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Judge gives green light to hip device class action

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Just a few months after Susan Wilkinson had hip replacement surgery, the pain came back and she began hearing a clicking sound from her left hip, which felt like it would pop out.

The 51-year-old Osoyoos, B.C., nurse was in such intense pain that she couldn't sleep, was taking narcotic pain killers every four hours and hobbling around on a cane.

Ms. Wilkinson was awake for her next hip surgery when the hip implant popped out with just the force of her surgeon's hand. The so-called Durom Cup had failed to adhere to her bone.

That device is now the focus of a class-action lawsuit for as many as 4,900 plaintiffs across Canada who may have had it implanted during hip replacement surgery.

Ms. Wilkinson is the representative plaintiff in the class-action proceedings approved by B.C. Supreme Court Justice Gregory Bowden against the device manufacturer and distributor Zimmer of Canada Ltd., Zimmer Inc. and Zimmer GMBH.

In Canada, a class-action lawsuit must first be certified by the court to determine if there are common issues between claimants, a reasonable cause of action and an identifiable class of two or more people.

“I am satisfied that the evidentiary burden in relation to this issue has been satisfied by the plaintiffs in this case,” Mr. Bowden said in his written ruling released this week. “The evidence is there that there have been at least 33 cases of Durom Cup failure in Canada.”

The cup is a prosthetic shell that’s implanted in a patient’s hip socket during surgery. At least 4,900 of the devices have been sold in Canada since 2005, but it’s unclear how many have failed, leading to pain.

In 2008, an American orthopedic surgeon raised concerns about failures of the device. Health Canada issued a safety notification about it in December of 2009 but the devices weren’t pulled from use in Canada. Instead, a retraining program was established for Canadian surgeons.

“The plaintiffs allege that the defendants were negligent in the research, development, testing, manufacture, distribution and sale of the Durom Cup and they knew or ought to have known that defects in the device would cause foreseeable injury ...,” Mr. Bowden said in his ruling issued Tuesday.

However, lawyers for Zimmer pointed out during the hearing that the failure rate was just .67 per cent for all those who received Durom Cup implants.

Certifying the lawsuit as a class action doesn’t prejudge the outcome of the case, but Mr. Bowden said there was enough evidence to allow it to move forward.

“In my view, the determination of whether the Durom Cup was defective or unfit for its intended use is common to all those Canadians who received an implant of a Durom Cup.”

In approving the class action, Mr. Bowden also ordered that the class members will include everyone who received the implant in Canada.

The Canadian Press
