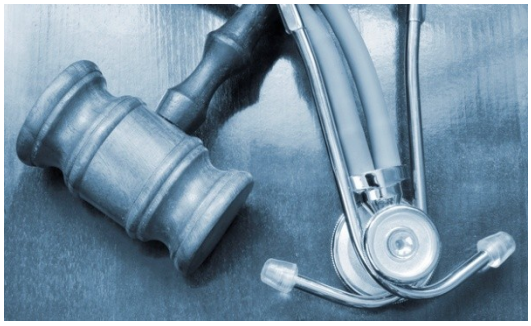
The Legal Intelligencer

Pelvic Mesh Mass Tort Filings Continue to Rise

P.J. D'Annunzio, The Legal Intelligencer
August 19, 2014



The number of filings in the pelvic mesh litigation in Philadelphia has increased since the mass tort's creation in February, court officials said.

So far there are 859 total filings, according to the Philadelphia Court of Common Pleas Complex Litigation Center's records. The mass tort saw the largest influx of cases in June, with 375 filings. In July, 192 cases were filed and four have been added in August, said the center's director, Stanley Thompson.

According to the center's most recent case listings, pelvic mesh has the second largest inventory behind the Reglan mass tort, which has 2,293 filings. Behind pelvic mesh is the Risperdal mass tort with 699 filings and asbestos litigation with 683 filings.

These numbers have not affected the court's ability to operate smoothly, according to Judge Arnold L. New, coordinating judge of the Complex Litigation Center.

In addition to the pelvic mesh litigation, "everything else has been remaining on course," New said, "exactly the way I hoped it would go."

Pelvic or transvaginal mesh is intended to treat urinary incontinence in women by supporting prolapsed organs. The plaintiffs allege that the mesh erodes prematurely, causing injuries including severe pain, sexual dysfunction and gynecological problems. The primary defendants in the cases include Johnson & Johnson, Johnson & Johnson subsidiary Ethicon Inc., Secant Medical and Boston Scientific Corp.

Tom Kline of Kline & Specter, the firm serving as liaison counsel in the Philadelphia mass tort, said oral argument on Secant's preliminary objections was recently held before New.

Secant claimed that it was immune from liability under the Biomaterials Access Assurance Act of 1998, Kline said. The act protects suppliers of biomaterials from civil liability. The act does not, however, protect manufacturers of biomaterial-based devices.

Kline said, "We believe strongly that Secant is indeed the manufacturer and therefore a proper defendant answerable under the tort liability laws of Pennsylvania."

Joe Tucker of Tucker Law Group represents Secant and declined to comment. Boston Scientific is represented by Joanna Vassallo of Shook, Hardy & Bacon, who did not return a call seeking comment.

The Legal previously reported that several cases had been relocated from Philadelphia to a West Virginia-based multidistrict litigation, causing a West Virginia federal judge to impose sanctions on Drinker Biddle & Reath, the firm representing Ethicon.

In *Wilson v. Ethicon Women's Health and Urology*, one of more than 18,000 cases assigned to U.S. District Judge Joseph R. Goodwin of the Southern District of West Virginia in the MDL, Goodwin said Drinker Biddle continued to remove cases from Philadelphia, thereby ignoring his prior rulings in other cases that his court did not have federal question jurisdiction over the plaintiffs' state-court claims.

"Ethicon's continued removal of these cases ignores both prior decisions of this court and clearly established federal law," Goodwin said in his opinion. "Ethicon claims in its opposition to the motion to remand that 'defendants have no desire to remove cases only to have them remanded or to relitigate issues already decided by the court.' However, by removing cases with no ascertainable legal basis, that is exactly what the defendants are doing."

Goodwin ordered Drinker Biddle to pay plaintiff Ann Wilson the attorney fees and costs she incurred in filing a motion to remand the case back to the Philadelphia trial court as well as an additional sanction equal to that amount.

Kline noted that all of the cases sent to the MDL involving Secant, a corporation based in Perkasie, Pa., have returned to Philadelphia.

Kenneth A. Murphy of Drinker Biddle in Philadelphia did not return a call seeking comment. In February, Kline said he thought the pelvic-mesh mass tort would grow to be the largest program in recent memory, surpassing the litigation surrounding the anti-inflammatory drug Vioxx.

"This stacks up as a very significant litigation. There have been a number of verdicts for plaintiffs in bellwether trials, and each of the verdicts has been a seven-figure jury verdict," Kline had said. "These cases are very significant cases involving injuries which are readily understandable, by women in particular, who can certainly appreciate the horrors that the mesh has caused to thousands."

Matthew Johnson, director of communications for Johnson & Johnson's Ethicon, had said in a February email to The Legal, "We are confident the evidence will show that Ethicon acted appropriately and responsibly in the research, development and marketing of our pelvic mesh products."