

The Largest Kentucky Jury Verdict of 2013

4905 - Products Liability - A girl who was born deaf received cochlear implants at age 4 – soon after the implants leaked and she suffered several electrical shocks – in this lawsuit against the manufacturer of the implants, it was alleged the manufacturer knew of the risk of leakage but delayed making it public because company insiders were poised for a big pay-off after the company was sold – a Louisville jury bought the theory and imposed \$6.25 million in punitive damages

Sadler v. Advanced Bionics, 3:11-450

Plaintiff: Tim Edwards, Edwin E. Wallis and Kevin M. McCormack, *Glassman Edwards Wyatt Tuttle & Cox*, Memphis, TN and Ronald E. Johnson, *Schachter Hendy & Johnson*, Ft. Wright

Defense: Michael O'Donnell, Craig R. May, Sean G. Saxon and Kara Rosenthal, *Wheeler Trigg O'Donnell*, Denver, CO and W. Kennedy Simpson, *Thompson Miller & Simpson*, Louisville

Verdict: \$7,246,235 for plaintiff

Federal: **Louisville**, J. Russell,
4-16-13

Breanna Sadler of Meade County was born deaf in 2002. Nearly four years later on 1-13-06, she received cochlear implants. The implants (a Hi Res 90K model) were manufactured by Advanced Bionics. The company had endured problems with this particularly model dating to 2004 – they were finally recalled in March of 2006. The implants were leaking and allowing body moisture to seep into the electrical parts. This led to both a risk of the failure of the implant and the user being shocked.

The recall occurred not quite two months after Breanna's implants were installed. Her doctor was unaware there was a leakage problem with the implants. Breanna didn't have problems with the implants until December of 2009.

Breanna was suddenly shocked, moisture having leaked into her implants. Her mother would recall the girl convulsed from an aggressive shock and then vomited. Her mother disconnected the device. Not sure what the problem was, her mother reconnected it. Breanna was shocked again. Breanna received a third and final shock when her doctor connected it again. Ultimately the devices were removed and six weeks later a working version made by a competitor was installed.

Breanna, now age 11, remains wary of glasses or even hearing aids because she is fearful of being shocked. Her proof developed that for a time, Sadler lived in a cold, dark and silent world.

In this lawsuit against Advanced Bionics (prosecuted by her parents), it was alleged the implants were negligently and/or defectively manufactured. As the case was tried to the jury, the plaintiff alleged that (1) the implants were not manufactured in conformity with the packaging supplement, and (2) Advanced Bionics didn't perform

validation testing in actual or simulated use conditions. Key experts for Breanna were Tom Green, Metallurgy and Hermeticity, Bethlehem, PA and Harold Pellerite, Medical Device Review, Damascus, MD. She sought medicals of \$236,305 plus \$9,910 for her father's lost wages and travel expenses. Her pain and suffering damages were not capped.

Beyond her claim for compensatory damages, Breanna alleged Advanced Bionics engaged in reckless behavior. It was her proof that going back to 2004, there were reports of leakage problems with the implants. Faced with those complaints, the company continued to make and ship the devices without proper testing.

There was also disturbing proof from the plaintiff that a deal was struck in 2004 to sell Advanced Bionics. Company bigwigs were due for a big payday if the deal was consummated – the first payment was due in February of 2006 – that was one month after Breanna's implants were installed. Thus from the plaintiff's perspective, thousands of children continued to receive the implants from 2004 to 2006 because of the scheme. Based on this profits before safety theory, the plaintiff also sought an award of punitive damages. [There are many other similar cases pending against Advanced Bionics regarding this implant – this was the first case to be tried.]

Advanced Bionics (now a subsidiary of a Swiss firm, Sonova) denied there was a defect with its implants – it noted that Sadler's implants passed all manufacturing tests. Defense experts were Kinzy Jones, Metallurgy and Ed McDonnell, Health Business Administration. Advanced Bionics also denied any scheme to hide knowledge of problems with the implants.

Damages were also diminished. The company explained it was fortunate that Breanna is now a happy and well-adjusted little girl with no memory of these events. Her parents' memory of them, the defense argued, was no proxy for Breanna's pain and suffering.

There was interesting pre-trial practice. Advanced Bionics had sought to apportion fault to a third-party (Astro-Seal) that manufactured a component. Astro-Seal had been dismissed by the case from the court because of a lack of personal jurisdiction. Judge Russell declined to permit apportionment to the "empty chair" defendant. Advanced Bionics also sought to have the claim precluded by the Biomaterials Access Act. That motion too was granted and denied in part, the jury only hearing the products liability counts.

The jury's verdict (after 3 ½ hours of deliberations) was for Breanna on both defect and negligent manufacture counts. She then took her medicals as claimed plus the lost wages and travel expenses of her father. The girl's pain and suffering was \$750,000, the compensatory damages totaling \$996,235.

The jury continued and further found by clear and convincing evidence that Advanced Bionics had engaged in reckless conduct. Punitive damages of \$6.25 million

were assessed, the verdict totaling \$7,246,235. A consistent judgment has been entered.

Advanced Bionics has since moved the court for permission to interview jurors. It cited that as the company faces several lawsuits, the interviews would help with settlements. Judge Russell denied the motion.