

Super Lawyers®



LexisNexis®
Martindale-Hubbell®
Peer Review Rated
For Ethical Standards and Legal Ability™



KERSHAW|TALLEY

CIVIL JUSTICE ATTORNEYS

If you have a Stryker Rejuvenate or ABG II, contact Kershaw|Talley today for a FREE case consultation.

Call Stuart Talley or Bill Kershaw toll free at **888-997-5170**.

STRYKER SETTLEMENT FAQs

Q: How much will I receive?

A: The settlement that was announced on November 3 covers individuals with Stryker Rejuvenate or ABG II hips that were revised. A common question we hear is, "How much will I get?"

The amount you will receive depends on numerous factors. The base, or where you start, is \$300,000 if you had a hip revision. This amount is per hip. So, if you had two hips revised you would get \$600,000. The settlement is structured so that each hip is dealt with independently.

There are deductions from the \$300,000 based on age (anyone over 70), weight (over a certain BMI), and other medical circumstances. There is also a deduction if the hip was initially put in as part of a revision surgery. This means in your index surgery you had a non-Stryker hip which wore out and then you were implanted with a Stryker hip.

There are upward adjustments, or enhancements, to the \$300,000. An upward adjustment will occur when you have extraordinary injuries. An extraordinary injury example is if they had to do an osteotomy

during your revision surgery. Osteotomy is a procedure where the cut the femur in order to get out the stem. There are enhancements for individuals with severe muscle damage during the revision surgery that required repair. Specifically, I am referring to the abductor muscle. There are also enhancements for people who had dislocations after the revision surgery. People who got an infection after revision surgery may also get an enhancement. The settlement has a series of enhancements designed to compensate people who had extraordinary injuries.

Determining the enhancements is not an easy process. It involves a detailed examination of your medical records and a thorough understanding of the settlement agreement. Analyzing your medical records and comparing it to the settlement agreement will figure out how much you need.

Q: How do I qualify?

A: Under the settlement agreement, there are certain criteria you must meet. The first is you underwent a revision surgery prior to November 3, 2014. A revision surgery means your Stryker hip was removed. It is important to understand that revision surgery

www.kershawtalley.com

Free Evaluation: 888-997-5170

KERSHAW | TALLEY

CIVIL JUSTICE ATTORNEYS

is defined in a very specific way. If the surgeon just replaced the cup or the ball, it is not considered a revision surgery. You needed to have the stem removed from the femur in order to qualify for the settlement.

The second part in order to qualify is having your hip removed for a recalled related event or reason. If your hip was removed because of an infection, or removed because you fell down after it was implanted, those types of reasons for removing the hip do not qualify. There is also a threshold requirement stating the Stryker hip was removed because of a recalled related reason. In order to qualify for the settlement, your medical records need to show one of the following: elevated cobalt and chromium, positive MRI (showing tissue damage or fluid accumulation), or tissue damage from metallosis found during surgery.

Q: Do I have to participate?

A: No. You do not have to participate in any settlement that Stryker offers. Everyone who has a case is free to evaluate that offer and determine whether or not they want to take the settlement. You do not have to accept the settlement if it does not compensate you adequately for your injuries.

It is important to have an attorney to evaluate your case if you have a Stryker Rejuvenate or ABG II hip. An attorney can inform you if the offer on your case is one you should or should not accept. The alternative of not taking the offer is pushing your case forward and trying to get a trial date; that is the only way Stryker will offer more for your case than the settlement.

Q: Will I receive compensation for lost earnings?

A: Many of our clients had revision surgery, and as a result of that surgery, had to miss work for a substantial period of time. Some clients were significantly injured from their Stryker hip and could no longer work. Many of them had physically demanding jobs and cannot work anymore. So, they lost future earnings.

The settlement in place provides additional compensation for individuals with lost earnings. In order to qualify, the lost earnings have to be at least 20% of the 2 year average of the combined earnings prior to your revision surgery. For instance, let's say you make \$100,000 per year. We would assess the amount you made for the 2 year period before your revision surgery. So, if you earned \$100,000 each year, you would have \$200,000 in total earnings. 20% of \$200,000 would be \$40,000. So, in order to qualify, you would have \$40,000 in lost earnings. For many people, this is not a problem because of the future lost earnings.

