

TOP DEFENSE WINS OF 2004

Just 10 hours to try a case with \$20M at stake

By: June D. Bell

CASE TYPE: products liability

CASE CITE: *Thomas D. Crowson Jr. & Andrea Crowson v. Davol Inc.*, No. A:03-CA-668-55 (W.D. Texas)

FOR THE DEFENSE: Joe G. Hollingsworth, Katharine R. Latimer, Kirby T. Griffis and Matthew J. Malinowski, Spriggs & Hollingsworth, Washington

PLAINTIFFS' LAWYERS: Brian M. Keller, Stephen M. Loftin, John B. Thomas and Jay N. Gross, Hicks Thomas & Liliensern, Houston

MOST PRODUCTS liability cases involving a medical device take two to four weeks to try. A pair of defense lawyers had just 10 hours to persuade a Texas jury that their client's surgical mesh did not cause a young plaintiff's sterility after his hernia-repair operation.

At stake: \$20 million in damages and punitive, plus a hint of how the other pending suits against the same defendant might fare.

"We used nine hours and 58 minutes," joked Katharine R. Latimer, who defended the case with Joe G. Hollingsworth on behalf of Davol Inc., a medical technology company. Both are partners at Spriggs & Hollingsworth in Washington.

Each side was allotted 10 hours for opening and closing statements, direct and cross-examination and objections. The team that lost the objection had the argument time subtracted

from a clock monitored by the courtroom clerk. The defense team lost a *Daubert* motion hearing before the trial even began, costing them 45 minutes right off the bat.

The draconian time limit was imposed by federal Judge Sam Sparks, who is "very protective and very devoted to his juries," Hollingsworth said.

He and Latimer rose to the challenge by paring their case to its elements and continually revising their strategy. "We had to go back every night, and sometimes at noon, and reconstruct the trial schedule," Hollingsworth said. "We just could not be wedded to a standard approach. We had to make judgments on the fly."

They devoted two-thirds of their time to cross-examination, targeting the plaintiff's medical-causation expert to prove there was no reliable scientific evidence linking surgical mesh to infertility. The whole defense was presented in less than a day.

The *Crowson* jury didn't know about the judge's ticking clock, but they, too, didn't waste any time. They returned the defense verdict in just 55 minutes.

The plaintiff's attorney, Brian M. Keller, said jurors later told him they needed pictures



THE TEAM: Latimer, top, and Hollingsworth faced a time limit.

of the patient's injury to determine whether the liability rested with the mesh or the surgeon, who was not a defendant. "They wanted more concrete evidence about what it looked like inside the plaintiff's body," said Keller, a partner in Hicks Thomas & Liliensern in Houston. He did not have those photos, however, because the plaintiff refused to undergo another invasive, painful and costly procedure.

A plaintiff's verdict likely would have added steam to what Hollingsworth called a "significant number" of cases involving surgical mesh pending against Davol. More than 700,000 men each year receive hernia-repair surgery, and most procedures use the defendant's polypropylene mesh.

But following the verdict in the *Crowson* case, a case ready for trial in Houston abruptly settled for "a very, very nominal sum," Hollingsworth said, and as many as two dozen cases were dropped.

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