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BIG SUITS

Bard v. W.L. Gore

On March 31 a federal judge in Arizona doubled the \$185 million that a jury had earlier ordered W.L. Gore & Associates, the maker of Gore-Tex, to pay a medical device company, capping a three-decade-old dispute over a breakthrough in vascular grafts.

But the medical device company, C.R. Bard Inc., is likely to receive still more once future royalties and damages since July 2007 are assessed. Bard's attorneys at Kirkland & Ellis, led by **Steven Cherny**, and several other firms that worked on the case during its long history, stand to share some \$19 million in fees.

The damages award comes after a jury found in December 2007 that Gore had infringed a patent on vascular grafts.

The grafts were developed in the 1970s by Dr. David Goldfarb, one of a number of doctors to whom Gore sent a substance known as expanded polytetrafluoroethylene to determine whether it would be suitable for use in medical devices. Goldfarb's breakthrough was figuring out the microscopic structure of the substance and the properties that would make it work in the body. He applied for a patent, as did Gore, sparking the long-running dispute.

Meanwhile, Bard obtained a license to Goldfarb's pending patent in 1980. In 2002 the Patent and Trademark Office awarded Goldfarb the patent. Bard approached Gore with a licensing proposal, but when the company did not respond, Bard sued. Trial began in November 2007; the jury returned a unanimous verdict in favor of the plaintiffs, Bard and Goldfarb.

Gore is planning to appeal.

FOR PLAINTIFFS BARD PERIPHERAL VASCULAR, INC. (TEMPE, ARIZONA) AND DAVID GOLDFARB

In-House: At C.R. Bard, Inc.: associate general counsel and chief patent counsel **Charles Krauss**.



STEVEN CHERNY
Kirkland & Ellis

Kirkland & Ellis: **Steven Cherny**. (He is in New York.) Cherny, lead trial counsel, inherited the case in 2004 after the attorney who originally filed the case, Foley Hoag partner Peter Ellis, retired. Cherny brought the matter first to Latham & Watkins and then to Kirkland when he joined in 2008.

Latham & Watkins: **Maximilian Grant** and **Stephen Swinton**. (Grant is in Washington, D.C.; Swinton is in San Diego.) The two worked with Cherny from 2004 to 2007 while Cherny was at the firm; Grant continued to work on the matter subsequently.

Ropes & Gray: **Jesse Jenner**. (He is in New York.) Jenner cocounseled with Cherny while at Fish & Neave, which merged with Ropes & Gray.

Foley Hoag: **Peter Ellis**. (He retired before the case went to trial.) Ellis filed the suit.

Wolf, Greenfield: **Lawrence Green** and associate **John Strand**. (They are in Boston.) The firm was patent counsel.

FOR DEFENDANTS W.L. GORE & ASSOCIATES (NEWARK, DELAWARE)

Osborn Maledon: **Brett Dunkelman** and **William Maledon**. (Both are in Phoenix.) The firm was lead trial counsel.

Locke Lord Bissell & Liddell: **Matthew Blackburn**, **James Gould**, and counsel **David Pfeffer**. (Blackburn is in San Francisco; the others are in New York.) The three were tapped for patent matters while at Morgan & Finnegan, which has since dissolved.

—*Tosin Sulaiman*