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Jury Awards \$13.5M in Second Pelvic Mesh Trial

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A Philadelphia jury has handed up a \$13.5 million award to a woman claiming she was permanently injured from a pelvic mesh device that eroded inside her.

The jury unanimously handed up the award in *Carlino v. Ethicon* late Wednesday morning, giving plaintiff Sharon Carlino \$3.5 million in compensatory damages and \$10 million in punitive damages. Johnson & Johnson subsidiary Ethicon was the defendant in the case.

The verdict is the second from the pelvic-mesh mass tort program to hit trial in Philadelphia. It is also the second multimillion-dollar plaintiff's victory from the pelvic mesh cases. In December, a jury handed up a \$12.5 million award to a woman making similar claims about an Ethicon-made pelvic mesh device.

The award in *Carlino* came after more than two weeks of trial, with **Kline & Specter attorneys Shanin Specter and Kila Baldwin**, and Rich Freese of Freese & Goss representing Carlino. Ethicon was represented by William Gage of Butler Snow and Laura H. Smith of Friday, Eldredge & Clark.

In a statement to the press, Specter said the Carlino family was gratified by the verdict.

"We hope Johnson & Johnson undertakes a bottom-up review of

their conduct in vaginal mesh," Specter said.

A statement from Ethicon said the -company plans to appeal the verdict.

"We have strong grounds for appeal," said Samantha Lucas, an Ethicon spokeswoman, in the statement. "We believe the evidence showed Ethicon's TVT midurethral sling was properly designed and labeled, Ethicon acted appropriately and responsibly in the research, development and marketing of the product, and TVT was not the cause of the plaintiff's continuing medical problems."

The statement went on to say the company empathized with women who suffer from urinary incontinence, and that physicians and regulators had deemed the type of mesh device implanted in Carlino to be safe and effective.

Carlino, however, had alleged that the device failed because it was negligently designed in several ways, and that its failure led her to suffer permanent pain during sex.

Although Carlino's case was the second pelvic mesh trial in Philadelphia, litigation over the device has been active throughout the country.

As of January, more than 74,000 cases were pending in seven multi-district litigations in the Southern District of West Virginia, according to court records. The largest MDL, which is against Ethicon, has 29,296 cases pending. More than 11,700

cases from the MDLs have been resolved, according to court records.

In May, a Delaware jury awarded \$100 million, including \$75 million in punitive damages, to a woman who experienced complications from a transvaginal mesh implant that Boston Scientific Corp. made. A Texas jury also awarded \$1.2 million against J&J in a pelvic mesh case last year, although that verdict was recently tossed.

Earlier this month, a jury in a Missouri state court also handed up a defense verdict for Boston Scientific.

Bloomberg Business also reported late last month that Johnson & Johnson has proposed paying \$120 million to settle 2,000 to 3,000 pelvic mesh suits.

According to court records, there are 179 cases pending in the Philadelphia pelvic mesh program.

During closing arguments Tuesday, Specter had hammered the device makers as "beyond reckless" for their alleged failure to tell doctors and patients about the erosion rates of the device and the risk of permanent harm.

"It is conclusive evidence of reckless disregard. Reckless, reckless, reckless. You know these things, and you don't act. You don't fix the product. You don't decline to sell it. You don't tell doctors about the risk, and you don't tell patients about the risks," Specter told the jury of eight

women and four men. "It's the epitome of recklessness. It's why they built this courthouse, and this courtroom, and why you got a court summons. You've got to straighten it out. It's as simple as that."

According to Specter, the mesh was defective because its pores were too small, it had a tendency to degrade, it was overly friable because it was cut by a machine and not a laser, and the mesh can erode through the patient's tissue.

However, Gage countered that many of the facts of Carlino's case did not add up.

In his closing arguments, Gage focused on Carlino's medical records to attack the claim that the mesh caused the claimed injuries. Gage noted that Carlino's complaints were primarily on the right side; however, he said the mesh had been removed from her right side in 2010, and only remained on Carlino's left side. Gage further noted that she had prior medical reports of pain and muscle spasms in her right leg and back, and that a doctor had diagnosed her with vaginal atrophy and pelvic floor muscle spasms.

"If the mesh is causing her pain on the right side, why isn't it causing pain on the left side where all the mesh remains?" Gage asked. "How can it be a substantial factor if it's nowhere near the place where it needs to be?"

Gage also noted that Carlino did not begin making complaints of pain during sex until 2015, after she met with an attorney.

"When you look at these records, the closer we got to trial, the worse the plaintiff's complaints get," Gage said.

The Carlino case was tried before Philadelphia Court of Common Pleas Judge Kenneth Powell.

The next pelvic mesh case set for trial is expected to begin in early April.