

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

**JULIA A. RATLIFF AND RAYLYN M.
RATLIFF**, *Co-Administrators of the Estate of
Cinthia K. Ratliff*

Plaintiffs

vs.

BOSTON SCIENTIFIC CORPORATION

Defendant

Case No. 2:15-cv-76

Judge

COMPLAINT
(Jury Demand Endorsed Hereon)

Now come Plaintiffs Julia and Raylyn Ratliff, Co-Administrators of the Estate of Cinthia Ratliff, by and through counsel, and for their cause of action state the following:

PARTIES, JURISDICTION, VENUE

1. Plaintiffs Julia and Raylyn Ratliff, are duly appointed Co-Administrators of the Estate of Cinthia K. Ratliff aka Cindi K. Ratliff who died on May 3, 2013, said Plaintiffs having been appointed by the Probate Court of Perry County, Ohio, on June 26, 2013.

2. Defendant Boston Scientific Corporation is a Delaware Corporation, with its corporate headquarters located in Malborough, Massachusetts and which conducts business throughout the United States, including in the state of Ohio.

3. Boston Scientific Corporation designs, develops, produces, manufactures, assembles, markets, distributes, and sells medical devices across the country and in Ohio.

4. Jurisdiction exists against Defendant pursuant to 28 U.S.C. §1332, in that there is complete diversity of citizenship between Plaintiffs and Defendant, and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

5. Venue is proper within the Southern District Eastern Division pursuant to U.S.C. §1391 in that jurisdiction is founded on diversity of citizenship and a substantial part of the events or omissions giving rise to the claim occurred within this District.

FACTUAL ALLEGATIONS

6. Defendant Boston Scientific at all times relevant designed, developed, produced, manufactured, assembled, marketed, distributed, and sold a medical device known as the Greenfield Vena Cava Filter, a device implanted and utilized for the purposes of controlling pulmonary embolism.

7. In 2004, Decedent Cinthia K. Ratliff, then known as Cynthia K. Campbell, resided in East Fultonham, Muskingum County, Ohio.

8. In 2004, Decedent came under the medical care and attention of Dr. Jessica B. Campbell, a vascular surgeon, whose practice was located in Zanesville, Muskingum County, Ohio.

9. On April 20, 2004, Decedent was admitted to Genesis Healthcare System in Zanesville, Ohio with a diagnosis of deep vein thrombosis.

10. As part of her care and treatment for the deep vein thrombosis Decedent had a procedure performed on April 22, 2004, by Dr. Jessica Campbell during which a Boston Scientific Greenfield Vena Cava Filter was placed within her right inferior vena cava.

11. Upon information and belief the specific Greenfield Vena Cava Filter implanted by Dr. Campbell was a Boston Scientific Greenfield Vena Cava Filter Catalog Number 50-501, Lot Number 6407350.

12. Upon information and belief, the Boston Scientific Greenfield Filter implanted by Dr. Campbell was implanted and utilized in accordance with Defendant's specific instructions, guidelines, and directives.

13. On May 3, 2013, Decedent was working as a long-haul truck driver and traveled to Oregon.

14. Upon information and belief while resting at a rest area located on I-5 in the vicinity of Coburg, Oregon, Decedent suffered a medical emergency. Shortly thereafter she was pronounced dead by medics who had been called to the scene.

15. As a result of her death on May 3, 2013, an autopsy was performed by Dr. Larry Lewman of the office of the State Medical Examiner, Clackamas, Oregon. Dr. Lewman determined the immediate cause of death to be "Perforation of Inferior Vena Cava by Greenfield Filter with Retroperitoneal Hemorrhage."

16. Upon information and belief, on the day of and prior to the implantation of the Greenfield Vena Cava Filter within Decedent, Defendant knew or should have known that its Greenfield Vena Cava Filter when used as expected and intended, had the possibility breaking free from its implantation site, migrating, perforating the vena cava, and causing serious injury and/or death to patients, including Decedent Cinthia Ratliff.

17. Upon information and belief, Defendant Boston Scientific negligently, recklessly, wantonly, and carelessly failed to properly design and manufacture Greenfield Vena Cava Filter Catalog Number 50-501, Lot 6407350, implanted in Decedent.

18. Upon information and belief, Defendant's negligent reckless, wanton, and careless failure to notify patients, including Decedent Cinthia Ratliff of the defective nature of its Greenfield Vena Cava Filter, was the cause of the Decedent's death on May 3, 2013.

