



Jury Readies To Mull 4th Philly Pelvic Mesh Case

By Dan Packel

Law360, Philadelphia (May 24, 2017, 5:43 PM EDT) -- A Philadelphia jury will begin deliberating Thursday whether a Johnson & Johnson unit is liable for a Pennsylvania woman's pain and inability to have sexual intercourse, after three consecutive eight-figure jury verdicts against the company in lawsuits over allegedly defective pelvic mesh.

Kline & Specter PC attorney Tom Kline told a jury in closing argument Wednesday that J&J subsidiary Ethicon Inc. ignored the risks of its Prolift mesh product in its rush to get it on the market, and that plaintiff Sharon Beltz bore the costs of the company's recklessness.

Beltz had the product implanted in 2006, one year after it was released. Ethicon stopped selling the mesh in 2012.

"It was on the market for seven years, and she is one of the casualties. It ended in 2012, other than the people who stockpiled this monstrous product," Kline said. "But for Sharon Beltz, then 34, there was and is no turning back."

Kline assailed Ethicon attorneys for bringing in just one live witness during the two-week trial and relying on "stale" depositions from 2012 and 2013.

He accused the company of hastily introducing Prolift in 2005 in order to preserve its market share when faced with a new product from a rival. He said that by August 2006, it knew the implant had a 26 percent rate of painful shrinkage among recipients and that by the time it was removed from the market, it had a 42 percent rate of dyspareunia, or painful sex.

Kline reminded jurors of the invasiveness of the polypropylene mesh, reiterating evidence introduced during testimony that if unspooled, Beltz's implant would extend 780 feet, or more than two and a half football fields.

And he quoted harsh testimony from defense expert Dr. Michael Margolis, a urogynecologist who categorized Prolift as a "surgical grenade — something you put in, pull the pin and you get a result forever."

Kline also pushed for punitive damages — which have been awarded in the first three Philadelphia trials — informing the newest jury to sit in judgment that J&J has a net worth of over \$70 billion.

Beck Redden LLP attorney Kat Gallagher, arguing for Ethicon, called out the "drama and antics" of Belt's counsel, asserting that the company had provided adequate warnings and that Prolift was not defective.

She noted that Beltz was facing serious complications from pelvic organ prolapse and stress urinary incontinence following four pregnancies.

"This was not a minor quality-of-life issue. This was a big problem for her and she wanted to have something done," she said. "She decides after weighing her risks and benefits that she wants to go forward."

Gallagher urged the jurors to weigh the questionnaire Beltz completed after discussions with her implanting urogynecologist, Dr. Heather van Raalte, in which she acknowledged the risks of the procedure, as well as a consent form before the surgery.

"She was willing to accept all of these risks. You can look at these forms," Gallagher said. "Consider that evidence rather than what her lawyers are telling you happened 11 years later."

Gallagher also sought to refute evidence from Beltz's witnesses that safer alternatives to Prolift existed and suggested that after Van Raalte performed a follow-up procedure, Beltz's pain was mitigated until after a 2011 surgery that used a different, non-Prolift mesh to treat a new prolapse.

"Prolift was a doctor-designed, doctor-developed and doctor-tested medical device," she concluded. "Ethicon didn't design this product in a boardroom. It went out to experts and asked them how to make it."

Litigation over Ethicon mesh products in Philadelphia has resulted in several hefty verdicts against the company, including a \$12.5 million award in December 2015 in the first case to go to trial, a \$13.5 million award in a second case in February 2016 and a \$20 million award handed down late last month.

The trial in a fifth case began on Tuesday.

The case is being presented for Beltz by Tom Kline of Kline & Specter LLP.

The case is being presented for J&J by Kat Gallagher of Beck Redden LLP.

The case is Beltz v. Ethicon Women's Health and Urology et al., case number 130603835, in the Philadelphia County Court of Common Pleas.

--Editing by Breda Lund