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VERDICTS &
SETTLEMENTS

Defense Win for J&J Subsidiary in Latest Pelvic Mesh Trial

BY MAX MITCHELL

*Krolikowski v. Ethicon
Women's Health and Urology*

Defense Verdict

Date of Verdict: April 17.

Court and Case No.:
C.P. Philadelphia No.
140102704.

Judge: Charles Cunningham III.

Type of Action: Products
liability.

Injuries: Urinary incontinence,
chronic pain.

Plaintiffs Counsel: Colin Burke,
Elia Robertson, Kline & Specter,
Philadelphia.

Defense Counsel: Sean Gallag-
her, Jeannie Tinkham, Bartlit
Beck; Andrea La'Verne Edney,

Butler Snow; Julie Callsen and
Jennifer Steinmetz, Tucker Ellis;
Melissa Merk and Eileen Somers,
Drinker Biddle & Reath.

Comment:

A Philadelphia jury has declined to hold Johnson & Johnson subsidiary Ethicon liable for injuries that a woman claimed she suffered as a result of the company's allegedly defective pelvic mesh product.

The defense win in *Krolikowski v. Ethicon Women's Health and Urology* was handed up April 17 after more than three weeks of trial before Philadelphia Court of Common Pleas Judge Charles Cunningham III.

Plaintiffs suing in Philadelphia over Ethicon's mesh products have repeatedly won multimillion-dollar verdicts, including a \$41 million award in January.

The verdict in *Krolikowski* marks only the second time a Philadelphia jury has found in favor of Ethicon over its pelvic mesh product, although the prior defense win was subsequently reversed by the trial court judge, a decision that is currently on appeal.

The plaintiff, Malgorzata Krolikowski, was represented by Kline & Specter attorneys Colin Burke and Elia Robertson. Ethicon was represented by Sean Gallagher and Jeannie Tinkham of Bartlit Beck and Butler Snow attorney Andrea La'Verne Edney, as well as Julie Callsen and Jennifer Steinmetz of Tucker Ellis and Melissa Merk and Eileen Somers of Drinker Biddle & Reath.

In an emailed statement Burke said the case presented unique challenges because of Krolikowski's related medical issues

and gaps in her medical coverage and treatment. He also noted that, although the jury found Ethicon's conduct was not causally related to the injuries, the jury also determined that the company had failed to exercise due care in its design, marketing and sale of the mesh device.

Mindy Tinsley, a spokeswoman for Ethicon, said the evidence showed the company's TVT-Secur device was properly designed and not the cause of the injuries.

"We empathize with women suffering from stress urinary incontinence, which can be a serious and debilitating condition," Tinsley said in the statement. "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."

Krolikowski's was one of nearly 90 lawsuits pending in Philadelphia over claims that Ethicon negligently designed mesh products and failed to warn doctors and patients about the dangers. More than 10,000 suits are also pending against Ethicon in federal court over the same products.

The first pelvic mesh case in Philadelphia was tried in late 2015, and since then six cases have resulted in wins for plaintiffs, with awards ranging from \$2.16 million to \$57.1 million.

The only other case to come to a defense win was *Adkins v. Ethicon*. That case was handled by Bryan Aylstock of Aylstock,

Witkin, Kreis & Overholtz. About a month after the win in that case, the judge who handled Adkins issued a one-page order granting Adkins' post-trial motion, which had contended that the jury's findings were inconsistent on the issue of whether the alleged design defect caused the injuries. The judge ultimately determined that the case should proceed to a damages hearing, but that decision is currently on appeal to the Pennsylvania Superior Court.

—Max Mitchell, of *The Law Weekly*

Max Mitchell is a reporter with *The Legal Intelligencer*, focusing on litigation in Pennsylvania with a specific emphasis on Philadelphia courts. Follow him on Twitter @MMitchellTLI