

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, TUESDAY, FEBRUARY 25, 2014

An **ALM** Publication

Pelvic Mesh Cases Expanding Into Latest Mass Tort

BY P.J. D'ANNUNZIO

Of the Legal staff

The increasing volume of pelvic mesh product-liability actions has prompted Philadelphia court officials to create a new mass tort program to coordinate those cases.

According to Stanley Thompson, director of the Philadelphia Court of Common Pleas Complex Litigation Center, Judge Arnold New earlier this month authorized the creation of a pelvic mesh mass-tort program. The order was approved by Administrative Judge John W. Herron.

"Right now we have 45 actions under the new program. It's my understanding that there were more filed but were removed to federal court," Thompson said. "I anticipate that more will be filed based on the petitions we've received from representation."

Thompson added that some of the cases moved to federal court are expected to return to Philadelphia and said a master docket list for global pleadings and motions has been established. The primary defendants in the cases include Johnson & Johnson, Johnson & Johnson subsidiary Ethicon Inc., Secant

Medical and Boston Scientific Corp.

Pelvic or transvaginal mesh is intended to treat urinary incontinence in women by supporting prolapsed organs.

Thomas R. Kline of Kline & Specter, a firm that is handling several of the cases, said, "The litigation appears to be headed toward one of the largest mass torts ever and it's largely due to the widespread use of a product that is clearly defective."

Kline said, "Thousands of women have been injured by the mesh product with injuries caused by the erosion of the vaginal mesh. Many of the injuries include severe pain, sexual dysfunction, and significant gynecological problems."

Eric Weitz of Messa & Associates is also handling several of the cases and said, "It turns out that these things, as we've alleged, were defective, they tend to degrade rapidly and that there are fundamental problems with them."

Weitz explained that most of the injuries sustained by women involved in the 20 cases in which his office is currently engaged required subsequent surgeries to re-

move the mesh and to deal with scar tissue.

Kline noted that the suits against the pelvic mesh manufacturers now number in the thousands nationwide.

"Our firm has filed in various jurisdictions over a thousand lawsuits for women who have been injured by a variety of mesh products including those from Johnson & Johnson and Boston Scientific," he said.

Weitz mentioned that his office is also receiving calls from across the country seeking representation in mesh cases. He also said that mesh litigation on the whole was still in the early stages and only a few outside of Philadelphia have been resolved as of yet.

"Some related ones have settled," Weitz said. "One was on trial and as of [Feb. 19] in West Virginia, the judge threw the case out because the plaintiffs in that couldn't prove it. Some plaintiffs in other jurisdictions have won. None have been tried in Philadelphia."

Kline also said that the litigation is in its relative infancy.

"The litigation is in a phase right now where in various jurisdictions the cases are beginning bellwether trials, or are

moving towards bellwether trials. Those trials are going to be indicative of setting values for these cases," Kline said.

As the meshes in question could have been placed in their recipients several years ago in some instances, Weitz said the statute of limitations could bar some claims.

"But there is also an issue of whether it was put in and nobody knew that it was defective at the time, so there could be a tolling of the statute of limitations," Weitz said.

In terms of case volume, Weitz said, "You're probably going to see these things popping up more and more all over the country."

Kline said he thought that the pelvic-mesh mass tort would grow to be the largest program in recent memory, surpassing that of 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 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."

Boston Scientific is represented by Joanna Vassallo of Shook, Hardy & Bacon, who did not return a call seeking comment. Joe Tucker of Tucker Law Group represents Secant and did not return calls seeking comment. Kenneth Murphy of Drinker Biddle & Reath represents Ethicon and did not return calls seeking comment.

Matthew Johnson, director of communications for Johnson & Johnson's Ethicon, said in an 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."