

## Texas Federal Jury Sides with J&J's DePuy In First Pinnacle Hip Implant Trial

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**Johnson & Johnson secured a sweeping victory** last week in the first bellwether trial in the multidistrict litigation **relating to DePuy's Pinnacle system metal-on-metal hip implant device**. The plaintiff argued that the components of the device could grind together causing pain, swelling, and the introduction of toxic metal fragments into the bloodstream, and that DePuy's defective design of the device and/or failure to provide adequate warnings about the device caused her injury. After a seven week trial and almost two days of deliberations, the jury rejected the plaintiff's claims of negligence, defective design, failure to warn, and unfair and deceptive acts or practices under the Montana Consumer Protection Act. Among other things, the jury concluded that the plaintiff's injuries were not caused by a failure on DePuy's part to act reasonably with respect to the design of and warnings about the Pinnacle metal-on-metal hip implant.

Last year, DePuy agreed to pay \$2.5 billion to settle more than 7,000 lawsuits over a different hip implant device, the ASR device, which it recalled in 2010, but has chosen to take the Pinnacle lawsuits to trial. DePuy ceased selling the Pinnacle device in 2013. At trial, DePuy argued that the device was well designed and safe when implanted correctly. According to DePuy, it was not the design of the implant, but the incorrect positioning of it by doctors that caused the metal to wear unnecessarily, and that a small number of surgeons implanting the device at the wrong angle had skewed the failure results for the device. Furthermore, DePuy had warned doctors that positioning the implant incorrectly could damage tissue.

The bellwether case, *Herlihy-Paoli v. DePuy Orthopaedics Inc.*, 3:12-cv-04975 (N.D. Tex.) was tried in the U.S. District Court for the Northern District of Texas before Judge Ed Kinkeade. There are currently 6,500 pending cases relating to the Pinnacle device. The next trial in the litigation is scheduled for January.

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