

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHRISTINA MCCLELLAN,
Plaintiff,

Civ. No. 07-1309-AA
ORDER

v.

I-FLOW CORPORATION, a Delaware
corporation, et al.,

Defendants.

DONNELL COX; DAVID DOOLITTLE
and CAROLYN DOOLITTLE, husband
and wife; JUAN A. HUERTA; and
KATHERINE FORREST,

Civ. No. 07-1310-AA
ORDER

Plaintiffs,

v.

DJO, LLC, a Delaware
corporation, et al.,

Defendants.

AIKEN, Chief Judge:

Plaintiffs filed suit alleging negligence and products liability arising from the post-operative use of pain pump devices

in their shoulder joints. Plaintiffs Christina McClellan and Juan Huerta subsequently amended their complaints to allege punitive damages against defendant I-Flow, Inc. (I-Flow). I-Flow now moves for summary judgment on the punitive damages claims, arguing that neither McClellan nor Huerta presents facts to show that I-Flow consciously and recklessly disregarded a known risk by promoting its pain pump devices for intra-articular uses.

Based on the parties' submissions, I find it questionable whether plaintiffs' claims for punitive damages will survive and be submitted to a jury. Plaintiffs present scant evidence that I-Flow knew of a causal relationship between its pain pumps and glenohumeral chondrolysis when plaintiffs underwent shoulder surgeries in 2004, such that I-Flow acted with "reckless and outrageous indifference to a highly unreasonable risk of harm" and with "conscious indifference to the health, safety and welfare of others" by marketing its pain pumps for intra-articular uses. Or. Rev. Stat. § 31.730(1); Andor v. United Air Lines, Inc., 303 Or. 505, 517, 739 P.2d 18 (1987) (punitive damages "are a penalty for conduct that is culpable by reason of motive, intent, or extraordinary disregard of or indifference to known or highly probable risks to others").

Nonetheless, I decline to grant summary judgment at this time, preferring to resolve the motion after review of all evidence presented at trial.

Accordingly, defendant I-Flow's Motions for Partial Summary Judgment (07-1309-AA doc. 102; 07-1310-AA doc. 341) are RESERVED until the close of evidence at trial.

IT IS SO ORDERED.

DATED this 21 day of October, 2009.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken

Chief United States District Judge