

PENNSYLVANIA LawWeekly

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VERDICTS&SETTLEMENTS

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Woman Who Needed 9 Surgeries to Fix Pelvic Mesh Awarded \$41M

Emmett v. Ethicon
\$41M Verdict

Date of Verdict:

Jan. 31.

Court and Case No.:

C.P. Philadelphia No. 1307-01495.

Judge:

Kenneth Powell.

Type of Action:

Products liability.

Injuries:

Urinary incontinence, painful bladder contractions, pain during sex, nine surgeries to correct defective mesh issues.

Plaintiffs Counsel:

Thomas R. Kline and Kila Baldwin, Kline & Specter.

Defense Counsel:

Tarek Ismail, Goldman Ismail Tomaselli Brennan & Baum; Anita Modak-Truran, Butler Snow and Joseph O'Neil, Campbell Conroy & O'Neil.

Comment:

A Philadelphia jury has awarded \$41 million to a woman who underwent nine surgeries to treat injuries she allegedly sustained as a result of defective transvaginal mesh.

The 12-member jury in *Emmett v. Ethicon* rendered the verdict in Judge Kenneth Powell's courtroom following a five-week trial. The award includes \$15 million in compensatory damages, \$25 million in punitive damages and \$1 million on a loss of consortium claim.

The verdict is the latest in a wave of multimillion-dollar verdicts juries have awarded over Ethicon's pelvic mesh products over the past few years.

Kline & Specter attorneys Thomas R. Kline and Kila Baldwin co-tried the case for plaintiff Suzanne Emmett, and attorney Tarek Ismail of Goldman Ismail Tomaselli Brennan & Baum, Anita Modak-Truran of Butler Snow and Joseph O'Neil of Campbell Conroy & O'Neil were defense counsel for Ethicon, a Johnson & Johnson subsidiary.

Following the verdict, Kline said "overwhelming" evidence convinced the jury.

"Evidence in the case was overwhelming as to the product defect, and the testimony as to the damages which were caused to Suzanne Emmett were devastating," Kline said. "The case involves one of thousands of women who were injured by grotesquely defective products, many of whom have entered into de minimis settlements with Johnson & Johnson. This case should be seen through the lens of how a jury views their product, as well as the monetary value of the injury."

Mindy Tinsley, a spokeswoman for Ethicon, said the company plans to appeal the verdict, adding that the products were properly designed and the company ad-

equately warned surgeons about the risks.

"Importantly, the jury found that the devices performed as surgeons expected," she said in the statement. "Ethicon stands by, and will continue to defend, our pelvic mesh products in litigation."

According to Kline, Emmett, 57, had three pelvic mesh devices implanted after she suffered organ prolapse. The mesh, however, ended up repeatedly eroding into her vagina, leaving her with urinary incontinence, painful bladder contractions and pain during sex, Kline said. According to Kline, she underwent nine surgical procedures and underwent more than 40 nerve treatments, including injections. Kline also said the husband's loss of consortium claim was bolstered by evidence that a piece of mesh cut Michael Emmett's penis "like a piece of barbed wire" during sex.

The injuries, according to Kline, are expected to be permanent.

Kline also noted that the defense contended the case was brought outside the statute of limitations, since the mesh was installed in 2007 and her lawsuit was filed in 2013.

Emmett's case is one out of nearly 90 cases pending in Philadelphia and more than 33,000 pending across the country stemming from pelvic mesh devices and allegations that the mesh-makers failed to properly warn about the risks of the devices.

At one point, with more than 100,000 pelvic mesh cases pending in a federal multidistrict litigation against six manufacturers, the pelvic mesh litigation was one of the largest-ever consolidated matters, attorneys said.

The cases, however, have recently begun to settle in large batches. Some attorneys, however—including Kline & Specter's Shanin Specter—have been critical of those settlements, claiming many lawyers took on too many cases and, as a result, were forced to settle for small amounts.

—Max Mitchell, of the Law Weekly •

No Evidence of Trauma on Plaintiff's MRIs, Defense Said

Cook v. Dougherty
Defense Verdict

Date of Verdict:

Oct. 23, 2018.

Court and Case No.:

C.P. Delaware No. CV-2016-010487.

Judge:

G. Michael Green.

Type of Action:

Motor vehicle.

Injuries:

Back, head, neck injuries.

Plaintiffs Counsel:

Alexander Kipperman, Spear, Greenfield, Richman & Weitz.

Plaintiffs Expert:

Mark D.T. Allen, orthopedic surgery, Germantown.

Defense Counsel:

Theresa Mogavero Simmons, Palmer & Barr, Willow Grove.

Defense Expert:

Michael L. Brooks, radiology, Darby.

Comment:

On July 26, 2015, plaintiff Robert Cook, in his early 60s, was driving on Oak Avenue at its intersection with Central Avenue, in Upper Darby. Cook asserted that he had been stopped at a red light. It turned green and he proceeded forward when his pickup truck was rear-ended by a sedan. Cook claimed a serious impairment to his neck, shoulder, knee and back.

Cook sued Dougherty, alleging that he was negligent in the operation of a vehicle. The owner of the vehicle, John Dougherty, was also sued and then dismissed, prior to trial. Dougherty maintained that Cook, after proceeding into the intersection, stopped suddenly. Dougherty stipulated to liability, and the case was tried on the issues of causation and damages.

Cook was taken by ambulance to an emergency room. He underwent an X-ray of his cervical spine, which was negative, and he was released. On Aug. 3, Cook presented to a rehabilitation facility with complaints of headaches and pain to his neck, shoulders, back and left knee. He was put on a course of physical therapy, which he treated through Dec. 28. He treated with exercise and massage for 73 visits. During that time, Cook consulted with an orthopedic surgeon, who via MRIs, diagnosed him

with bulging at cervical intervertebral disc C2-3, protrusions at C3-4, C4-5, C5-6 and C6-7; a partial thickness tear of the right supraspinatus tendon, of his dominant arm; and degenerative changes at lumbar spine. He was further diagnosed with a lumbar strain and sprain.

No further treatment was rendered until June 2016, when Cook treated with seven more sessions of physical therapy and was prescribed pain medication. No further treatment was rendered.

Cook's orthopedic surgeon causally related his injuries to the accident, and opined that he suffered a serious impairment of a bodily function to his neck and right shoulder.

Cook testified that he continues to experience pain and limitations in his neck and right shoulder. He can no longer exercise, has difficulty performing certain activities of daily living and has trouble using his right arm for overhead activities. Cook sought damages for past and future pain and suffering.

The defense questioned the severity of Cook's injuries. It cited that there was no damage to either vehicle, and that there was a six-month gap in Cook's treatment.

The defense's expert in radiology testified that Cook's MRIs only showed pre-existing degenerative disc disease throughout his spine with no evidence of trauma.

This report is based on information that was provided by plaintiffs and defense counsel.

—This report first appeared in *VerdictSearch*, an ALM publication. •

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