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Jury awards \$35M in mesh implant case

Woman alleges device defectively designed, causes more distress

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A federal jury in Indiana has returned a \$35 million verdict in favor of a woman who alleges she was injured by a vaginal mesh implant.

The jury on Thursday directed Johnson & Johnson and a subsidiary to pay \$10 million in actual damages and \$25 million in punitive damages to Barbara Kaiser of Valparaiso, Ind.

The jury found Johnson & Johnson and Ethicon Inc. negligently designed a transvaginal mesh device and then failed to adequately warn patients and physicians of its risks.

Transvaginal mesh is used to treat stress urinary incontinence and pelvic organ prolapse, a condition that occurs when a woman's bladder or another pelvic organ drops from its normal place and pushes against the walls of the vagina.

In surgery in Munster, Ind., in 2009, Kaiser's doctor implanted an Ethicon Prolift mesh device to treat her pelvic organ prolapse.

Kaiser filed her lawsuit against Johnson & Johnson and Ethicon in 2012 in multidistrict litigation in the Southern District of West Virginia.

In the suit, Kaiser contended the Prolift implant caused injuries that included bladder spasms and pelvic and groin pain.

The suit was transferred to federal court in Hammond, Ind., in March 2017.

In June 2012, three months after Kaiser filed her suit, Johnson & Johnson announced it would phase out the sale of four vaginal mesh implants, including the Prolift Pelvic Floor Repair System, over the next year.

Johnson & Johnson said factors that prompted its move included the "commercial viability" of the implants in a competitive market and the availability of other treatments.

Johnson & Johnson is facing thousands of suits around the country alleging Prolift mesh can harden and twist, causing pain and sometimes eroding the vaginal walls.

Plaintiffs maintain that Prolift devices have high rates of injury and complications and that patients must frequently undergo new operations.

In Kaiser's case, a nine-member jury returned the verdict following a nine-day trial.

U.S. District Judge Philip S. Simon of the Northern District of Indiana has not entered a judgment in the case.

The lead trial attorney for Kaiser was Thomas O. Plouff of Costello, McMahan, Burke & Murphy Ltd.

Plouff said the \$35 million



Thomas O. Plouff

awarded his client is one of the largest transvaginal mesh verdicts in the United States.

Plouff contended Johnson & Johnson did no clinical testing and developed no safe way to remove the plastic from patients' pelvic area should something with the Prolift mesh go wrong.

In fact, Plouff contended, the device made patients worse.

"They've essentially created a new disease," he said.

Edward Anthony Wallace of Wexler Wallace LLP and Jeffrey M. Kuntz of Wagstaff & Cartmell LLP in Kansas City, Mo., acted as co-counsel during the trial.

"This just reaffirms my faith in our judicial system," Kuntz said in a statement.

Wallace also praised the jurors who returned the verdict.

"Their names may never be known, but we hope Johnson &

Johnson and other medical manufacturers will start to listen to these juries before they put a medical device on the market that lacks clinical data and adequate warnings," he said in a statement.

Kaiser's legal team was assisted by jury consultant Michael I. Ford of Trial Research Group in Frisco, Texas.

Spokeswoman Mindy Tinsley said Johnson & Johnson will appeal the verdict.

In a statement, Tinsley maintained the verdict "contradicts the evidence that the product was properly designed and that the company appropriately informed surgeons of pertinent complications."

Tinsley described pelvic organ prolapse as "a serious and debilitating condition with limited treatment options."

An important option for some patients is pelvic mesh, Tinsley contended.

"All surgeries to treat pelvic organ prolapse have risks," she said. "While we empathize with those who have experienced complications, many women with pelvic mesh see an improvement in their day-to-day lives."

The lead trial attorneys for Johnson & Johnson were Kathleen A. Gallagher of Beck Redden LLP in Houston and Mary Nold Larimore of Ice Miller LLP's Indianapolis office.

The case is *Barbara Kaiser, et al. v. Johnson & Johnson*, No. 17 C 114. pmanson@lawbulletinmedia.com