implants, including DePuy's ASR implant, which was recalled in 2010. Last year, DePuy agreed to pay \$2.5 billion to settle more than 7,000 lawsuits over its ASR metal-on-metal hips.

Richard Sarver, a lawyer for DePuy, said Herlihy-Paoli's two Pinnacle hips may have been improperly positioned, and that her active lifestyle may have exacerbated any problems.

"If you place a cup in the wrong position, which is what happened here, bad things happen," Sarver said.

A spokeswoman for DePuy, Mindy Tinsley, said the company is committed to "vigorously defending itself against the claims" made in Pinnacle lawsuits.

The case is Herlihy-Paoli v. Pinnacle, U.S. District Court for the Northern District of Texas, No. 12-4975. (Reporting by Jessica Dye in New York and Marice Richter in Dallas.; Editing by Alexia Garamfalvi and [Lisa Shumaker](#))

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