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NJ Justices Won't Review \$11M J&J Pelvic Mesh Bellwether

By Jeannie O'Sullivan

Law360, New York (December 6, 2016, 5:15 PM EST) -- The New Jersey Supreme Court has refused to second-guess an \$11 million jury award against Johnson & Johnson unit Ethicon Inc. in a bellwether case involving a woman who experienced adverse effects from the device maker's pelvic mesh product.

In a Monday order made public Tuesday, the justices denied Ethicon and J&J's certification petition for review of an Appellate Division's affirmation of a verdict that found jurors heard sufficient evidence showing Linda Gross' doctor might have offered different guidance had he possessed more information about the Ethicon product's risks.

An attorney for Gross said Tuesday that his client and the other plaintiffs in the mass tort are owed a "debt of gratitude" for fighting the legal battle, which has spanned more than a decade.

"This case now establishes certain key legal rulings are binding, including the propriety of punitive damages, which strengthens every case in this litigation," Adam M. Slater of Mazie Slater Katz & Freeman LLC told Law360. "We will now look at motions that can be filed to cement the benefits of the decision for thousands of deserving women, including collateral estoppel on the failure-to-warn verdict."

Representatives for the pharmaceutical parties did not immediately respond to requests for comment Tuesday.

The guidance that Gross never received might have led her to pursue a different course of treatment and avoid the injuries for which she sued the pharmaceutical entities, **a three-judge appellate panel had ruled** in the bellwether case in March.

Gross and her husband had sued in 2008, saying Ethicon failed to fully disclose risks associated with its Gynecare Prolift mesh product, which Gross used to repair a pelvic floor collapse. Gross' case was the bellwether in New Jersey's multidistrict litigation over Ethicon's vaginal mesh products, which the company agreed to stop selling in June 2012 despite saying it did not believe them harmful.

The trial featured testimony from an array of Ethicon employees, who were questioned about the design, testing and marketing of Prolift, which Gross was implanted with in 2006. Gross had 18 subsequent surgeries to remove the mesh, she said, after the product caused severe nerve pain that ended her nursing career and prevented her from enjoying time with her family and from having a normal sex life. In February 2013, the jury awarded Gross \$3.35 million in compensatory damages and \$7.76 million in punitive damages for injuries caused by the product.

During oral arguments in February 2016 before the Appellate Division, Ethicon challenged New Jersey Superior Court Judge Carol E. Higbee's determination that sufficient evidence existed to support a finding that the company was responsible for Gross' injuries after she used the product, according to the panel decision. The company previously asked the judge to issue a judgment notwithstanding the verdict or to order a new trial, on the grounds that the jury award was not supported by adequate evidence. The judge declined to do either.

The panel agreed with the move in March, noting the doctor's testimony that he would have counseled against the procedure or spent at least 45 minutes discussing its drawbacks had he known the product "should not be implanted in sexually active people."

Gross was represented in the Appellate Division by Adam M. Slater and David A. Mazie of Mazie Slater Katz & Freeman LLC.

J&J and Ethicon were represented in the Appellate Division by Christy Jones and William M. Gage of Butler Snow O'Mara Stevens & Cannada PLLC and Kelly Crawford-Riker, Maha M. Kabbash and Mary Ellen Scalera of Riker Danzig Scherer Hyland & Perretti LLP.

The case is Gross v. Gynecare Inc. et al., case number 077827, in Supreme Court of the State of New Jersey.

--Additional reporting by Adam Sege. Editing by Edrienne Su.

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