It is important to know that lost earnings are capped at \$200,000. The most you can get from lost earnings is \$200,000. Under the settlement agreement, there is a deduction from lost earnings for any amount you received from Broadspire to compensate you for your lost earnings. You must take this into consideration. Proving the amount of lost earnings is a complex process. You should have a lawyer to make the best showing possible to get as much as you can from lost earnings.

KERSHAW | TALLEY

CIVIL JUSTICE ATTORNEYS

Q: My hip hasn't been revised. How does that impact me?

A: The settlement offered at this time only applies to individuals who had their Stryker hips revised (the hip was replaced) before November 3, 2014.

There is one exception to that rule. There are many people who need to have their hip replaced. Their surgeons recommended revision surgery because of elevated cobalt and chromium, or other issues. However, due to their age or health status, are unable to undergo a revision surgery. For example, someone needs a revision but experiences heart problems and cannot have the surgery. The settlement agreement allows for compensation for people who fall into that category. The agreement gives them \$75,000 should they accept that offer.



Perhaps, you do not fall into that category: you are in a wait and see approach, you're monitoring your cobalt and chromium levels yearly, you aren't experiencing any pain, and you may never need revision surgery. If you fall into that category, your case will still be pending and none of your rights will be re-

leased under the settlement agreement. At some point in time, within the next year, your case will most likely be dismissed. However, under the settlement agreement, if you believe you have injuries, you can continue pursuing your case. If you have your case dismissed, but 2 years from now you do need revision surgery, we can refile your case and the statute of limitations will be tolled during this time. This means the filing date of your new case will relate back to the date you initially filed your case. In other words, if you have a case on file, and your hip has not been revised, then by filing a lawsuit you protect yourself against the statute of limitations running on your case. You are not prejudiced in any way by having your case dismissed.

If you have not had your hip revised, and you do not have a case on file, the tolling of the statute of limitations does not apply to you. If you have a Stryker Rejuvenate or ABG II that is not revised, it is crucial to get a case on file so that your statute of limitations is preserved. The statute of limitations is essentially the time period by which you have to file a lawsuit.

Q: Do I need a lawyer to get money from the settlement?

A: The answer is no. You do not need a lawyer to participate in the settlement. However, the settlement is structured in a way to encourage people to hire a lawyer. The reason is the claims process; the process of submitting all the documentation in the settlement is incredibly complex.

The claims administrator and the defendants want

KERSHAW | TALLEY

CIVIL JUSTICE ATTORNEYS

an orderly process. They want claims submitted by people who know how to do it and will not make mistakes. Under the settlement, people with revised hips will receive a base award of \$300,000. **However, if you are not represented at the time of the settlement agreement, there is an approximate 35% deduction from your settlement.** Most plaintiffs' lawyers will do these cases for 35%. You are actually better off having a lawyer helping with your settlement rather than working alone. You will receive 35% less either way.

You definitely want an attorney because the settlement agreement is extremely complex. It is not easy determining how much you will receive. You may not get all your money if you are inexperienced reviewing medical records, and dealing with settlement agreements. You definitely want an attorney helping with your case. There is really no cost to you when you take into consideration the deduction for not having a lawyer. A lawyer should get you the most money you can get under the settlement agreement.

Q: What are "liens"? How will this affect how much I get?

A: There are deductions from the amount you receive from liens. Liens are essentially the right of your healthcare insurance company, or Medicare, to recover from your lawsuit any amounts they expended from your medical bills associated with your revision surgery. The amount of those liens can vary dramatically depending on your insurance.

There are a couple of important things to know. First,

it is the amount your insurance company actually paid that is a lien on your case. It is not the amount the hospital or your doctor billed for your revision. Often times those are very different values. Secondly, your lawyer should get those liens substantially reduced. Most people with Stryker Rejuvenate or ABG II cases have lawyers who operate on a contingency fee basis (they get a percentage of their settlement). The contingency fee generally ranges from 30% to 40%. The law in most states asserts if you have a recovery, and your insurance company is entitled to reimbursement for medical expenses, it is not fair you have to pay the fee necessary to get them their medical expenses back. Almost all insurance companies will agree to reduce their lien by the amount of the attorney's fees. For instance, if you have a 30% contract with your attorney, usually the lien holder will reduce the lien by at least 30%. Sometimes, you can get further reductions. Especially, if you have a settlement on the low end of what you were expecting.

