**Kransky v. Depuy Orthopaedics, Inc.**

**Parties:**

**Facts:**

**Procedure:**

**Issues:**

The original issue for this case was the injury, pain, and suffering caused by a defective hip implant manufactured by Depuy Orthopaedics (a subsidiary of Johnson & Johnson). In the issues related to the appeal, Depuy claims the trial court abused its discretion by not allowing testimony related to the FDA clearance for the hip replacement implant (ASR XL). Depuy also claims that the court further abused its discretion by allowing Dr. Trotsky’s testimony which they claim was unqualified as expert witness testimony. A second issue with witness testimony is Dr. Swenson’s testimony regarding his experience with the ASR XL which Depuy claims was a surprise to them at trial and it was unqualified, anecdotal evidence. Furthermore, Depuy challenges that causation cannot be proven because there was not enough evidence to link the injury suffered to the hip replacement, the jury’s verdict was inconsistent, and the award was excessive.

**Laws:**

Whether or not the hip replacement in this case was defective was not called into question. Depuy had issued a voluntary recall of the product in 2010 before the FDA could step in. This is a case of strict liability in tort. According to Kubasek et al. (2015) “Unlike causes of action based on negligence or, to a lesser degree, breach of warranty, product liability actions based on strict liability in tort focus on the product, not on the producer or seller. The degree of care exercised by the defendant is not an issue in these cases. The issue in such cases is whether the product was in a “defective condition, unreasonably dangerous” when sold.” (p.334)

Regarding Depuy’s claim that FDA approval and compliance was not allowed to be admitted as evidence, the court can rely on Montana case law as stating “a manufacturer's compliance with product safety regulations is irrelevant and inadmissible on the question of the product's defectiveness. . . ." (Speaks v. Mazda Motor Corp. (D. Mont. 2015) 118 F.Supp.3d 1212, 1225.

**Holding:**

In 2016, in the court of appeals in California, the original jury decision was affirmed.

**Reasoning:**

All of the claims brought forth in the appeal by Depuy were struck down by the court. The defendant wanted the FDA approval process to be included in testimony to help prove compliance. FDA clearance testimony was excluded on the basis that it would have been too cumbersome and complicated for the jury to understand and would have been of little value in proving or disproving the case. It was also irrelevant under Montana law.

Dr. Trotsky’s and Dr. Swenson’s expert witness testimony was not thrown out based on their levels of skill and training. It was upheld that the doctors were able to give expert witness testimony.

The court also upheld the verdict by the jury that causation could be shown between Mr. Kransky’s injury and the defective hip implant. The court dismissed Depuy’s claim that the jury’s verdict was inconsistent based on the finding that there was no negligence but that the product was defective based on strict liability. However, because there was evidence of causation the court did not find that the jury’s ruling was inconsistent. Finally, on the claim excessive damages, in the court’s opinion it was not disproportionate to the amount of pain and suffering caused.

**Conclusion:**

It seems that Johnson & Johnson continues to find itself in the middle of many legal cases by its own fault or that of its joint ventures and subsidiary companies. This is an important case and represents the first of many related to ASR XL hip replacement implants. Mr. Kransky’s case was moved quickly to trial due to his failing health. Loren Kransky died in early 2014 and never learned the outcome of this appeal. His wife became the representative in the case for his estate.

**References:**

Kubasek, N., Brennan, B., & Browne, M. (2015). The legal environment of business: A critical thinking approach. (p. 334).