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BREAKING: Bard Owes Injured Woman \$1.6M In IVC Bellwether, Jury Finds

By **Cara Salvatore**

Law360, Phoenix (March 30, 2018, 1:22 PM EDT) -- A Phoenix federal jury awarded \$2 million in compensatory damages on Friday to a woman who said a clot-stopping vein filter manufactured by Bard broke apart in her body, finding that the device maker was responsible for 80 percent of the harm, but also saying Bard is liable for punitive damages.

The punitive damages phase of the first bellwether over the IVC device will immediately follow Friday's verdict, which came after six-and-a-half hours of deliberations beginning Thursday. The jury said Bard was not liable for strict product liability design defect, strict product liability failure to warn, or negligent design. But it said Bard did negligently fail to warn, and that plaintiff Sherri Booker sustained \$2 million worth of harm.

Booker, who was 37 at the time she received a Bard G2 filter that eventually broke inside her inferior vena cava, the body's largest vein, dabbed at her eyes with a tissue as the verdict was read, as did some of her lawyers. The nine-member jury attributed 20 percent of the fault to a radiologist who failed to flag a visibly separated filter piece on an x-ray in 2009, before Booker's injuries developed to the point where she needed open-heart surgery. The other 80 percent was attributable to Bard, it said.

The jury also found that the surgeon who performed the 2014 procedure to retrieve filter pieces — with only partial success — was not a cause of injury to Booker, as Bard had argued.

The G2, which looks a bit like a daddy longlegs, did not have to undergo the normal gauntlet of clinical testing before its approval because it was submitted to the FDA under a 510(k), in which a manufacturer certifies that a new device is similar to one already approved. For the G2, that earlier device was the Recovery. Bard attorney Richard North Jr. said during closings that evidence on the first-generation Recovery was a "red herring" with regard to Booker's device, the second-generation G2.

The MDL under U.S. District Judge David Campbell includes over 3,600 plaintiffs, and Booker's trial will be followed within weeks by another, with plaintiff Jones. They and a handful more bellwethers are meant to help pinpoint the sturdiness and dollar value of the implant patients' claims. The Jones bellwether will center on Bard's fourth-generation filter, the Eclipse.

Booker is represented by Julia Reed Zaic of Heaviside Reed Zaic, Mark O'Connor of Gallagher & Kennedy PA, and Ramon Rossi Lopez and Josh Mankoff of Lopez McHugh LLP.

Bard is represented by James Condo and Amanda Sheridan of Snell & Wilmer LLP, and Richard North Jr., Matthew Lerner, Elizabeth Helm and Brandee Kowalzyk of Nelson Mullins

Riley & Scarborough LLP.

The cases are Booker v. Bard, case number 2:16-cv-00474, and In re: Bard IVC Filters Products Liability Litigation, case number 2:15-md-02641, both in the U.S. District Court for the District of Arizona.