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DAILY REPORT

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Georgia Woman Wins \$3M in Bellwether Trial of Blood Filters

The verdict followed a month-long trial and is the first time the Cook IVC has been found defective in one of thousands of cases consolidated in multidistrict litigation in Indiana district court.

By **Greg Land**

An Indianapolis jury awarded \$3 million in the third bellwether case of allegedly defective intravenous blood filters manufactured by **Cook Medical Inc.**—one of two primary makers of the devices involved in multidistrict litigation.

The jury declined to award punitive damages to the plaintiff, 53-year-old Tonya Brand of Snellville, Georgia, following the monthlong trial.

It's the first time the Cook IVC has been found to be defective in the MDL. A jury found for the defense in 2017, and the second was dismissed on summary judgment last year after the court deemed it time-barred.

But a Texas state court jury awarded \$1.2 million against the company in a failure to warn case last year.

More than 10,000 cases involving IVC complaints have been



filed nationwide in state and federal courts, the vast majority naming Cook and a second manufacturer, Bard Medical, as defendants.

Cook's general counsel said the verdict will be appealed.

"We appreciate the jury's thoughtful approach and rejection of punitive damages as well as unreasonably high demands for compensatory damages," said Cynthia Kretz, vice presi-

dent and general counsel for Cook Medical.

"While we respectfully disagree with the compensatory damages and verdict, we appreciate the time and hard work of the jury," Kretz said. "We never want to see a patient with a poor outcome and we're sorry that this patient experienced a very rare complication."

Cook's trial counsel, Charles Weber and Andrea Pierson

of **Faegre Baker Daniels** in Minneapolis, did not reply to request for comment.

Brand, the plaintiff, is represented by a team including Ben Martin of Dallas' **Law Offices of Ben C. Martin**; Denman Heard of Houston's **Heard Law Firm**; Laura Baughman of **Baron & Budd**'s Dallas office; Joe Williams of **Riley Williams & Piatt** in Indianapolis; Misty Farris of Dallas' **Fears Nachawati** and Rob Hammers of **Schneider Hammers** in Atlanta.

IVC filters are implanted in the large vein carrying blood to a patient's heart from the lower body to filter out blood clots that can cause a pulmonary embolism.

Many of the complaints involve cases where the filters dislodged or broke apart, traveling through patients' bloodstreams into the heart or lungs.

Brand's complaint was filed in Georgia's Northern District before being combined with multidistrict litigation in Indiana's Southern District before Judge Richard Young.

In her case, a Cook IVC inserted prior to spinal fusion in 2009 fragmented, and in 2011 a portion broke through the the vein and skin of her thigh. Another piece was found to have lodged near her spine, where it remains.

"Permanent IVC filters have been used successfully since the 1950s to prevent coagulation in high-risk patients," Hammers said. "The idea of temporary filters, a retrievable filter, created a market opportunity to have them put in until the risk subsided."

"The problem with these filters is that they can create a cascading effect of complications: they would tilt, perforate the vein, and fracture," he said.

In an interview, Brand's lawyers said the evidence indicated that Cook knew there were problems with device before it went on the market.

"From the very beginning, the company knew they had design problems that could cause injury to the patients, and they didn't do anything to address those concerns," Baughman said.

Brand's complaint also included claims for failure to warn, but Young dismissed them on summary judgment.

Jurors heard from 10 experts during the trial, including key testimony from cardiovascular specialist Harlan Krumholz of the Yale School of Medicine.

"He testified that there were multiple warning signs about the use of these filters," Baughman said, and that there were severe risks and very little benefit.

The jury deliberated for more than 11 hours Thursday, coming in after midnight with a verdict for \$3 million. They came back Tuesday for about five hours of trial on punitives before deciding none were warranted.

Because the judge had ruled that only the design defect claims could proceed, much of the evidence concerning Cook's efforts to market the devices to doctors could not be presented to the jury for the punitive damages stage, Williams said.

"We had other evidence that their marketing decisions showed a complete indifference to the well-being of the patients," he said.

"When you're asking for punitives, you've got to prove by clear and convincing evidence that there was reckless indifference on the part of defendant," he said.

"I don't think the jury felt we met that burden," he added.

Hammers hailed the decision a "landmark" verdict "because it is the first verdict finding the design of a retrievable filter is defective, and this verdict is also the highest compensatory award of any case tried to date."

Thousands of cases involving Bard have been consolidated into an MDL in Arizona before Judge David Campbell. A jury there awarded \$3.6 million last year to a woman who required open-heart surgery to remove fragments of an IVC that fractured in 2014.

Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta.

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