19. Upon information and belief, at the time of the implantation of the Greenfield Vena Cava Filter, the Defendant negligently, recklessly, wantonly, and carelessly failed to provide proper and adequate warnings to the potential users/recipients of the product, including Decedent, of the hazards associated with the filter, including, but not limited to failing to properly and adequately warn that a person might suffer personal injury as a result of implantation of the filter.

COUNT ONE – PRODUCT LIABILITY

20. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate all of the above paragraphs of the Complaint as if fully rewritten herein.

21. Plaintiffs bring their claim for relief against Defendant Boston Scientific Corporation under Ohio's Product Liability Act, R.C. 2307.71, et seq. ("OPLA").

22. Defendant is the "manufacturer" of the Greenfield Vena Cava Filter because it is engaged in the business of designing, formulating, producing, creating, making, constructing, assembling or rebuilding the product.

23. In the alternative, the Defendant was a “supplier” of the Greenfield Vena Cava Filter because it sold, distributed, prepared, labeled or otherwise participated in the placing of the Greenfield Vena Cava Filter in the stream of commerce, where it repaired or maintained the aspect of the vena cava filter that caused harm.

24. The Defendant is liable for the Greenfield Vena Cava Filter’s defective manufacture under R.C. 2307.74, defective design under R.C. 2307.75, inadequate warnings under R.C. 2307.76, and failure to conform to representations under R.C. 2307.77 pursuant to the OPLA.

25. The Greenfield Vena Cava Filter implanted in Decedent Cinthia Ratliff was not properly manufactured to withstand normal, foreseeable, and intended use for the care and treatment of deep vein thrombosis.

26. The defective aspects of the Greenfield Vena Cava Filter were the direct and proximate cause of the death of Cinthia Ratliff.

27. To the extent the Defendant is a “supplier” rather than a “manufacturer,” it is liable as though it were a manufacturer because it altered, modified or failed to maintain the Greenfield Vena Cava Filter after it came into its possession, or it marketed the Greenfield Filter under its own label or trade name.

28. To the extent the Defendant is “supplier” rather than a “manufacturer,” it is liable for its own negligence, which proximately caused death to Cinthia Ratliff, as well as the failure of the Greenfield Filter to conform to its representations of safety and the appropriate use of the Greenfield Filter, which proximately caused death to Cinthia Ratliff.

29. As a direct and proximate result of the Defendant's violations of the OPLA, Decedent sustained injuries of a personal, pecuniary, and permanent nature including, but not limited to, physical injuries, medical bills, pain and suffering, mental anguish, and ultimately death, and such other harms and losses as will be proven at trial. As such, Plaintiffs are therefore entitled to all remedies provided by the OPLA and according to Ohio common law, which are compensatory, punitive, attorney fees, costs, expenses, and interest

COUNT TWO – WARRANTY

30. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate by reference all of the above allegations in the Complaint as if fully rewritten herein.

31. The Defendant expressly warranted that the Greenfield Filter was safe for ordinary and foreseeable use in patients like Decedent as a treatment for pulmonary embolism. In actuality, the Greenfield Filter was not safe for such use.

32. The Defendant also impliedly warranted that the Greenfield Filter was safe and fit for ordinary and foreseeable use as a treatment for pulmonary embolism. In actuality, the Greenfield Filter was not safe and fit for such use.

33. Decedent relied upon these express and implied warranties and the breach of these warranties was the direct and proximate cause of her death. As such, Plaintiffs are entitled to recover Ohio common law and other statutory enactments, in addition to the OPLA.

COUNT THREE – STRICT LIABILITY

34. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate by reference all the above paragraphs in the Complaint as if fully rewritten herein.

35. When the Greenfield Filter, having Boston Scientific Catalog Number 50-501 and Lot Number 6407350, left Defendant Boston Scientific's control, it was in a condition that was unsafe, unreasonably dangerous, and defective in that it was defectively manufactured or re-manufactured with inadequate, insufficient, and improper warnings as required by law.

36. Despite the foregoing, the Defendant transferred or sold the Greenfield Filter for implantation into Decedent, either directly or through a supplier (i.e. Genesis Healthcare System), in this defective and unsafe condition and without proper warnings.

37. As a direct and proximate result of the unsafe, unreasonably dangerous or defective condition of the Greenfield Filter, the Plaintiffs suffered injuries, for which the Defendant is strictly liable under Ohio common law and other statutory enactments, in addition to the OPLA.

COUNT FOUR – NEGLIGENCE

38. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate by reference each and every allegation set forth in the above paragraphs in the Complaint as if fully rewritten herein.

