

Dentists Win Class Cert. In Nobel Biocare Implant Suit

Law360, New York (August 15, 2011, 1:15 PM ET) -- A judge on Friday certified a class of dentists suing Nobel Biocare Holding AG in California for \$450 million, alleging the company misrepresented a dental implant that caused bone and gum problems and burdened dentists with patient repairs.

U.S. District Judge Jacqueline H. Nguyen found that the proposed, nationwide class had met the certification requirements of Rule 23(a) as well as Rule 23(b)(3), which requires that common questions predominate over individual questions and that a class action represents the best way of adjudicating the dispute.

Jason M. Yamada filed a complaint in July 2010 on behalf of thousands of fellow dentists seeking indemnification for alleged defects in the Zurich-based dental implant maker's NobelDirect product, which was introduced in January 2004.

Complications such as bone resorption and gingival retraction have forced the proposed class members to perform surgery on dissatisfied patients, leaving them to pick up the tab for patient surgeries and related staff costs, according to the complaint.

The class seeks about \$450 million in reimbursements, costs, projects repairs and medical monitoring expenses, as well as certain injunctive relief, according to the order. Nobel Biocare AB and Nobel Biocare USA LLC are also named as defendants.

The class includes all dentists in the U.S. who have purchased any NobelDirect dental implant, other than the NobelDirect Groovy implant.

The judge found the Yamada had satisfied Rule 23(a)'s requirements for numerosity, commonality, typicality and adequacy of representation.

On the numerosity requirement, Judge Nguyen noted that Yamada's claims that more than 100 dentists nationwide purchased more than 30,000 defective implants. Joining more than 100 plaintiffs is impracticable, the judge said, who said Nobel Biocare doesn't dispute that there are at least 100 potential class members.

The judge also agreed that Yamada had met the commonality requirement based on questions including whether Nobel Biocare had a duty to disclose and failed to disclose design defects and information about defective instructions.

Turning to the requirements of Rule 23(b)(3), Judge Nguyen disagreed with Nobel Biocare that a claim under California's Unfair Competition Law hinged on questions

of individualized proof over the alleged omissions and misrepresentations and that numerous factors that could play into the failure of an implant precluded certification.

Common issues of law and fact predominate, and class certification “would be the fair and efficient means of resolving this dispute and avoiding duplicative litigation,” the judge said.

According to Yamada, the problems with the implants stem from a defective design and the company’s recommended implementation technique, and not the experience or skill of individual dentists. The practitioners using NobelDirect implants could not have known of the alleged flaws, he claims.

Yamada says the company knew of the alleged flaws but failed to include warnings on the NobelDirect packaging that would alert dentists to the supposed high failure rate.

Part of the appeal of the NobelDirect implant, a single-piece titanium device, was that it could be screwed directly into the jawbone without a surgical flap, according to the complaint. The suit disputes this characterization, calling the marketing knowingly and intentionally false.

Representatives for the parties did not immediately return requests for comment Monday.

The class is represented by Jason T. Baker and William M. Audet of Audet & Partners LLP, Jason E. Ochs and Ramon R. Lopez of [Lopez McHugh LLP](#) and Stephen D. Ochs of the Law Offices of Stephen D. Ochs.

Nobel Biocare is represented by Eric Y. Kizirian and Roy M. Brisbois of [Lewis Brisbois Bisgaard & Smith LLP](#).

The case is Yamada v. Nobel Biocare Holding AG, case number 2:10-cv-04849, in the U.S. District Court for the Central District of California.