

Guidant suit seeks punitive award

But company lawyer denies allegations

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Guidant Corp. should be at risk of punitive damages for how it handled problems with implanted cardiac defibrillators that ultimately were recalled in 2005, attorneys for plaintiffs argued Friday during a court hearing in Minneapolis.

Guidant, which manufactured the devices in Arden Hills, was acquired last year by Boston Scientific. According to internal company documents presented during the hearing, Guidant knew of problems with its Prizm 2 devices nearly three years before it publicly disclosed them.

The company kept selling the device so it could keep pace with Fridley-based Medtronic Inc., its top competitor in the multibillion-dollar market, charged Nicholas Drakulich, an attorney for a California man who is one of more than 2,200 plaintiffs in lawsuits related to Guidant's controversial recalls.

But Timothy Pratt, the lead attorney for Guidant, argued that punitive damages are uncalled for since the company actively investigated and worked to address issues with the devices ever since they were first reported in 2002. The Prizm 2 otherwise had a stellar record in terms of reliability, Pratt said.

The motion for punitive damages in the Guidant case was one of five up for discussion Friday in a hearing that helped set the stage for a trial set to begin in July. In the case, Leopaldo Duron is suing Guidant to recover the financial and emotional harm he says he suffered after having his Prizm 2 device surgically replaced following the recall.

Duron's is the first of six so-called bellwether cases that are intended to represent three types of Guidant plaintiffs: patients like Duron who had devices explanted; patients whose explant surgeries involved medical complications, and patients who opted not to have their devices replaced. The jury verdicts in the bellwether cases could help guide settlement discussions with similarly situated plaintiffs.

Duron's Guidant device never failed, and his case likely wouldn't have come to court were it not for the case of Joshua Oukrop, a 21-year-old Grand Rapids, Minn., man who died when his implanted Guidant defibrillator failed to deliver a life-saving jolt. Duron's defibrillator could have suffered from the same shorting problem, Drakulich said.

Oukrop's case came to light after Dr. Robert Hauser and physicians at the Minneapolis Heart Institute brought the story to the New York Times in 2005. The doctors were concerned that Guidant wasn't doing enough to notify physicians and patients about the potential problem.

Drakulich reprised some of that history Friday in making the case for punitive damages, displaying a 2005 e-mail that Hauser sent that charged: "This is an egregious act by a manufacturer of lifesaving devices."

Pratt, the Guidant attorney, responded that he was unsure of the context for Hauser's e-mail. But he said plaintiffs were engaging in an unfair game of second-guessing Guidant officials who, Pratt said, were preparing to go public with the Oukrop matter before the New York Times got involved.

"The issue of when you notify physicians on low-frequency failures is still under debate," Pratt said.

The hearing featured some sensational bits of evidence from plaintiff attorneys that Pratt quickly sought to disarm.

Drakulich, for example, displayed an internal company memo that stated: "The marketing staff is comprised of money-hungry, market-share-at-any-cost individuals whose sole purpose is to wildly promote products." Pratt said the comment was intended as a joke.

Plaintiff attorneys suggested that Guidant made a deliberate decision not to fix problems with devices because such a remedy

would be too expensive - on the order of \$9,000 per device. But Pratt angrily rejected the suggestion, saying Guidant officials rejected that particular fix because they thought they had already addressed the problem with design modifications.

U.S. District Judge Donovan Frank did not rule on the motions from the bench.

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