

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, MONDAY, APRIL 6, 2015

An **ALM** Publication

Phila. Court Has Jurisdiction in Mesh Cases, Judge Rules

P.J. D'ANNUNZIO

Of the Legal staff

In response to a venue challenge, a Philadelphia judge has ruled the city's courts have jurisdiction over the defendants in the pelvic-mesh mass tort.

Philadelphia Court of Common Pleas Judge Arnold L. New, coordinating judge of the court's Complex Litigation Center, rejected the jurisdictional challenge of defendants Boston Scientific and Johnson & Johnson subsidiary Ethicon. The defendants had sought to remove the cases to federal court in West Virginia.

"Upon consideration of defendants' motion to dismiss for lack of personal jurisdiction, and plaintiffs' response thereto, it is hereby ordered and decreed that the motion is denied," New said in an order.

Thomas R. Kline of Kline & Specter, liaison counsel to the plaintiffs in the litigation, said New's decision came after several briefings, discovery on the matter and oral argument.

"We are pleased to move forward with the cases that are listed for trial, a group of over 100 cases that are affected by this ruling," Kline said. "While there's no opinion by Judge New, our argument was that we had established general juris-

diction over Johnson & Johnson and specific jurisdiction in Pennsylvania over Ethicon and Boston Scientific."

Kline said the bulk of the 100-plus cases involved Johnson & Johnson.

Kenneth Murphy of Drinker Biddle & Reath represents Johnson & Johnson and did not return a call seeking comment. Boston Scientific's attorney, Joseph Blum of Shook, Hardy & Bacon, also did not return a call seeking comment.

As of press time, there were approximately 500 mesh case listings in the Complex Litigation Center.

According to a notice of removal filed in February by Boston Scientific in the U.S. District Court for the Eastern District of Pennsylvania, the allegations against Boston Scientific in Philadelphia court are similar to thousands of cases against it across the country, warranting an MDL.

"There are currently more than 15,000 cases pending against" Boston Scientific in federal court, according to the notice.

Boston Scientific's attempt to transfer the cases came six months after Secant Medical, the sole Pennsylvania-based defendant in the pelvic-mesh mass tort, was dismissed from the litigation.

In August, New found that Secant was immune from liability as a bi-

omaterials supplier under the Biomaterials Access Assurance Act of 1998.

While the act protects suppliers of biomaterials from civil liability, it does not protect manufacturers of biomaterial-based devices. The plaintiffs argued Secant fit the definition of a manufacturer of mesh products.

New's ruling left Johnson & Johnson's Ethicon and Boston Scientific as the remaining primary defendants in the mesh cases.

Prior to the dismissal of Secant, pelvic mesh filings were on the rise. In August, there were 859 total filings, according to court records. The mass tort saw the largest influx of cases in June, with 375 filings. In July, 192 cases were filed.

Months later, the mesh litigation is still the third largest mass tort behind Reglan, with 2,293 case filings, and Risperdal, consisting of 1,310 filings.

Risperdal is an antipsychotic drug that several plaintiffs have claimed causes gynecomastia, a condition in which males grow breasts. The drug is also alleged to increase the risk of pituitary tumors.

Two Risperdal cases have been tried in Philadelphia so far. The first resulted in a \$2.5 million verdict for the plaintiff. The second case resulted in a defense verdict,

despite the jury finding Johnson & Johnson subsidiary Janssen Pharmaceuticals negligent in failing to warn about the drug's potential side effects.

The plaintiffs in the Reglan litigation claim the drug, prescribed to treat gastroesophageal reflux disease, caused them to develop an incurable neurological disorder called tardive dyskinesia.

Pelvic or transvaginal mesh is intended to treat urinary incontinence in women by supporting prolapsed organs. The plaintiffs allege the mesh erodes prematurely, causing injuries including severe pain, sexual dysfunction and gynecological problems.

According to Kline, the first series of mesh cases are scheduled to go to trial in Philadelphia from November to May 2016.