

## J&J hip implant settlement rumoured, but total could grow



[Elizabeth Cairns](#)

Johnson & Johnson was going to have to settle the lawsuits over its faulty ASR hip implants sooner or later and must have known it would have to pay handsomely to do so. A rumoured settlement totalling around \$4bn sounds like a lot, but given more than 11,000 cases pending, and that the first case to go against J&J saw an award of \$8.3m, the company might have got off relatively cheaply.

But the deal might not be a definitive solution. It is believed to leave J&J open to further suits from patients whose hips fail in future, and the company has separately put cash aside to reimburse Medicare for compensation it paid to recipients; the final total could be much higher. And coming as it does just a week after the company forked out \$2.2bn in fines to the US government over fraudulent selling of its antipsychotic Risperdal, its timing could have been better.

### One win, one loss

The metal-on-metal ASR hip was recalled by J&J's DePuy orthopaedic subsidiary in 2010 after reports of pain, osteolysis and even tissue necrosis. The recall alone is estimated to have cost \$1bn as the company moved to inform patients and doctors that the hip was not safe. It took until March this year for the conclusion of the first case.

This saw J&J pay compensatory damages of \$8.3m after the jury ruled that the ASR was defective by design and that DePuy had acted negligently. Documents came to light during the trial that indicated that surgeons had told the company that the hip was defective two years before it was recalled, and this prompted an investigation by the US government ([J&J's hip problems worsen with US government probe, February 26, 2013](#)).

The only other ASR lawsuit to come to court so far went in J&J's favour, but it seems the company has sought to head off any more individual multi-million dollar payouts.

Under the new settlement, which is still subject to court approval, each patient who has received an ASR and has had to undergo replacement surgery as a consequence can expect a payout of around \$350,000. However, it is not yet clear how many of the 11,000-plus patients to have filed suits against J&J have so far needed replacement surgery; the estimated figure is 7,500.

The other lawsuits filed by ASR recipients who fear they will need revision surgery in future would result in a second round of settlements.

It is believed that 94% of eligible patients must sign up for the settlement to ensure that J&J does not withdraw the offer.

But the government investigation into J&J's behaviour, seeking to find out whether anyone at the company made false statements affecting federal healthcare programmes in connection with the ASR, has reached no resolution. And even if J&J is cleared of wrongdoing here, it could still end up paying hundreds of millions of dollars to recompense Medicare for the revision surgeries it has had to fund.

The company is known to be hunting for a buyer for its diagnostics business ([J&J considers diagnostics sale, but why stop there?, January 24, 2013](#)). Paying out more than \$6bn in fines and legal costs could nudge J&J to speed up the search.

To contact the writer of this story email Elizabeth Cairns in London at [elizabethc@epvantage.com](mailto:elizabethc@epvantage.com) or follow [@LizEPVantage](#) on Twitter