

Top Product Liability Verdicts In The First Half Of 2015

By **Sindhu Sundar**

Law360, New York (August 3, 2015, 5:05 PM ET) -- Both sides of the product liability bar have won consequential trial victories so far this year, including a \$100 million verdict against Boston Scientific Corp. in pelvic mesh litigation — the largest so far — and two wins for Pfizer Corp. in suits over birth defects allegedly caused by Zoloft.

Here, Law360 looks at the top product liability verdicts of 2015 and the firms that won them:

Boston Scientific Hit With \$100M Mesh Verdict — Motley Rice LLC, Murphy & Landon

Plaintiff Deborah Barba in May won a \$100 million award in a state jury trial in Delaware against Boston Scientific over claims arising from injuries allegedly caused by the device maker's Advantage Fit and Pinnacle mesh products. Her award, the largest so far in mesh trials, comprised \$25 million in compensatory damages and \$75 million in punitives, according to court documents.

Boston Scientific indicated at the time that it planned to appeal the verdict. The device maker is currently also fighting a \$34.5 million judgment resulting from a different mesh trial that concluded in September.

Outcomes in early bellwether trials are not necessarily strong predictors for the outcomes of future trials, even if they may sometimes set the tone for the litigation. The mesh implant trials, for instance, started to go to trial in 2012 and resulted in mixed outcomes and smaller verdicts, attorneys observe. The first suit to go to trial over vaginal mesh injuries went to trial in July 25 and ended in a \$3.6 million judgment against C.R. Bard Inc.

"Whether one side wins the first two or three trials doesn't mean it will continue winning, and over time you'll see how the trend shakes out," he said. "The mesh trials have proven that point, and the size of verdicts seems to be growing."

The plaintiff is represented by Fidelma Fitzpatrick and Fred Thompson of Motley Rice LLC and Philip T. Edwards of Murphy & Landon.

The defendant is represented by Colleen D. Shields of Eckert Seamans Cherin & Mellott LLC and Matthew D. Keenan and Eric Anielak of Shook Hardy & Bacon LLP.

The case is Deborah Barba v. Boston Scientific Corp., case number N11C-08-050 MMJ, in the Superior

Court of the State of Delaware in New Castle County.

Pfizer Wins First Zoloft Birth Defect Trials — Quinn Emanuel Urquhart & Sullivan LLP, Paul Weiss Rifkind Wharton & Garrison LLP, Thompson Coburn LLP

Pfizer Inc. this year won the first two trials, both in state courts, over the alleged cardiac birth defect risks of its antidepressant Zoloft, giving the drugmaker an edge before the federal bellwether trials scheduled for next year in the Zoloft birth defect multidistrict litigation in Pennsylvania.

In April, Pfizer defeated claims by 31-year-old mother Kristyn Pesante, who claimed her son Logyn, now 11, was born with several cardiac defects. The Missouri state jury did not rule on the plaintiff's causation or failure-to-warn claims, finding simply that "on the claim by plaintiff Logyn Pesante for compensatory damages for personal injury against defendant Pfizer, we the undersigned jurors find in favor of Pfizer," according to the verdict.

In June, a Philadelphia state jury cleared Pfizer in a \$2.4 million suit by Mia Robinson and her mother Rachel, who claimed that Rachel's treatment with the medication during her pregnancy had resulted in Mia's heart problems. Mia was born with a condition called transposition of the great arteries, in which the two main blood vessels exiting the heart are in the wrong position.

The defense verdicts could bode well for the drugmaker in federal bellwether trials scheduled for 2016, attorneys have said, amid a vigorous dispute between the parties over whether plaintiffs' causation experts pass muster.

Pfizer is represented by Mark Cheffo of Quinn Emanuel Urquhart & Sullivan LLP, Beth Ann Wilkinson and Alexandra M. Walsh of Paul Weiss Rifkind Wharton & Garrison LLP, and Booker T. Shaw of Thompson Coburn LLP.

Pesante is represented by Shelley Hutson of Clark Love & Hutson.

The cases are Tracey Foster et al. v. Pfizer Inc. et al., case number 1222-CC02441-01, in the 22nd Judicial Circuit Court of Missouri, and Mia Robinson et al. v. Wolters Kluwer Health Inc. et al., case number 110700778, in the Court of Common Pleas of Philadelphia County, Pennsylvania.

