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## J&J, Plaintiffs Seek Arbitration In Sutures MDL

By **Erin Coe**

Law360, New York (February 09, 2011, 2:33 PM ET) -- Johnson & Johnson and plaintiffs involved in a multidistrict litigation alleging post-surgery complications due to defective Panacryl sutures are seeking a stay while they try to resolve the dispute in arbitration.

The parties filed a joint motion in the U.S. District Court for the Eastern District of North Carolina on Tuesday, looking to put the matter on hold after they reached an agreement to proceed to binding arbitration to address all the complaints pending before the court. They also stipulated to the voluntary dismissal without prejudice of the plaintiffs' remaining class allegations.

The parties, which have litigated the case for more than four years, said that upon the conclusion of arbitration the plaintiffs will voluntarily dismiss without prejudice the complaints before the court.

Attorneys representing the plaintiffs and J&J did not immediately return calls seeking comment.

In November 2009, the judge overseeing the MDL against J&J rejected a request to certify a nationwide class of patients who claim they suffered infections and sustained other injuries as a result of the allegedly faulty sutures.

The Panacryl sutures, which were designed to stay in the body for 24 to 36 months after surgery, were made by J&J unit Ethicon Inc. and marketed and sold by Johnson & Johnson Health Care Systems Inc.

The sutures were supposed to be absorbed by patients' bodies, but some patients allegedly experienced a phenomenon called "suture spitting" in which the sutures were rejected by the body and pushed up to the skin surface, according to court documents.

The plaintiffs pitched a class that would have covered anyone who went through a surgical procedure in which Panacryl sutures were used between Oct. 1, 1999, and March 31, 2006, and who experienced "wound dehiscence, granulated tissues, infection, sinus tract infection and/or suture spitting" that resulted in medical treatment, according to court records.

The plaintiffs did not demonstrate that questions of law or fact common to the would-be class predominated over questions affecting only individual members, according to the judge at the time. The judge said the need to apply the laws of several jurisdictions, combined with the individualized factual issues in play, precluded a finding that common issues predominated.

The plaintiffs who moved for class certification hailed from North Carolina, New York, Minnesota and Australia.

The moving plaintiffs filed five suits in state court in New Jersey, the home state of Johnson & Johnson, claiming the sutures were defective in that they caused a high rate of foreign body reactions when used as directed, and that the defendants did not provide adequate warning of the dangers associated with the sutures.

J&J had the cases removed to federal court in New Jersey, and the U.S. Judicial Panel on Multidistrict Litigation subsequently sent the cases to the U.S. District Court for the Eastern District of North Carolina. Cases from Louisiana and Arkansas were also transferred to that court.

The moving plaintiffs proposed a two-stage trial plan, in which a first-stage trial would address common liability and general causation issues and the second stage would consist of individual trials on specific causation and damages. But that plan did not eliminate the need to apply laws from different jurisdictions or individualized inquiry into the cause of plaintiffs' injuries, the court found.

The class certification motion said that counsel for other Panacryl MDL plaintiffs, who advocated statewide classes, had no objection to a nationwide class, but wished to reserve their rights to pursue statewide classes at a later time.

The plaintiffs are represented by Toma Zensen LLC, Leger & Shaw, Kershaw Cutter & Ratinoff LLP and Lum Drasco & Positan LLC.

Johnson & Johnson, Johnson & Johnson Health Care Systems Inc. and Ethicon Inc. are represented by Ellis & Winters LLP, Bryan Cave LLP, Drinker Biddle & Reath LLP and Smith Moore Leatherwood LLP.

The case is In re: Panacryl Sutures Products Liability Litigation, case number 08-md-1959, in the U.S. District Court for the Eastern District of North Carolina.

--Additional reporting by Ben James. Editing by Eydie Cubarrubia.

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