

Weak Trial Evidence Leads To Breg Pain Pump Suit Dismissal

By **Steven Trader**

Law360, New York (January 15, 2016, 6:20 PM ET) -- A California judge on Thursday found that a man claiming to have developed a serious arthritic condition from the use of a Breg Inc. pain pump hadn't presented to a jury the evidence necessary to prove his defect and negligence claims, dismissing his suit from the Orange County court.

After beginning a jury trial on Monday and presenting his evidence, William Stovall was unable to provide sufficient proof that Breg's negligence and a design defect in its Pain Care 3000 infusion pump led him to develop chondrolysis in his right shoulder, according to the judge's order that granted Berg's mid-trial motion to dismiss, which was confirmed by Breg's defense counsel at Bowman and Brooke LLP.

Stovall, a Texas resident, claimed he had lost the cartilage in his right shoulder after a doctor recommended he use a pain pump following a surgery he had to tighten his shoulder to prevent dislocations, according to his complaint. His case was among state litigation consolidated and coordinated by Judicial Council Coordinated Proceedings over cartilage damage allegedly suffered by recipients of infusion pain pumps made by Breg and others.

After spending years in pain following his use of the pump, Stovall alleges that he began making inquiries to law firms around 2009 or 2010, complaint read. He learned of the chondrolysis diagnosis — a condition that can lead to severe arthritis — in September 2011, and a complaint followed that November claiming Breg was strictly liable and had acted negligently by selling a faulty pump, according to the complaint.

His case was later joined in the JCCP against infusion pump makers including Breg, Stryker Corp. and I-Flow Corp., and originally included 1,000 infusion pump plaintiffs.

In the JCCP's first bellwether trial in 2013, a jury found that lead plaintiff Scott McKenna did not have the condition chondrolysis — a decision later upheld by a California appeals court.

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. 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.

Sandra Ezell of Bowman and Brooke told Law360 via email Friday that Breg was prepared to offer expert testimony to the same effect against Stovall.

Those experts would have testified that because of three previous fractures and three total previous dislocations, the surgery Stovall had on his right shoulder overtightened and changed the biomechanics of that shoulder and led to degenerative and other changes that left him with traumatic degenerative arthritis and other problems, Ezell said.

“Our main defense in the case is that Breg designed, tests and manufactured a good product that could be used by doctors for the local treatment of pain in lieu of narcotics and other medications,” Ezell said. “This product was state of the art and neither negligent in design or defective as regards performance or warnings.”

Stovall’s case was one of only two remaining against Breg in the JCCP, and Ezell said she was set to try that one some time in 2017.

Counsel information for Stovall wasn’t immediately available.

The case was In Re: Infusion Pump Litigation, case number 37-2011-00059728, in the Superior Court of the State of California, County of Orange.

--Additional reporting by Sindhu Sundar. Editing by Emily Kokoll.

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