

Calif. Appeals Court Upholds Breg Win In Pain Pump Suit

By **Sindhu Sundar**

Law360, New York (March 03, 2015, 9:59 PM ET) -- A California appellate court on Monday upheld a lower court jury verdict for device maker Breg Inc., there was enough evidence to show that its pain pump did not cause the injuries of a plaintiff who had claimed the device caused him to develop an arthritic condition.

The appeals court panel affirmed the jury verdict against plaintiff Scott McKenna, who had squared off against Breg in 2013 in the first bellwether trial in the consolidated state litigation over pain pump devices, finding that he did not have the condition chondrolysis.

McKenna had used the Pain Care 3000 infusion pump, which would infuse pain medication into his shoulder joint capsule, after undergoing his shoulder surgery in July 2002. He alleged that he was diagnosed in 2008 with chondrolysis, a condition that can lead to severe arthritis. Breg's main argument in its defense during the trial was that he did not have chondrolysis, but rather secondary arthritis, which its product could not have caused.

The California appellate court said the jury had relied on adequate evidence in ruling that McKenna did not have chondrolysis.

"The defense based on lack of causation was supported by substantial evidence, and because a general verdict was returned, we must infer that the jury returned a defense verdict on that ground," the court said in its ruling.

"It does not matter that there was also substantial contrary evidence, it added. "Because the judgment is presumed to be correct, we must affirm the judgment if it is supported by substantial evidence."

McKenna, a Colorado resident, had undergone his surgery after suffering an injury, according to court documents. He underwent another in December 2008, and then a third one the following year, where he had to have a total shoulder replacement, according to court documents.

His case was among the Judicial Council Coordinated Proceedings over cartilage damage allegedly suffered by recipients of infusion pain pumps made by companies, including Breg, Stryker Corp. and I-Flow Corp.

The JCCP against all of the companies involved originally included 1,000 infusion-pump plaintiffs. There have been no trials involving Breg since February 2013, and currently only two cases against it remain in the JCCP.

"On behalf of Breg, we are very pleased with the appellate court upholding the district trial court's verdict in favor of Breg," Bowman and Brooke executive managing partner Kim Schmid said in a statement Tuesday.

An attorney for the plaintiffs could not immediately be reached for comment Tuesday.

The plaintiffs are represented by Jeffrey A. Milman and Jason M. Caruso of Hodes Milman Liebeck and Thomas B. Powers.

The defendants are represented by Robert K. Miller, Robert L. Wise and Holly S. Dutton of Bowman and Brooke LLP.

The case is In Re Infusion Pump Cases, case number G048732, in the Court of Appeals for the State of California, Fourth Appellate District.

--Editing by Chris Yates.

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