

Breg Wins Bellwether Trial In Calif. Pain Pump Suits

By **Greg Ryan**

Law360, New York (February 07, 2013, 5:28 PM ET) -- Breg Inc. secured a defense verdict Wednesday in the first bellwether case to go to trial in coordinated litigation in California over injuries allegedly caused by pain pumps, according to counsel for the device maker.

A jury unanimously held that California-based Breg did not negligently fail to warn plaintiff Scott McKenna about the risks related to its Pain Care 3000 infusion pump, according to Bowman and Brooke LLP. It also found the device was not defective because of inadequate warnings, the firm said.

The case is part of Judicial Council Coordinated Proceedings over cartilage damage allegedly suffered by recipients of infusion pain pumps made by different companies, including Breg, Stryker Corp. and I-Flow Corp.

McKenna, a Colorado resident, underwent arthroscopic shoulder surgery in July 2002 after suffering an injury the previous month, according to his complaint. His surgeon inserted a Breg pump that would infuse pain medication into his shoulder joint capsule, the complaint said.

In the years after the surgery, McKenna allegedly experienced pain and immobility in his shoulder. During a second surgery in December 2008, doctors discovered he was suffering from chondrolysis, a condition that can lead to severe arthritis, as a result of the placement of the pump, according to the complaint.

In 2009, McKenna was forced to undergo additional surgery for a total shoulder replacement, the complaint said. His injury "is permanent, disabling, it limits his movement, function, his ability to work, and his ability to perform the tasks of daily living," it said.

Breg contended in response that McKenna did not have chondrolysis, but secondary osteoarthritis, and that the condition was not caused by the placement of the pump. It also argued that the warnings about the device's risks were adequate because they were based on scientific and medical findings at the time of the device's sale.

Attorneys for McKenna could not be immediately reached for comment on the verdict.

Breg has faced pain pump suits in other jurisdictions. A federal judge in Washington state declared a mistrial in July in one suit.

The Sixth Circuit revived some claims in another pain pump lawsuit in August, saying a lower court overlooked a key factor, the so-called consumer expectation test, which considers “[t]he extent to which [the product’s] design or formulation is more dangerous than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner.”

The company settled a suit in Minnesota federal court in October, after a judge largely denied Breg’s summary judgment motion in the previous month.

McKenna is represented by Thomas Powers of Williams Love O’Leary & Powers PC, by Matthew Munson of Beasley Allen Crow Methvin Portis & Miles PC, and by Laura Kalur of Kalur Law.

Breg is represented by Kim Schmid, Sandra Giannone Ezell, Barry Koopmann and Molly Given of Bowman and Brooke LLP.

The case is McKenna et al. v. Breg Inc. et al., case number 37-2010-00061603, in the Superior Court of California, San Diego County.

--Editing by Rebecca Flanagan.

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