If you have a lien, it must be dealt with. Your attorney will be in contact with your insurance company or Medicare advising them of the settlement. The



KERSHAW | TALLEY

CIVIL JUSTICE ATTORNEYS

process entails getting your medical records and bills from the insurance company, and comparing it against the actual medical treatment to make sure everything is legitimate. Then there is a negotiation process where your attorney should seek to reduce the lien. The purpose is getting you as much money as possible.

Q: I received money from Broadspire. How will that be taken into account?

A: Many people want to know whether Broadspire will continue to process their claims and whether the Broadspire program will cease to exist. The Broadspire program will continue to exist and specifically for people who have not had revision surgery. If you have not had revision surgery, you do not qualify for the settlement, and Broadspire will continue to cover your expenses.

It is important to note that in the settlement agreement Stryker made it very clear that the Broadspire program is entirely voluntary. They can shut it down anytime they want. But right now, as far as we know, the program will continue to exist for those individuals who have not had revision surgery.

If you had revision surgery, and qualify for the settlement, the way the settlement is drafted is you have until March 2015 to decide whether or not you want to participate in the settlement. If you qualify for the settlement, and decide not to participate, meaning you want to continue litigating your case, Broadspire will no longer be available to you. That is part of the settlement agreement.

Q: Will Broadspire continue paying my expenses?

A: Under the terms of the settlement, there is a specific provision that deals with Broadspire. As you probably know, Broadspire is a company hired by Stryker to help compensate people with a Rejuvenate or ABG II hip who have expenses related to the recall. There are essentially 3 types of categories we are dealing with.

In the first category, we have people that have submitted claims to Broadspire for compensation prior to November 3, 2014. November 3, 2014 is the date that the settlement agreement was entered. If you submitted a claim before then, Broadspire will process that claim in the ordinary course and if it's a valid claim they will compensate you. It is important to know that for claims falling within that category the settlement offer Stryker made will not be reduced in anyway by amounts you received for claims submitted prior to November 3.

If you submitted a claim after November 3, and want to participate in the settlement agreement, there will be a deduction for claims submitted during that window. As an example, say you submitted a claim on November 5 for surgery you had in October. Under the settlement agreement, Broadspire would process that claim; if it's \$10,000 then Broadspire would send you a check for \$10,000. Once you get your settlement, there will be a \$10,000 deduction.

For people who qualify for the settlement, but decide not to enroll and reject the settlement, Broadspire

KERSHAW|TALLEY

CIVIL JUSTICE ATTORNEYS

will completely cut that person off. There will be no compensation for somebody who does not participate in the settlement for any claims submitted after the deadline for participation which is March 2015.

Q: When will I get paid?

A: This depends on the individual circumstances of your case. The process of going through thousands of settlements and figuring out whether or not people qualify, and how much they will receive, is an incredibly complex process. There is a settlement administrator being put into place to administer all the settlements. This company is called Garden City. Garden City will hire hundreds of individuals such as retired nurses, or people skilled at reviewing medical records, to help process this mass wave of settlement claims that are going to be made over the next couple of months.

The process of getting the infrastructure in place is time consuming. Right now, the settlement is structured in two parts: a base award and enhancements. The base award is simpler to figure out. If you had a revision surgery that qualifies, you receive the base award. There might be some small deductions but it's a pretty straightforward process. We expect base awards will be entirely processed and payments will start to be made probably in the late summer of 2015. The enhancements are more difficult to evaluate and process. There are many medical records that need to be reviewed and specific things that have to be shown in the medical records to qualify for an enhancement. If an enhancement is denied or objected to by Stryker, there's an appeal process. We expect the enhancement

process of the settlement will be paid around early 2016.

We understand for many people waiting 9 months to a year for their settlement seems like a long time. But not having a settlement means waiting even longer. There are more than 5,500 cases on file right now. The idea of not taking the settlement for fear of waiting too long to get paid needs to be compared to the alternative. The alternative is getting in line behind 5,500 people to get your day in court. Many people will be upset about how long it takes to get paid. Unfortunately, that is the reality.

Contact Kershaw|Talley Today:

Kershaw|Talley is a Sacramento-based firm representing individuals nationwide in defective medical device cases. The firm generates hundreds of millions of dollars in recoveries for their clients and in the classes they represent. Individuals impacted by Stryker's hip systems are potentially entitled to compensation for wage loss, medical bills, and pain and suffering. Call toll free now for your FREE consultation: **888-997-5170**