39. Defendant owed Decedent a duty of care and breached this duty of care and was thereby negligent in each of the following respects:

- a. by failing to give adequate warnings to purchasers and users of the Greenfield filter, including Decedent, about its use and the risks associated with its use, including, but not limited to, the risk of migration and perforation and the unreasonably dangerous and defective condition of the Filter; and/or
 - b. by failing to discover the defects in the Greenfield Filter by not using reasonable care to inspect the Filter prior to it being distributed into the chain of commerce and sold for implantation into patients including into the Decedent, Cinthia Ratliff.
40. As a direct and proximate result of the above-described negligence of the Defendant, Decedent sustained injury and death for which Defendant is liable under Ohio common law and other statutory enactments, in addition to the OPLA.

COUNT FIVE - GROSS NEGLIGENCE

41. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate by reference each and every allegation set forth in the above paragraphs in the Complaint as if fully rewritten herein.
42. Defendant owed Decedent a duty of care, breached this duty of care, and was grossly negligent in their breach of the reasonable and expected standard of care, which requires the imposition of exemplary and/or punitive damages in this matter.
43. The Defendant's misconduct and gross negligence was a flagrant disregard for the safety of person(s) who might be harmed by the product in question, especially in

light of the fact that substantial and debilitating injury and/or death would occur from a breach of the standard of care required in the design, manufacture, and sale of the Greenfield Vena Cava Filter which includes—but is not limited to—safety testing and warnings.

44. Pursuant to Ohio common law and R.C.2307.80, punitive or exemplary damages against the Defendant as a manufacturer or supplier is warranted and should be imposed in order to send a message to the public and prohibit similar conduct by other manufacturers and suppliers of similar medical devices in the future and to protect consumers in the State of Ohio.

COUNT SIX – WRONGFUL DEATH

45. Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff incorporate by reference each and every allegation set forth in the above paragraphs in the Complaint as if fully rewritten herein.

46. Plaintiffs bring this cause of action pursuant to Ohio Revised Code Section 2125.02 for the benefit of the Decedent's beneficiary, devices, heirs, legatees, and next of kin.

47. As a direct and proximate result of the foregoing acts, inactions, negligence, and/or gross negligence of Defendant, Decedent's next of kin have suffered:

- a. Loss of support from a reasonable expected earning capacity of the Decedent;
- b. Loss of services of the Decedent;

- c. Loss of society of the Decedent including loss of companionship, consortium, care, instruction, assistance, attention, protection, advice, guidance, counsel, training and education;
 - d. Loss of prospective inheritance; and
 - e. Suffered and will continue to suffer extreme mental anguish as a result of the death of Cinthia Ratliff.
48. As a direct and proximate result of the foregoing acts, inactions, negligence, and/or gross negligence of Defendant, Plaintiffs have incurred expenses for the funeral and burial of Decedent.
49. As a direct and proximate result of the foregoing acts, inactions, negligence, and/or gross negligence of Defendant, Plaintiffs have incurred expenses for the care and treatment of Decedent's injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Julia A. Ratliff and Raylyn M. Ratliff demand judgment against the Defendant in an amount in excess of \$75,000.00 for compensatory damages, together with interest, attorney fees, costs of suit, and any other relief this Court deems just and proper, including any exemplary damages for the willful and wanton misconduct and gross negligence of the Defendants pursuant to Ohio common law and R.C 2307.80 of the Ohio Products Act.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

/s/ Paul Grieco

PAUL GRIECO (0064729)

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(314) 226-1015

mflannery@cuneolaw.com

Counsel for Plaintiffs

CIVIL COVER SHEET

Case No. 2:15-cv-76

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Julia A. Ratliff and Raylyn M. Ratliff

DEFENDANTS

Boston Scientific Corporation

(b) County of Residence of First Listed Plaintiff Perry County, OH
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Middlesex County, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Landskroner Grieco Merriman, LLC
1360 West 9th Street, Suite 200
Cleveland, OH 44113 (216) 522-9000

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:
Product Liability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/12/2015

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Southern District of Ohio

Civil Action No. 2:15-cv-76

Signature of Clerk or Deputy Clerk

Civil Action No. 2:15-cv-76

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Boston Scientific Corporation
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Southern District of Ohio

Civil Action No. 2:15-cv-76

Signature of Clerk or Deputy Clerk

Civil Action No. 2:15-cv-76

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Boston Scientific Corporation
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☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: