

BREAKING: J&J Dodges Pelvic Mesh Claims In Philadelphia Trial

By **Matt Fair**

Law360, Philadelphia (April 17, 2019, 2:52 PM EDT) -- A Philadelphia jury sided with a Johnson & Johnson unit on Wednesday when it shot down claims that an allegedly defective pelvic mesh implant designed to alleviate a woman's incontinence had worsened the condition and caused her to start experiencing pain when having sex.

Despite agreeing that J&J subsidiary Ethicon Inc. had negligently designed, marketed and sold its TVT-Secur mesh implant, the jury found that the negligence was not a cause of any of the injuries that Philadelphia-area resident Malgorzata Krolikowski said she suffered from the device.

It was a rare trial victory for Ethicon in a mesh case in Philadelphia, as juries in six previous cases had awarded a total of nearly \$145 million in damages to women who suffered injuries as a result of their implants.

"Obviously we're disappointed," said Colin Burke, an attorney with Kline & Specter PC representing Krolikowski, "but we respect the jury's decision."

He said he took solace, however, in the jury's finding of negligence.

"They found that the defendants, Ethicon and Johnson & Johnson, were negligent," he said. "We had the evidence to prove that."

The jury's decision, which came after about six hours of deliberation, caps a three-and-a-half-week trial over a TVT-Secur implant that Krolikowski received in 2008 after complaining to her doctors about stress urinary incontinence.

Despite the implant, however, Krolikowski said that her condition did not improve and that it significantly deteriorated over the years.

In addition, she claimed that she began experiencing pain and urine leakage when she had sex.

Elia Robertson, another Kline & Specter attorney representing Krolikowski, told jurors during opening arguments last month that the complications, along with the resulting embarrassment and humiliation, had interfered with the woman's ability to strike up romantic relationships.

Krolikowski argued that Ethicon had rushed the TVT-Secur to market in September 2006 despite significantly limited clinical testing that produced troubling results: a 30% failure rate and a 60% rate of complications in the 31 women the implant was tested on.

Ethicon pulled the product from the market in 2012.

The company argued at trial that there was no way to link Krolikowski's injuries to her mesh implant, and that the product couldn't be deemed defective simply because it had failed to cure her incontinence.

"An imperfect result does not equate to a defect," Andrea La'Verne Edney, an attorney with Butler Snow LLP representing Ethicon, told jurors during opening arguments. "Just because the device didn't work and cure 100 percent doesn't mean it was a defective device."

The company argued that the likely source of Krolikowski's pain during sex was either preexisting uterine fibroids or the abnormal position of her uterus.

Burke told Law360 that he believed jurors may have been swayed by evidence that Krolikowski did not seek treatment for her worsening incontinence or her pain with intercourse for years leading up to her decision to file suit.

"Unfortunately, because of our client's financial situation and insurance situation there was a gap in her medical history," he said. "We think that may have been a determinative factor for the jury."

Ethicon spokeswoman Mindy Tinsley told Law360 that the company believed the jury had reached the proper conclusion.

"We empathize with women suffering from stress urinary incontinence, which can be a serious and debilitating condition," she said. "There are various treatment choices for women with this condition seeking to improve their quality of life, including surgical treatment with implantable mesh, which is backed by years of clinical research and is considered by most doctors to be the gold standard treatment. The jury's decision reflects the facts in this case. The evidence showed Ethicon's TVT-Secur device was properly designed and did not cause the plaintiff's alleged injuries."

Krolikowski's case is one of nearly 90 mesh-related cases that Ethicon is facing as part of a mass tort program in Philadelphia.

Trial in another case began on Monday, while another trial is expected to pick back up next week after being placed on hiatus last month due to a defense witness's health complications.

Krolikowski is represented by Elia Robertson and Colin Burke of Kline & Specter PC.

Ethicon is represented by Julie Callsen and Jennifer Steinmetz of Tucker Ellis LLP, Sean Gallagher of Bartlit Beck LLP, Andrea La'Verne Edney of Butler Snow LLP and Kimberly Gustafson Bueno of Scott Douglas & McConnico LLP.

The case is Malgorzata Krolikowski v. Ethicon Inc., case number 140102704, in the Court of Common Pleas of Philadelphia County, Pennsylvania.

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