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FILED

No. DC-12-14349-D

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MARTHA and FELIX SALAZAR,

Plaintiffs,

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IN THE DISTRICT COURT
JAMES H. SIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS

DEPUTY

vs.

DALLAS COUNTY, TEXAS

BOSTON SCIENTIFIC CORPORATION,

Defendant.

95TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments of the attorneys, you will go to the jury room to decide the case, answer the questions that are included herein, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes that you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the Court's bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that no one can read what you wrote.

I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.

2. Base your answers only on the evidence admitted in Court and on the law that I have given you in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of the instructions and definitions I have given you in this Charge.
4. If my instructions use a word in a way that is different from its ordinary meaning, you must use the meaning I have given you, which is a proper legal definition.
5. All questions and answers are important. No one should say that any question or answer is not important.
6. Answer "Yes" or "No" to all questions that require such an answer. A "Yes" answer must be based on a preponderance of the evidence, unless otherwise instructed. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence, unless otherwise instructed.

"Preponderance of the Evidence" means the greater weight of credible evidence admitted in this case. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up

each juror's amount and then figuring the average. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

9. Except where you are instructed otherwise, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

"Negligence," when used with respect to the conduct of Boston Scientific Corporation, means failure to use ordinary care, that is, failing to do that which a company of ordinary prudence would have done under the same or similar circumstances or doing that which a company of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary Care" means that degree of care that would be used by a company of ordinary prudence under the same or similar circumstances.

"Proximate Cause" means a cause which was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a company using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

In answering the following questions, you are further instructed that:

"Boston Scientific" means Boston Scientific Corporation.

"Obtryx" refers to the Boston Scientific Obtryx Transobturator Mid-Urethral Sling device implanted in Martha Salazar on January 17, 2011.

A medical device manufacturer, like Boston Scientific, owes a duty to adequately warn a patient's prescribing physician about the device's risks. The manufacturer does not owe a duty to warn patients directly.

As I have said before, if you do not follow these instructions you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for

another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

QUESTION 1

Was Boston Scientific negligent in designing the Obtryx at the time it left Boston Scientific, and was that negligence, if any, a proximate cause of injury to Martha Salazar?

For Boston Scientific to have been negligent there must have been a defect in the designing of the product.

A “design defect” is a condition of the product that renders it unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use. For a design defect to exist there must have been a safer alternative design in January 2011.

“Safer alternative design” means a product design other than the one actually used that in reasonable probability—

1. would have prevented or significantly reduced the risk of the injury in question without substantially impairing the product’s utility, and
2. was economically and technologically feasible at the time the product left the control of Boston Scientific by the application of existing or reasonably achievable scientific knowledge.

Answer “Yes” or “No:”

Yes

QUESTION 2

Was Boston Scientific negligent in marketing the Obtryx at the time it left Boston Scientific and was that negligence, if any, a proximate cause of injury to Martha Salazar?

For Boston Scientific to have been negligent there must have been a defect in the marketing of the product.

A “marketing defect” with respect to the product means the failure to give adequate warnings of the product’s dangers that were known or by the application of reasonably developed human skill and foresight should have been known or failure to give adequate instructions to avoid such dangers, which failure rendered the product unreasonably dangerous as marketed.

“Adequate” warnings and instructions mean warnings and instructions given in a form that could reasonably be expected to catch the attention of a reasonably prudent surgeon in the circumstances of the product’s use; and the content of the warnings and instructions must be comprehensible to the average surgeon and must convey a fair indication of the nature and extent of the danger and how to avoid it to the mind of a reasonably prudent surgeon.

An “unreasonably dangerous” product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary surgeon with the ordinary knowledge common to the surgeon’s medical community as to the product’s characteristics.

Answer “Yes” or “No:”

Yes

(If you have answered “Yes” to either Question 1 or 2, then answer Question 3. Otherwise, do not answer Question 3.)

