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Pa. Judge Affirms Jurisdiction On Out-Of-State Mesh Cases

By **Dan Packel**

Law360, Philadelphia (December 5, 2017, 6:38 PM EST) -- A Pennsylvania state court judge on Tuesday affirmed that the court has jurisdiction over all but one of 71 cases involving out-of-state residents suing Johnson & Johnson subsidiary Ethicon Inc. in Philadelphia's mass tort program over pelvic mesh injuries.

In a one-page order, Philadelphia Court of Common Pleas Judge Arnold New denied the company's renewed bid to dismiss the out-of-state cases, but he made an exception for one case in which an out-of-state plaintiff was implanted with Ethicon's Prolift+M pelvic mesh device.

Although, according to the plaintiffs, the other implants in question were made using a mesh manufactured by Secant Medical Inc. in Pennsylvania, the mesh in Prolift-M was not manufactured by Secant.

"We are heartened by Judge New's ruling affirming Pennsylvania jurisdiction for all but one of Ethicon transvaginal mesh cases," attorney Shanin Specter of Kline & Specter PC said in an email. "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."

The judge **said in August** that he would reconsider a 2015 ruling that kept alive a number of cases brought by non-Pennsylvania litigants.

That announcement, in a one-page order with no explanation, came after Ethicon argued in a June motion that two recent U.S. Supreme Court decisions narrowing the scope of jurisdiction for plaintiffs looking to pursue claims in venues outside either where they were injured or where a defendant is headquartered meant that 91 cases pending in the Philadelphia County Court of Common Pleas needed to be dismissed and refiled elsewhere.

The company previously sought to have claims from out-of-state plaintiffs, whose cases are part of a mass tort program aimed at coordinating litigation over alleged pelvic mesh injuries, dismissed for a lack of jurisdiction, but Judge New rejected its bid in March 2015. Judge New is the coordinating judge of Philadelphia's Complex Litigation Center, which handles the court's mass torts.

Renewing its effort, Ethicon pointed to a ruling from the justices in June that found Bristol-Myers Squibb Co. did not have sufficient business contacts in California to confer courts there with jurisdiction over some 600 lawsuits brought by out-of-state plaintiffs over injuries allegedly caused by the blood thinner Plavix.

The 8-1 opinion came just weeks after another ruling from the Supreme Court that found two out-of-state employees couldn't sue BNSF Railway Co. in Montana given the company's lack of a bona fide business presence in the state.

Ethicon emphasized that its position as a New Jersey-based business meant that non-Pennsylvanians could not bring their claims in Philadelphia County.

Documents in the litigation show that the original 91 out-of-state cases identified by Ethicon have been whittled down to 71 cases.

"While we have not had an opportunity to review the entire order, we are disappointed and will consider our legal options to have this issue considered further," Ethicon spokeswoman Kristin Wallace said in an email to Law360.

Six cases in the mass tort program have gone to trial so far in Philadelphia, resulting in five verdicts in favor of plaintiffs against Ethicon and damages now totaling just more than \$105 million.

The plaintiffs are represented by Thomas Kline, Shanin Specter, Lee Balefsky and Charles "Chip" Becker of Kline & Specter PC, and Clayton Clark of Clark Love & Houston.

Ethicon is represented by Kenneth Murphy and Melissa Merk of Drinker Biddle & Reath LLP, and Julie Callsen of Tucker Ellis LLP.

The case is In Re: Pelvic Mesh Litigation, case number 140200829, in the Philadelphia County Court of Common Pleas of Philadelphia.

--Additional reporting by Matt Fair. Editing by Stephen Berg.

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