



## **J&J Hit With \$7.8M Punitive Award Over Vaginal Mesh Product**

By Joshua Alston

Law360, New York (February 28, 2013, 2:21 PM ET) -- A New Jersey jury on Thursday leveled a \$7.76 million punitive judgment against Johnson & Johnson's Ethicon Inc. in favor of a South Dakota woman who blames the company's vaginal mesh product for destroying her quality of life, bringing her total award to \$11.1 million.

Days after awarding \$3.35 million in compensatory damages to plaintiff Linda Gross, the jury added the punitive award after deciding that J&J deliberately misled doctors and consumers about the safety of the Gynecare Prolift, a polypropylene mesh product used in pelvic floor surgeries.

In punitive arguments on Tuesday, Gross' attorneys urged jurors to find that J&J willfully and recklessly disregarded the harm that could be caused by failing to adequately warn that the Prolift product could cause complications including nerve damage, urinary issues and painful sexual intercourse.

Adam M. Slater of Mazie Slater Katz & Freeman LLC, an attorney for Gross, gave a passionate closing during which he apologized to jurors for raising his voice, and urged them to send J&J a message that would influence them to change their business practices.

Slater's partner, David A. Mazie, joined in the closing arguments, reminding jurors of testimony they heard from economist Frank Tinari, whose study of J&J's financial statements placed the company's net worth at \$64.8 billion and its average profits over the last four years at \$11.5 billion.

New Jersey state law limits punitive damages to five times the amount of the compensatory award — \$16.75 million in this case — but Slater told Law360 on Thursday that the punitive award is about the message it sends more than the number itself.

"The amount is important too, and we're happy with it, but the most significant thing is that the jury spoke, and that will have significant ramifications for future cases," Slater said.

J&J attorney Christy Jones of Butler Snow O'Mara Stevens & Cannada PLLC told the jury in her closing that the company respected the verdict, but said that J&J could not have established the good will that leads customers like Gross to choose its products if it acted so recklessly.

"Companies like Johnson & Johnson and Ethicon make products with the goal of helping people," Jones said. "They couldn't build their reputation if they ignored patients' health. They couldn't, and they didn't."

Ethicon said in a statement that the company acted appropriately and responsibly in

bringing the Prolift to market, and plans to appeal both the compensatory and punitive awards.

"While we are always concerned when a patient experiences medical conditions like those suffered by the plaintiff, all surgeries for pelvic organ prolapse present risks of complications," said Sheri Woodruff, an Ethicon spokeswoman.

Slater said his team is confident that an appeals court will uphold the jury's decisions. "In terms of appellate issues, we think it was a very clean trial," he said.

The trial, which began in January, featured testimony from an array of Ethicon employees who were questioned about the design, testing and marketing of Prolift, which Gross had implanted in 2006 to repair a pelvic organ prolapse. Gross had 18 subsequent surgeries to remove the mesh after she said the product caused severe nerve pain that ended her nursing career and prevented her from enjoying time with her family or having a normal sex life.

Gross' case is the first in more than 1,800 suits filed in New Jersey over Ethicon's vaginal mesh products, which it agreed to stop selling in June, despite saying it did not believe the products to be harmful.

Gross is represented by Adam M. Slater and David A. Mazie of Mazie Slater Katz & Freeman LLC.

Johnson & Johnson and Ethicon are represented by Christy Jones and William M. Gage of Butler Snow O'Mara Stevens & Cannada PLLC and by Kelly Crawford-Riker of Riker Danzig Scherer Hyland & Perretti LLP.

The case is Gross v. Gynecare Inc., case number Atl-L-6966-10, in the Superior Court of New Jersey, Atlantic County.

--Editing by Rebecca Flanagan.