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Are Big Verdicts a Sign Johnson & Johnson Has 'Lost Its Way'?

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Plaintiffs lawyers have been winning a steady stream of big products liability verdicts against Johnson & Johnson recently, and some have suggested the company's size makes it a bigger target for litigation—and also more willing to take cases to trial.

All the litigation hasn't kept Wall Street from taking a liking to Johnson & Johnson—several brokerages upgraded their ratings on the company's stock in recent weeks, including Goldman Sachs, which changed its prognosis for Johnson & Johnson to "neutral," after rating it "sell" for 14 months. But the heavy burden of litigation facing the company may have some questioning the company's direction and management.

On March 17, a federal jury in Dallas ordered the company to pay $502 million to five plaintiffs who claimed the company's Pinnacle artificial hips failed prematurely. And on Feb. 22, a state jury in Missouri returned a $72 million verdict in the case of a woman whose death from ovarian cancer was linked to long-term use of Johnson & Johnson's talcum powder products. The company is expected to appeal both verdicts.

On another front, Johnson & Johnson's Janssen Pharmaceuticals has been hit with plaintiff verdicts in three of the four cases tried before Philadelphia juries in the past year concerning a tendency by antipsychotic drug Risperdal to cause male users to develop breasts. The company has seen verdicts of $500,000, $2.5 million and $1.75 million in those cases. Also in Philadelphia, the company was hit with verdicts of $12.5 million in January and $13.5 million in February over its pelvic mesh products. And in the fall, the company faces the first trial in multidistrict litigation in Philadelphia of 217 suits claiming that Tylenol causes liver damage.

In addition, on March 29, the New Jersey Appellate Division upheld an $11.1 million verdict against Johnson & Johnson subsidiary Ethicon Inc. in the first bellwether pelvic mesh trial in New Jersey state court.

Erik Gordon, who studies drug companies as an assistant professor at the University of Michigan's Ross School of Business, said he sees a departure from the vow by Johnson & Johnson's founders to put patients' interests ahead of those of stockholders.

"J&J seems to have changed from a company that lived its famous credo of putting patients first to a company that puts 'hit the sales numbers' first and cites the credo, with feeling, when it is in a public relations mess related to allegedly defective products," Gordon said.

The root cause of the verdicts lies in the conduct of Johnson & Johnson, said Shanin Specter of Kline & Specter in Philadelphia, who recently tried two pelvic mesh cases against the company to verdict for a total of $26 million in jury awards.

"Johnson & Johnson is being told by juries that they have acted negligently and recklessly more than any other company in the United States," Specter said. "Their internal documents demonstrate that they are a company that has lost its way, and they are putting sales over safety."

Specter added that the history of punitive damage awards against Johnson & Johnson is striking. In his pelvic mesh cases, $17 million of the $26 million awarded were for punitives. In the Pinnacle case in Texas, $360 million of the $502 million awarded were for punitives, and in the Missouri talcum powder case, $62 million of the $72 million were for punitives.

In addition, the $11.1 million verdict in the New Jersey pelvic mesh case included a $7.76 million punitive damages award, which the appeals court held was "more than adequately supported" by the evidence.

"Remember that punitive damages are a rare event in the United States, so to see J&J be assessed these damages over and over again is a regrettably meaningful statement about the culture of the company," Specter said. "You don't see this happen with the same frequency with other huge companies."

Still, other lawyers said that punitive damages are particularly vulnerable on appeal, and that the $502 million Texas verdict is likely to be overturned.

The heavy toll of plaintiffs' verdicts against Johnson & Johnson and other drug companies comes as the pharmaceutial industry is undergoing a shift in public perceptions, said Christopher Placitella of Cohen, Placitella & Roth in Red Bank, who represents plaintiffs in mass tort suits.

"It used to be big tobacco was an issue, and I think that some of that color has shifted to the pharmaceutical industry, as people are paying more and more for drugs, and having to shoulder that load," he said. "I think the public has a higher demand for competency and foresightedness."

But John Beisner of Skadden, Arps, Slate, Meagher & Flom in Washington, who represents Johnson & Johnson in the Pinnacle case and other products liability suits, said he sees the series of large verdicts against the company as a consequence of the current litigation environment, in which plaintiffs lawyers advertise heavily to find clients to join their lawsuits. Those lawyers look to inflate the number of plaintiffs in their cases without carefully vetting the merits of each client's claims, said Beisner.

Then, plaintiffs' counsel in those cases are "a lot more aggressive about crossing the line on many kinds of things," such as "trying to put in everything or make arguments to the jury that are not going to be sustained on appeal. Plaintiffs' counsel are going for the headlines," Beisner said.

"If you look at federal court statistics, recently upwards of 40 to 45 percent of all civil lawsuits in the federal court system are in these multidistrict litigation, mass tort proceedings. That is stunning. That tells you how big this mass tort, lawyer-driven industry has become," Beisner said.

Johnson & Johnson spokesman Ernie Knewitz said in a statement about the recent crop of litigation: "While each product and legal case is handled uniquely, it's important to distinguish that jury verdicts should not be confused with regulatory rulings or rigorous scientific findings."

Knewitz added, "We have no greater responsibility than to the patients and consumers who use our products. We have quality controls in place to ensure that our products are safe and effective for consumers when used as directed, and we actively engage in transparent discussions with health authorities from the time we begin developing our products and while they're on the market, to ensure they work as intended."

Attorneys for both plaintiffs and defendants most often pointed to the size of the company and its wide range of products to explain why Johnson & Johnson is now the target of so much litigation. But its size, and the deep pockets in particular, also allow the company to be more aggressive and take more cases to trial than similar smaller companies, attorneys said.

Unlike smaller drug companies that might hesitate about taking a case to trial, "J&J is never afraid of what their exposure could have been ... If you compare J&J to other manufacturers, whether it's pills or devices, they're in a stronger position because of their size, and just who they are, to be more aggressive in fighting off plaintiffs," said Kevin Hart, who represents plaintiffs in drug and medical device litigation at Stark & Stark in Lawrenceville.

The steady stream of verdicts against Johnson & Johnson could be a factor of the company having a more aggressive litigation posture, said Placitella.

"Part of that is the litigation position they're trying to assert. I think that's a big piece of it," Placitella said. "They're digging in harder, pushing themselves to the forefront of trial."

But Hart cautioned against drawing any big conclusions about Johnson & Johnson based on the current crop of verdicts against the company. He noted that trials are very fact-specific and six months from now Johnson & Johnson may no longer be the focus of so much litigation.

"It's a product-by-product thing, as opposed to saying J&J overall is getting hammered," Hart said.