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Jury Ready To Decide 2nd Philly Pelvic Mesh Case

By **Dan Packel**

Law360, Philadelphia (February 9, 2016, 6:12 PM EST) -- A Philadelphia jury will begin deliberating Wednesday whether a Johnson & Johnson unit could be held liable for a New Jersey woman's pain and inability to have sexual intercourse, in the second case to be tried in the jurisdiction's mass tort program for pelvic mesh implants.

Kline & Specter PC attorney Shanin Specter told the jury in closing arguments Tuesday that transvaginal tape manufactured by Ethicon Inc. was not reasonably safe, and that plaintiff Sharon Carlino's physician would never have implanted the product had he been aware of its risks.

"The evidence shows that this woman has been courageous. She's trusted Ethicon and Johnson & Johnson," Specter said. "She trusted her doctor for apparently good reason, but he didn't know what he should have known. They've thrown everything at the wall to try to beat her down."

Over the last two weeks, the eight women and four men on the jury have heard a number of doctors speak to the risks of Ethicon's so-called TVT product, which Carlino was implanted with in 2005 to treat her stress urinary incontinence. The disorder causes small amounts of urine to involuntarily escape the body when sneezing or coughing.

According to Specter, the evidence showed that the product had four key flaws. He said Tuesday that the pores in the mesh were too small, which prevented the tissue from properly growing through the mesh; instead, the implant generated rigid scar tissue, which caused the vagina to contract. He also said the mesh changes shape when implanted and tends to erode, fray or curl.

Additionally, according to Specter, when the tape is cut with a machine rather than a laser, pieces fall off the edges and become embedded in the vaginal tissue. Finally, he said, the mesh degrades when implanted.

"Altogether, these combine to lead to permanent pain," he said. Even after follow-up surgeries, like one Carlino had to remove some of the mesh, "the pain remains or comes back or starts anew," he explained.

Specter, nodding to current product liability law in Pennsylvania, noted to the jury that there was at least one reasonable alternative strategy to correct the ailment that did not use TVT — the "Burch procedure," which he said used sutures manufactured by J&J.

Butler Snow LLP attorney William Gage responded by questioning the evidence behind Specter's alternatives, Carlino's medical history, and her doctor's testimony about his familiarity with the product's risks.

"It's like we didn't come to the same trial," Gage told the jurors.

Gage highlighted that while Carlino said she had pain on the right side of her vagina, this was the side where the TVT had been removed.

"It's been taken out almost six years ago," Gage said.

He also said that Carlino's medical records did not show she had experience pain from sex for several years after undergoing the procedure, suggesting this changed as the litigation advanced.

"The closer to trial, the worse the complaints got," Gage said.

He also said that Carlino waited too long before filing her lawsuit in June 2013, pointing out what he called 26 reasons that the suit was barred by the statute of limitations.

And he suggested that Carlino's real complaint should have been with her implanting physician, Dr. Andrew Blechman, saying that Blechman testified that he knew of the risks of the product as early as 2005.

"If Dr. Blechman had only warned Mrs. Carlino of what Ethicon warned Dr. Blechman, she would never had the surgery," Gage said.

Carlino's is one of nearly 180 cases pending in a mass tort program in the Philadelphia County Court of Common Pleas.

An **initial case**, tried in December, resulted in \$12.5 million in total damages against Johnson & Johnson, with a jury agreeing that a different Ethicon pelvic mesh product was negligently designed and that a physician who implanted the product in plaintiff Patricia Hammons in 2009 received inadequate warnings about the risks.

Carolino is represented Shanin Specter and other attorneys from Kline & Specter PC.

Ethicon is represented by attorneys from Butler Snow LLP, Friday Eldredge & Clark LLP, Drinker Biddle & Reath LLP and Thomas Combs & Spann PLLC.

The case is Carolino et al. v. Ethicon Inc. et al., case number 130603470, in the Court of Common Pleas of the State of Pennsylvania, County of Philadelphia.

--Additional reporting by Matt Fair. Editing by Edrienne Su.

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