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Jury awards man \$4.3 million after spine stabilizer problems

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A Cook County jury awarded \$4.3 million to a man who received multiple back surgeries to reset a spinal device that should have stayed put.

Jerome Kaczorowski, a 67-year-old from Homer Glen who worked in computer sales before the procedures, received the initial surgery in June 2008 to relieve pain he experienced from degenerative arthritis.

The device — which features a set of curved metal support rods on either side of the spine and locking caps where screws set the base in place — was installed to immobilize a lower portion of Kaczorowski's spine so it could fuse to a bone graft.

However, the device's locking caps failed after installation, which caused the screws to loosen and the rods to dislodge. This prevented Kaczorowski's spine from fusing to the graft within the typical three- to four-month period.

As a result, Kaczorowski underwent additional surgeries — one four months later to reset the pins and another in May 2012 to replace the device altogether.

Kaczorowski's spine fused to the graft after his May 2012 surgery, in which his doctor replaced the device with a similar one from a different company.

And although Kaczorowski no longer feels pain from the prolonged lack of spinal fusion, Bruce D. Goodman, a principal at Steinberg, Goodman & Kalish who represented Kaczorowski, said he now walks with help from a cane or walker and sometimes needs a wheelchair. Goodman said his client will experience discomfort for the rest of his life.

"(The surgeries) created so much scar tissue that he now has unrelenting permanent pain that forces him to be on narcotic painkillers," he said.

Kaczorowski experiences side effects from the medication as well, Goodman said, such as memory loss, lack of focus, fatigue and constant perspiration.

"It's devastated him as an individual," Goodman said. "He used to be kind of a gregarious guy, and now he is in pain all the time and he doesn't really want to be around people."

In May 2009, Kaczorowski filed a lawsuit against Synthes USA Sales, the first device's manufacturer, vendor and distributor. The suit alleged the device was unreasonably dangerous for including parts that didn't perform as expected and failing to include warnings regarding various components that could fail post-operation.

In its reply filed shortly afterward on June 22, Synthes admitted that one of the locking caps' purposes included stabilizing the support rods to prevent movement and loosening of any of the device's components was not intended.

Citing a risk-analysis conducted before the device was sold, the company also admitted to Kaczorowski's allegation that it knew the locking caps or screws could loosen after they were surgically installed.

Despite the admissions, Synthes contended during trial that the product's benefits outweigh its risks, and it is safe when used as intended.

Cook County Circuit Judge Thomas V. Lyons II presided over the trial, which began June 16.

After about five hours of delib-



Bruce D. Goodman

eration, Thursday's jury verdict awarded Kaczorowski \$10,000 for injury disfigurement; \$1 million for current and future disability; \$350,000 for pain and suffering; \$1.7 million for future pain and suffering; \$10,000 for current and future emotional distress; \$375,578 for medical expenses; \$157,788 for future medical expenses; \$385,000 for lost earnings and \$330,000 for future lost earnings.

Goodman said the jury's award will fairly compensate Kaczorowski for all the physical, medical and financial care he will need throughout his life.

"Although, he would in a minute take zero and be normal again," he said.

Robert J. McLaughlin, a shareholder at Segal, McCambridge Singer & Mahoney Ltd, and W. Kennedy Simpson, principal at Thompson, Miller & Simpson P.C. in Louisville, Ky., represented Synthes. Neither attorney could be reached for comment.

The case is *Jerome Kaczorowski v. Synthes USA Sales LLC*, 09 L 5974.