

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, WEDNESDAY, DECEMBER 6, 2017

An **ALM** Publication

J&J Loses Bid to Shrink Phila.'s Pelvic Mesh Mass Tort

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Philadelphia Court of Common Pleas Judge Arnold New ruled Tuesday afternoon that only one case pending against Johnson & Johnson subsidiary Ethicon needed to be dismissed from the venue as a result of the U.S. Supreme Court's recent high-profile pronouncement in Bristol-Myers Squibb v. Superior Court of California. About 120 cases are pending in the mass tort program.

New's two-sentence order said that any case involving an out-of-state plaintiff implanted with a Prolift +M pelvic mesh device would be tossed for lack of jurisdiction, but the order tossed only a single case. The order further denied Ethicon's motion to dismiss cases involving all other products.

Kline & Specter attorney Shanin Specter, who is representing the plaintiffs, said in an emailed statement that the decision only tossed one case.

"We are heartened by Judge New's ruling affirming Pennsylvania jurisdiction for all but one of the over 100 Ethicon transvaginal mesh cases," he said. "Now our badly injured clients can continue to have us try their cases, which have been overwhelmingly successful both in Philadelphia and around the country. We will appeal the adverse ruling in the lone other case."

A spokeswoman for J&J said in an emailed statement, "While we haven't had an opportunity to review the entire order, we are disappointed and will consider our legal options to have this issue considered further."

The Supreme Court's Bristol-Myers ruling made clear that out-of-state plaintiffs can't sue companies where the defendants aren't considered to be "at home," or haven't conducted business directly linked to the claimed injury.

Some have referred to it as a "game-changing" decision for state-court mass tort programs, but exactly how the decision will play out as

state courts begin to implement it remains to be seen.

New's ruling marks one of the first times a Pennsylvania judge has applied Bristol-Myers to a mass tort program in Philadelphia, which has long been regarded as a hub for pharmaceutical litigation and has recently produced several multimillion-dollar verdicts for plaintiffs in consolidated litigations, including pelvic mesh.

The jurisdictional dispute in the mesh litigation focused on the relationship between Ethicon and Bucks County biomaterials supplier Secant, which manufactured the mesh used in all of Ethicon's products except for the Prolift +M. The type of mesh used in that product was manufactured by a non-Pennsylvania company.

Plaintiffs have argued that, given Secant's role in making the product, venue was proper in Pennsylvania, even though Ethicon is based in New Jersey.

Ethicon, however, downplayed its relationship with Secant, and fought unsuccessfully to bar the plaintiffs from deposing a former executive about the materials the company used in its mesh products.

According to the plaintiffs, that employee's testimony confirmed that, aside from the Prolift +M product, Secant produced 100 percent of

the mesh used in all of Ethicon's other mesh products.