Sunbeam Told To Pay \$59M For Fatal Fire — The Homampour Law Firm

Plaintiff Kenneth Aaron Shinedling won a \$59.3 million award after a California federal trial over a fire that killed his wife and was allegedly sparked by a Sunbeam Products Inc. space heater. The jury found Sunbeam was mostly to blame for the fire, concluding that the manufacturer was negligent because it knew of the fire risks posed by its defective product.

The family received \$13.6 million in wrongful death damages, and the remainder of their compensation was for the emotional distress they've experienced. One daughter — 4 years old at the time of her mother's death — was awarded another \$13.4 million for her past and future suffering.

Sunbeam is represented by Anne Marie Ellis and Gary A. Wolensky of Arent Fox LLP, David J. O'Connell of Goldberg Segalla LLP, Manuel Saldana of Gordon & Rees LLP, Elizabeth V. McNulty of Archer Norris PLC and Dani Helene Rogers.

The Shinedlings are represented by Arash Homampour and Corey C. Arzoumanian of The Homampour Law Firm.

The case is Kenneth Aaron Shinedling et al v. Sunbeam Products Inc et al, case no. 5:12-cv-00438, in the U.S. District Court for the Central District of California.

Yamaha Beats \$17M Suit Over ATV Injury — Bowman and Brooke LLP

In March, a California state jury **found** for Yamaha Motor Corp. in a \$16.7 million trial over claims by plaintiffs Elizabeth Ault-Smietana and her husband Jayson Smietana that alleged defects in a Yamaha Rhino off-road vehicle caused a serious accident that resulted in the amputation of Ault-Smietana's leg.

The case was the eleventh around the country to go to trial in the Yamaha mass tort involving its Rhino utility vehicle, and the last active case in the California Judicial Council coordinated proceedings, which once had more than 275 cases, according to Yamaha's attorneys.

Despite Yamaha's win, defense attorneys say product liability trials continue to pose challenges, particularly in cases where the injuries are especially serious or graphic.

"Any significant product liability case is invariably a sympathetic, emotionally charged case, which because of human nature tends to cause juries and judges to side with the plaintiffs, even where the claims may not be supported by the law," said Terry Budd of K&L Gates, national trial counsel for a number of companies.

The plaintiffs in the current case were represented at trial by Fredric G. Levin and Virginia Buchanan of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA, Ryan Bright of Klein DeNatale Goldner Cooper Rosenlieb & Kimball LLP, and Ian Pancer of the Law Offices of Ian Pancer.

Yamaha was represented by Paul G. Cereghini, Timothy J. Mattson, Jenny A. Covington and Travis Wheeler of Bowman and Brooke LLP and Brian Gabel of the Yamaha Motor Corp. U.S.A. legal department.

The case is Elizabeth Ault-Smietana v. Yamaha Motor Corp. U.S.A., Case No. 37-2011-00086006-CU-PO-CTL, in the Superior Court of California, Orange County.

Halal Food Co. Founder Convicted For Mislabeling Meat — U.S. Attorney's Office for the Northern District of Iowa

William Aosse, the founder and former owner of Cedar Rapids, Iowa-halal foods company Midamar Corp., was **convicted** in July for mislabeling meat bound for export to Malaysia and Indonesia. The jury's guilty finding, relatively uncommon in food labeling suits, related to the company's export of meat that was labeled as coming from a Nebraska plant, when it actually came from a Minnesota plant, according to court documents.

The Minnesota slaughterhouse wasn't certified to export beef to Malaysia and Indonesia from 2007 to 2010, while the Nebraska-based slaughterhouse was. Midamar said at the time that the conviction didn't relate the halal certification of the meat.

Aosse is represented by Haytham Faraj of The Law Offices Of Haytham Faraj PLLC and Jason R.

Klinowski of Wallace Jordan Ratliff & Brandt LLC.

The government is represented by U.S. Attorney Kevin W. Techau and Assistant U.S. Attorneys Richard L. Murphy and Timothy L. Vavricek.

The case is U.S. v. William B. Aossey Jr., case number 1:14-cr-00116, in the U.S. District Court for the Northern District of Iowa.

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