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Mask-Wearing Broward Lawyers Work to Connect With Jurors During In-Person Trial

Among the challenges the litigators faced was having two of the jurors dismissed for COVID-19-related reasons, leaving six to decide the case.

By Michael A. Mora | November 25, 2020



Bryan Hofeld and Jeffrey Haberman, partners at the Schlesinger Law Offices in Miami Courtesy photo

A Fort Lauderdale law firm scored a multimillion-dollar verdict in an Iowa federal court in a rare in-person federal jury trial that took place amid the height of the coronavirus pandemic.

And one of the biggest obstacles for Bryan Hofeld, a partner at the Schlesinger Law Offices in Fort Lauderdale who represented Lori Nicholson, hit him right at the start. When Hofeld conducted voir dire of potential jurors, they wore their masks concealing the lower half of their faces to prevent the spread of COVID-19.

"A lot of that assessment in jury selection involves not just what they say, but it involves how they express certain things they say," Hofeld said. "It made it harder to develop a good impression of people, what their disposition was and that was definitely a challenge."

The case stemmed from a hip implant manufactured by Biomet Inc. that Nicholson received in 2007. About five years later, Nicholson had to undergo the knife again after the hip loosened due to metal ion disease caused by the implant, according to court documents.

The tremendous pain suffered by Nicholson led Hofeld and a second partner at the law firm, Jeffrey Haberman, to prosecute a case against Biomet in the U.S. District Court in the Northern District of Iowa. Their victory in an Iowa federal court exemplified one of the potential impediments trial litigators across the country are facing amid the coronavirus pandemic.

And another impediment surfaced in a nightmare case in the Eastern District of Texas, when the presiding U.S. district court judge declared a mistrial last week after 15 participants in the trial tested positive for COVID-19. In that case, the defendants refused to proceed with less than six jurors, according to the court docket.

Now, U.S. District Court Judge C.J. Williams has entered a judgment in the Iowa federal court in which the jury awarded Nicholson \$1 million for compensatory damages and \$2.5 million for punitive damages.

Meredith Weissman, vice president of corporate communications at Biomet, said the metal-on-metal implant has helped thousands of patients regain mobility, and the company will continue on its mission of alleviating pain and improving quality of life for people around the world.

"While we appreciate the jury for its service, we disagree with the jury's conclusion and believe it was contrary to the evidence presented at trial," Weissman said. "We will pursue all available legal options to appeal this verdict."

Just like with the Eastern District of Texas case, the Fort Lauderdale litigators faced similar challenges. Just before Nicholson's case went to trial, a mistrial was declared in a separate case in the same courthouse because a juror and an attorney tested positive for COVID-19.

And, as the case against Biomet progressed, two of the jurors had close contact with people in their personal lives who tested positive for COVID-19. Out of an abundance of caution, the judge dismissed the two jurors because he was concerned the pair would test positive, which left only six jurors to deliberate the case and reach a verdict in just under four hours.

Read the verdict form:

QUESTION 2: On Plaintiff Lori Nicholson's claim of design defect against Biomet, as submitted in Instruction Number 17, we, the undersigned jurors, on the question of whether the alleged design defect caused Plaintiff's damage, find in favor of:

(circle one below)

Plaintiff Lori Nicholson or Defendant Biomet

Note: If you answered Question 2 in favor of Plaintiff Lori Nicholson, go on to answer Question 3. If you answered Question 2 in favor of defendant Biomet, do not answer any other questions, but sign and date the verdict form.

QUESTION 3: Complete the following questions as to compensatory damages only if you found for Plaintiff Lori Nicholson in Questions 1 and 2 above:

We, the undersigned jurors, assess compensatory damages for the personal injuries of Plaintiff Lori Nicholson as follows: (write in amounts awarded below)

Page 2 / 3

Past physica _____

But Hofeld said he did not let those incidents distract him from prevailing for his client. The Fort Lauderdale litigator said the defendant made his client a "human guinea pig."

"To have been told it's a forever hip, the only one she will ever need throughout her life. Well, now she is being told within five years, that failed, and now she has to go under the knife again and have another surgery," Hofeld said. "She was terribly distraught. She was crying the whole drive home from the doctor's office."

While Nicholson is fine now, her surgeon and experts testified that she would need one or two more surgeries in the future because of the harm caused by the metal-on-metal hip.

"There were future damages we were able to argue to the jury based on the testimony she had that more likely than not, she will need future surgeries and with those future surgeries there will be some degree of pain," Hofeld said. "Based on the evidence, it looks like she may have a tough road ahead of her."

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