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$12.8M Pelvic Mesh Verdict Stands as Pa. Begins to Weigh 'Bristol-Myers' Venue Standard

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In the first instance of a Pennsylvania appellate court wading into the effects of the U.S. Supreme Court's high-profile decision in Bristol-Myers Squibb v. Superior Court of California, the Pennsylvania Superior Court has declined to toss a more than $12.8 million judgment against pelvic mesh maker Ethicon.

A unanimous three-judge panel ruled Tuesday to affirm the $12.85 million award in Hammons v. Ethicon, which a Philadelphia jury handed up in late 2015. The award was the first verdict to come out of the pelvic mesh mass tort program in Philadelphia, where nearly 100 similar cases are pending.

The case also presents the Superior Court with its first opportunity to address the U.S. Supreme Court's 2017 decision in Bristol-Myers Squibb, which 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. The ruling was hailed by the defense bar as "game-changing" and led to an immediate wave of venue challenges across the country.

Ethicon, which is a subsidiary of Johnson & Johnson, had contended that plaintiff Patricia Hammons' claims were not sufficiently connected to activities that happened in Pennsylvania to establish specific jurisdiction under Bristol-Myers, and so, since Hammons is an Indiana resident and Ethicon's principal place of business is New Jersey, Philadelphia did not have jurisdiction to handle the case.

However, Superior Court Judge Victor Stabile, who wrote the court's 82-page precedential decision, said, "The connection between Ethicon and Pennsylvania is considerably stronger than the connection between Bristol-Myers and California."

Specifically, Stable noted that Ethicon had worked with an Allentown doctor, as well as Bucks County, Pennsylvania-based Secant Medical, to develop the pelvic mesh that was at issue in Hammons' case.

"Emails between Ethicon and Secant officials demonstrate that Ethicon repeatedly communicated its requirements for mesh design and development, manufacturing, quality control, testing, and certification to Secant—all issues central to this litigation. The emails also show that Ethicon employees visited Secant's plant in Pennsylvania on multiple occasions to observe the mesh production process," Stable said. "This evidence establishes an affiliation between Pennsylvania and Hammons' cause of action against Ethicon for defective design of the Prolift device."

Hammons' case stemmed from having a Prolift mesh device implanted in 2009 to address a prolapsed bladder. Hammons contended that the density of the mesh caused scar tissue to build up and contract, which eventually led to erosion of Hammons' bladder and "excruciating" pain. After the device failed, she had to have numerous surgeries, but contended that she will not be able to completely remove portions of the mesh that eventually adhered to the bladder.

In December 2015, the jury hit Ethicon with a $7 million punitive damages verdict after it initially awarded the plaintiff $5.5 million in compensatory damages. The judge later awarded delay damages.

The company raised 10 issues on appeal, arguing, among other things, that Hammons' claims were not brought quickly enough, that the judge should not have allowed punitive damages and that the plaintiff failed to provide sufficient evidence to support her claims.

Stabile, however, denied those arguments.

"We are gratified by Superior Court's very thorough and deeply thoughtful analysis of Ethicon's arguments for judgment or new trial," Hammons' attorney, Shanin Specter of Kline & Specter, said in an emailed statement.

Two spokeswomen for Ethicon did not return an email seeking comment.