

[Products Liability Law Daily Wrap Up, DEFENSES TO LIABILITY—MEDICAL DEVICES—Ind. Sup. Ct.: Indiana appellate court must look at multiple claims about permanent birth control device, \(Jun. 17, 2020\)](#)

Products Liability Law Daily Wrap Up

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By Cathleen Calhoun, J.D.

A complaint alleging injuries caused by Essure® contained several claims, but the appeals court had only looked at one.

A products liability suit filed against Bayer Corp. by over 30 women alleging injuries as a result of an implantable birth control device was sent back to the Indiana appellate court. According to the state high court, the lower court must address not just one but *all* of the claims in the action ([Bayer Corp. v. Leach](#), June 12, 2020, *per curiam*).

Claims. More than 30 women alleged that they were injured by a medical device called Essure®—a birth control device that is permanently implanted. In their claims, the women noted several legal theories, including manufacturing defect, and listed several potential defects of the product that caused it to fracture and break apart. They alleged the emergence of specific symptoms following the implantation of the device, such as menorrhagia, abdominal pain, and skin rashes. The manufacturer, Bayer Corp., sought judgment on the pleadings, arguing that: (1) aspects of the complaint were deficient; and (2) the claims were preempted. The trial court denied Bayer's motion and Bayer appealed to the appellate court.

Appellate court decision. The Indiana appellate court [concluded](#) that Bayer had sufficient notice of the defect-related claims. The court also determined that the claims were not expressly preempted by the Medical Device Amendments (MDA) because they were premised on Bayer's alleged failure to comply with federal manufacturing requirements. The claims also were not impliedly preempted, since they were derived from traditional Indiana tort law, according to the appeals court. The court noted that a jury reasonably could conclude that Bayer's alleged failure to comply with federal manufacturing standards rendered Essure in a defective condition unreasonably dangerous to any user or consumer. As a result, the appellate court found that the state-law claims were viable and that Bayer was not entitled to dismissal.

Supreme court ruling. The Indiana Supreme Court stated that in this case, like many others, the plaintiffs alleged several sets of operative facts, resulting in several discrete claims. However, the appeals court had addressed the legal viability of only one of those claims—defective manufacturing—and did not analyze the remaining ones, reasoning that any viable claim preserved the entire complaint. The state high court disagreed with the lower court's reasoning, and stated that in a complaint with multiple claims, the viability of a single claim does not immunize a separate, deficient claim from judgment on the pleadings. As a result, the high court concluded that the lower court should have addressed the merits of all the claims. Accordingly, the supreme court granted transfer and remanded the case to the appeals court to consider the viability of each claim.

The case is No. [20S-CT-354](#).

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Companies: Bayer Corp.

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