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## Pa. Supreme Court OKs Jurisdiction in \$12.85M Pelvic Mesh Case, Limiting Impact of Defense-Friendly SCOTUS Ruling

**By Max Mitchell**  
*Of the Legal staff*

In upholding a \$12.85 million award in a pelvic mesh case, the Pennsylvania Supreme Court has determined that a high-profile 2017 jurisdictional ruling by the U.S. Supreme Court does not represent a major shift in the way courts should analyze specific jurisdiction, despite the ruling being hailed by many in the defense bar as a “game-changer.”

On Wednesday, the state Supreme Court on a 6-1 vote ruled that Pennsylvania properly had jurisdiction over the case. The majority rejected arguments that the claims could not pass constitutional muster under the U.S. Supreme Court’s 2017 decision in *Bristol-Myers Squibb v. Superior Court of California*.

The new state Supreme Court ruling came in a case captioned *Hammons v. Ethicon*.

*Bristol-Myers Squibb*, touted as a victory for defendant companies, 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.

Justice Max Baer, however, rejected arguments that, under *Bristol-Myers*, the jurisdictional analysis should focus on the jurisdiction’s connection to each of the plaintiff’s individual claims. Instead, he said, the focus should remain on the defendant’s conduct.

Ultimately, Baer determined that jurisdiction was proper in the pelvic mesh litigation because the defendant’s conduct was sufficiently tied to the Keystone State, since Ethicon had contracted with a Bucks County company to weave the mesh that later injured the plaintiff.

“We conclude that the court in *BMS* did not reject its prior phrasings of specific personal jurisdiction, but rather incorporated the broader terminology emphasizing the connections between the controversy, litigation, or suit and the defendant’s actions in the forum state,” Baer said. “Accordingly, absent further clarification from the high court, we decline to restrict jurisdiction by focusing narrowly on the elements of plaintiff’s specific legal claims, which could unnecessarily restrict access

to justice for plaintiffs. Instead, we look more broadly to determine whether the case as a whole establishes ties between the defendant’s actions in the forum state and the litigation.”

Justices Debra Todd, Christine Donohue, Kevin Dougherty, David Wecht and Sallie Mundy joined Baer, with Donohue writing a concurring opinion that Wecht joined.

Chief Justice Thomas Saylor dissented, saying in a two-page opinion that he thought the ruling disregarded the holdings in *Bristol-Myers*.

Wednesday’s decision has direct impacts on the dozens of pelvic mesh cases being litigated, but it should also have significant implications for litigants seeking to sue foreign companies in Pennsylvania, as it also served as the state Supreme Court’s first time analyzing the *Bristol-Myers* decision.

**In an emailed statement, Kline & Specter attorneys Shanin Specter and Charles “Chip” Becker, who are leading attorneys for the plaintiffs in the mesh litigation, said the issue was always clear.**

**”We are heartened by the Pennsylvania Supreme Court’s 6-1 decision**

**affirming that Johnson & Johnson's relevant activities in Pennsylvania were sufficient to accord jurisdiction to the Pennsylvania courts,"** the statement said. **"Given that the defective mesh that brutally injured Patricia Hammons was made in Pennsylvania, this was never a close call. We do, however, expect [Johnson & Johnson] to seek relief in the U.S. Supreme Court. We expect to win there too."**

Robert Heim of Dechert represented Ethicon before the Supreme Court. A spokeswoman for Ethicon, which is a subsidiary of Johnson & Johnson, said, "It will be no surprise that I agree with the very succinct dissenting opinion of the chief justice."

A spokeswoman for Ethicon said in an emailed statement that the company disagreed with the holding that there were adequate ties to Pennsylvania.

"As mentioned in the dissenting opinion of Chief Justice Saylor, under United States Supreme Court precedent an 'adequate link' between a defendant's in-state conduct and a plaintiff's injury is needed to support specific jurisdiction, and there was no such linkage in this case," Mindy Tinsley said. "We're disappointed with the decision and are considering our options."

Patricia Hammons' case, like the nearly 100 other pelvic mesh cases pending against Ethicon in Philadelphia, is based on claims that the defendant failed to warn about its defective mesh products. Ethicon contended that Hammons' claims were not sufficiently connected to activities that happened in Pennsylvania, 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.

The plaintiffs, however, argued that the claims are sufficiently connected to Pennsylvania, by pointing to the role that Secant Medical, a Bucks County company, played in developing the mesh and the fact that Ethicon worked with an Allentown doctor to test the products.

Although Baer did not address arguments about the Allentown doctor, he determined that the connections to Secant were sufficient to establish jurisdiction.

"As has been noted, Ethicon contracted for Secant to produce the mesh, which involved Ethicon shipping its proprietary filament to Secant's Bucks County facilities to be knit according to Ethicon's detailed specifications and later certified as having met those specifications, before being shipped back to Ethicon," Baer said. "The process also necessitated site visits by Ethicon employees and multiple communications between those employees and representatives of Secant to ensure that the production process, and ultimately the mesh, met Ethicon's requirements."