

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 3005	DATE	10/18/2010
CASE TITLE	O'Brien vs. Intuitive Surgical, Inc.		

DOCKET ENTRY TEXT

Defendant's motion to dismiss is granted. I will give plaintiff one more opportunity to amend his complaint to state a claim. Plaintiff's amended complaint shall be filed by November 19, 2010.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

Defendant's motion to dismiss is granted. As I understand plaintiff's allegations, which I assume are true for purposes of this motion, the defendant's surgical device failed during or just prior to surgery on plaintiff, therefore the surgeons went ahead with the surgery by means other than the surgical device, and plaintiff has suffered injury as a result of the surgery. Plaintiff seeks numerous kinds of relief but the only relief possible in this suit is damages from injury to plaintiff caused by the defective product. Plaintiff assumes that because there has been a recall of this product (or so it is alleged), defendant is strictly liable for plaintiff's injuries. The problem in plaintiff's complaint is that, as I read it, the product was a robotic system for aid in surgery. When the product failed, the surgeons simply converted to open surgery. It is not clear from the complaint whether the failure occurred prior to or during the actual surgery. There is no explanation of how the robot caused plaintiff's injuries. Plaintiff does not claim, and I doubt could claim, that defendant had promised or otherwise owed him a duty under which the device would be used in the surgery. The only way that plaintiff might have a claim would be if the failure of the device, for example, caused a rupture or some injury by way of the failure, or perhaps that it caused a delay in completing the surgery, and the delay was the cause of plaintiff's injuries. In other words, the complaint fails to allege how the failure of the device caused plaintiff's injuries. I will give plaintiff one more opportunity to amend his complaint to state a claim. Plaintiff's amended complaint shall be filed by November 19, 2010.