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J&J Hit With Record \$57.1M Verdict in Pelvic Mesh Case

BY MAX MITCHELL
Of the Legal Staff

A Philadelphia jury has handed up a \$57.1 million verdict against Johnson & Johnson subsidiary Ethicon after a trial over allegations that its transvaginal mesh product was defective.

The jury award, handed up Thursday in *Ebaugh v. Ethicon*, was composed of \$7.1 million in compensatory damages and \$50 million in punitive damages.

According to a review of The Legal's archives, the verdict is a record award for the pelvic mesh program in Philadelphia, which has seen several multimillion-dollar verdicts since the first pelvic-mesh-related case was tried in late 2015. The verdict is more than twice the second-largest award out of the program, a \$20 million verdict a jury handed up in May.

The case was tried by Kline & Specter attorneys Kila Baldwin, Tracie



BALDWIN

Baldwin said in a statement.

Palmer and Elia Robertson.

"I am pleased the jury recognized the recklessness of J&J and I hope the company takes notice of the verdict and adjusts its practices accordingly,"

A spokeswoman for Ethicon said the company plans to appeal.

"We believe the evidence showed Ethicon's TVT and TVT-Secur devices were properly designed, Ethicon acted appropriately and responsibly in the research, development and marketing of the products, and the products were not the cause of the plaintiff's continuing medical problems," Kristen Wallace said in an emailed statement.

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Kat Gallagher of Beck Redden tried the case for Ethicon.

The trial lasted about a month, and the jury deliberated for more about two days, according to Baldwin.

Philadelphia Court of Common Pleas Judge Michael Erdos presided over the trial. More than 100 cases are pending in Philadelphia's pelvic mesh mass tort program. J&J, however, has recently stepped up efforts to have those cases removed from Philadelphia based on a U.S. Supreme Court ruling from June that some have

described as "game-changing" for mass tort programs.

That Supreme Court's decision, which came in the case *Bristol-Myers Squibb v. Superior Court of California*, made clear that out-of-state plaintiffs can't sue companies in states where the defendants aren't considered to be "at home," or haven't conducted business directly linked to the claimed injury.

That ruling is not likely to factor into *Ebaugh*, as plaintiff Ella Ebaugh is a Pennsylvania resident, according to court papers.

According to Ebaugh's pretrial memo, she is in her 50s and was diagnosed with urinary incontinence in 2005. In 2007, she

had TVT-Secur mesh installed, but, after she reported that it did not provide any relief, a second device was implanted about two months later. According to the memo, over the following few years, that device eroded through her urethra on three occasions, requiring three revision surgeries between 2011 and 2016.

Ebaugh contended that the company failed to tell patients and physicians about the risks associated with the products, and withheld information about the complications from the medical community.

Baldwin told The Legal on Thursday afternoon that she thought J&J's internal emails were particularly persuasive to jury members.

"It showed there were many attempts to manipulate the literature ... and they continued to sell them knowing this information," she said. "They made the case almost indefensible."

Max Mitchell can be contacted at 215-557-2354 or mmitchell@alm.com. Follow him on Twitter @MMitchellTLI.

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