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Philadelphia Jury Slams J&J With \$120M Pelvic Mesh Verdict

by **Max Mitchell**

Of the Legal staff

A Philadelphia jury has hit a Johnson & Johnson subsidiary with a \$120 million verdict for allegedly failing to warn about the dangers of one of its pelvic mesh products.

The verdict came down Wednesday afternoon in Philadelphia Court of Common Pleas Judge Kenneth Powell's courtroom after three weeks of trial, and included \$20 million in compensatory damages, as well as \$100 million in punitive damages.

The verdict marks the seventh time a Philadelphia jury has hit J&J subsidiary Ethicon with a multimillion-dollar verdict over one of its pelvic mesh products, and it also marks the first time a Philadelphia jury has awarded more than \$100 million in a pelvic mesh case.

The plaintiff in the case, Susan McFarland, a 68-year-old from Altoona, had Ethicon's TVT-O pelvic mesh product implanted in 2008 to treat urinary incontinence, but she claimed that the plastic eroded, causing pain and chronic uterine tract infections. She, as well as nearly 90 plaintiffs with claims pending in Philadelphia, contended that Ethicon failed to properly warn about the dangers of the product.

Kline & Specter Tracie Palmer was lead counsel for McFarland, along with Braden Lepisto.

"This verdict speaks volumes. This is a product still on the market and the jury's message to Johnson and Johnson is take this product off the market for the health and safety of America's women," Palmer said.

Kate Skagerberg of Beck Redden was lead counsel for Ethicon. The company was also represented by Adam Spice of Butler Snow and Alicia Hickok of Drinker Biddle & Reath.

In an emailed statement, a spokeswoman for Ethicon said the award was "inconsistent with the science, Ethicon's actions, and previous verdicts related to our TVT-O product, which continues to be the gold standard of treatment for stress urinary incontinence."

"We believe the evidence showed Ethicon's TVT-O device was properly designed and that Ethicon acted appropriately and responsibly in the research, development and marketing of the product. Unfortunately, the jury was not permitted to hear critical evidence related to the FDA's review and classification of these devices, which we believe significantly influenced the verdict and punitive award in this case," spokeswoman Mindy Tinsley said, adding that the company plans to appeal the verdict.

The case, *McFarland v. Ethicon*, was also subject to several efforts by

Ethicon to have Powell removed from hearing any pelvic mesh cases.

In March, Ethicon, which is the primary defendant in the pelvic mesh mass tort in Philadelphia, made a motion, arguing that Powell needed to be removed from hearing any of the cases because his mother brought suit against another J&J subsidiary over the blood thinner Xarelto. According to the company, Powell failed to properly disclose his mother's lawsuit until after he presided over one trial and was assigned to handle another.

Those efforts, however, were dismissed by the court.

The verdict in *McFarland* is the latest in a series of multimillion-dollar verdicts that Philadelphia juries have awarded plaintiffs in the pelvic mesh litigation, including *Hammons v. Ethicon*, which resulted in a \$12.5 million verdict in 2015, and *Emmett v. Ethicon*, which ended in a \$41 million verdict in January. The award, however, also came one week after a Philadelphia jury handed Ethicon a rare defense win.