



**McGINN  
CARPENTER  
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201 Broadway SE  
Albuquerque, NM 87102  
ph 505.843.6161  
fx 505.242.8227  
tf 800.259.9240

Allegra@McGinnLaw.com

Randi McGinn  
Allegra C. Carpenter  
A. Elicia Montoya  
Kathy Love  
Katie Curry  
Michael E. Sievers

# New Mexico Judge rules Zimmer liable for \$2 million in hip implant case

*New Mexico court cites 'unreasonably dangerous design'; plaintiff represented by Randi McGinn, Allegra Carpenter of Albuquerque, NMN and Joseph Osborne of Boca Raton, FL.*

ALBUQUERQUE, NEW MEXICO, April 4, 2017 -- Medical device manufacturer Zimmer Inc. has been ordered to pay more than \$2 million to a New Mexico man for a defective hip implant based on an “unreasonable risk of injury,” following a two-week bench trial.

“A hip implant shouldn’t cause metal poisoning and make a patient worse rather than better. Hopefully, this important ruling will protect future patients considering a hip implant, who should make sure the implant their doctor chooses has eliminated the risk of metallosis,” said Randi McGinn, of McGinn, Carpenter, Montoya and Love in Albuquerque, New Mexico.

Randi McGinn and Allegra Carpenter of [McGinn, Carpenter, Montoya & Love, P.A.](#), of Albuquerque, N.M. represented the New Mexico injured Plaintiff, Brian McDonald, along with attorney Joseph Osborne.

“It is important that the manufacturer of defective products bear the ultimate financial responsibility for harms caused by the product. This is the market’s way of discouraging the production of dangerous products,” said Allegra Carpenter.

“This is the first case we know of that has gone to trial in the country, and a growing number of these are going to court,” said Joseph Osborne, Jr., of [Osborne & Associates](#) in Boca Raton, Fla., who represents medical device plaintiffs around the country.

The product in question is Zimmer’s dual modular hip implant, the M/L Taper Hip Prosthesis with Kinectiv Technology (“MLTK”) and a cobalt-chromium head.

In a 27-page decision, New Mexico Judge Nan G. Nash ruled that the defective design and insufficient testing caused likely permanent harm to the plaintiff, resulting in “metallosis,” or a buildup of cobalt debris harming the hip joint and contaminating blood.

“It is never appropriate to design a hip implant system that would create an unreasonable risk of injury to the health or safety of a patient,” Nash wrote, ruling for the patient on grounds of strict

products liability.

In February 2010, Michael Brian McDonald, an Albuquerque economist then in his sixties, was suffering right hip pain that was preventing him from his usual tennis and golf. That June, McDonald received the MTLK implant.

Initial recovery went well, but by May 2011, McDonald suffered debilitating hip pain and loss of flexibility, resulting in two corrective surgeries that October and November, during which the doctor implanted two new prostheses and replaced the cobalt-chromium head with a ceramic head.

After a lengthy recovery, McDonald sought investigation of his legal rights from McGinn, Carpenter, Montoya and Love. Upon analysis and review, it was clear this kind of injury was caused solely by a defect in the product. No hip prosthesis should result in this degree of metal shedding just one year after implant. A lawsuit was brought and the case went to bench trial before Judge Nash December 12-23, 2016, in the Second Judicial District Court in Albuquerque.

In her March 31 ruling, Judge Nash wrote "It is more probable than not that Plaintiff will need a third, more complicated revision surgery in the future," Nash wrote. "This surgery will cost approximately \$250,000 and will involve removal of all of the implant components for a period of 2-3 months to try and kill the infection, during which Plaintiff will be wheelchair bound. If the infection can be successfully eradicated, another hip prosthesis will be implanted, necessitating the same type of physical therapy and recovery period as the first two revision surgeries."

The judge traced the product defect to Zimmer's testing its components in isolation, but not their interactions together, which would have determined their potential harm.

"In designing the MLTK, Defendants knew that the use of dissimilar metals can result in a higher potential for corrosion and that wear debris from a junction of two dissimilar metals had been documented to be toxic and harmful to the human body," she wrote.

In determining the damages of \$2.027 million, Judge Nan apportioned it into \$1 million for past and future pain and suffering, \$480,000 for lost enjoyment of life, and the rest for past and future medical expenses, lost household services, and out-of-pocket expenses.

SECOND JUDICIAL DISTRICT, New Mexico County for Bernalillo, McDonald v. Zimmer Inc. and Zimmer Holdings, Case No. D-202-CV-2013-0406

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