QUESTION 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Martha Salazar for her injuries, if any, that resulted from the defective design or marketing of the Obtryx?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any, for:

- a. Physical pain and mental anguish sustained in the past.

Answer: 1.5 million

- b. Physical pain and mental anguish that, in reasonable probability, Martha Salazar will sustain in the future.

Answer: 10 million

- c. Physical impairment sustained in the past.

Answer: 750 K = 750,000 ²⁰

- d. Physical impairment that, in reasonable probability, Martha Salazar will sustain in the future.

Answer: 5 million

- e. Reasonable expenses of necessary medical care that, in reasonable probability, Martha Salazar will incur in the future.

Answer: 3 million

- f. Loss of earning capacity that, in reasonable probability, Martha Salazar will sustain in the future.

Answer: 1.7 million

(If you have answered "Yes" to either Question 1 or 2, then answer Question 4. Otherwise, do not answer Question 4.)

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate Felix Salazar for injuries, if any, to Martha Salazar, that resulted from the defective design or marketing of the Obtryx?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any, for:

- a. Loss of household services sustained by Felix Salazar in the past.

"Household Services" means the performance of household and domestic duties by a spouse to the marriage.

Answer: 15 K = 15,000⁰⁰

- b. Loss of household services that, in reasonable probability, Felix Salazar will sustain in the future.

Answer: 500 K = 500,000⁰⁰

- c. Loss of consortium sustained by Felix Salazar in the past.

"Consortium" means the mutual right of the husband and wife to that affection, solace, comfort, compassion, society, assistance, sexual relations, emotional support, love, and felicity necessary to a successful marriage.

Answer: 250 K = 250,000⁰⁰

- d. Loss of consortium that, in reasonable probability, Felix Salazar will sustain in the future.

Answer: 750 K = 750,000⁰⁰

(Answer Question 5 only if you unanimously answered "Yes" to Question 1 or 2. Otherwise, do not answer Question 5.

To answer "Yes" to Question 5, your answer must be unanimous. You may answer "No" to Question 5 only upon a vote of 10 or more jurors. Otherwise, do not answer Question 5.)

QUESTION 5

Do you find by clear and convincing evidence that the harm to Martha Salazar resulted from gross negligence?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by Boston Scientific,

- (a) which, when viewed objectively from the standpoint of Boston Scientific at the time of its occurrence, involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Boston Scientific has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No:"

Yes (UNANIMOUS)

(If you unanimously answered "Yes" to Question 5, answer Question 6. Otherwise, do not answer Question 6.)

QUESTION 6

What sum of money, if any, should be assessed against Boston Scientific and awarded as exemplary damages, if any, for the grossly negligent conduct found by you in response to Question 5?

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any, are:

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of Boston Scientific.
- d. The situation and sensibilities of the parties involved.
- e. The extent to which such conduct offends a public sense of justice and propriety.
- f. The net worth of Boston Scientific.

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

Answer in dollars and cents for damages, if any:

Answer: 50 million ~~BENEFIT~~ ^{BENEFIT} (UNANIMOUSLY)

(If you have found an amount in answer to Question 6, answer Question 7. Otherwise, do not answer Question 7.)

QUESTION 7

How do you apportion the exemplary damages between Martha Salazar and Felix Salazar?

Answer by stating a percentage for each person named below. The percentage you find must total 100 percent.

Martha Salazar: 95 %

Felix Salazar: 5 % (unanimously)

TOTAL 100%

Presiding Juror:

After you retire to the jury room to answer the questions I have put to you, the first thing you must do is choose a presiding juror.

It is the duty of the presiding juror –

1. to have this complete Charge read aloud, if it will be helpful to your deliberations,
2. to preside during your deliberations, meaning to manage the discussions, and see that you follow these instructions,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to me,
4. to write down the answers you agree on,
5. to get the signatures for the verdict certificate, and
6. to notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror?

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the Charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.