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J&J Owes \$7.76 Million in Punitives in Vaginal Mesh Case

By David Voreacos - Feb 28, 2013 12:22 PM ET

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Q QUEUE

Johnson & Johnson (JNJ) must pay \$7.76 million in punitive damages to a woman who previously won a \$3.35 million compensatory award for injuries she blamed on the company's vaginal-mesh device, a New Jersey jury ruled.

Jurors in Atlantic City made the award today to punish J&J, the world's largest seller of health-care products. The verdict came in the first of 4,000 lawsuits to go to trial over J&J's pelvic mesh, including 2,100 in New Jersey. The jury of six men and three women declined to comment on its decision.

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Linda Gross, a nurse from South Dakota, and her husband Jeffrey, after a New Jersey jury ruled that Johnson & Johnson must pay \$7.76 million in punitive damages to Gross who previously won a \$3.35 million compensatory award for injuries she blamed on the company's vaginal-mesh device. Photographer: David Voreacos/Bloomberg

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Forensic economics expert Frank Tinari said J&J had assets of \$121.3 billion and a net worth of \$64.8 billion through Dec. 31. Advertising and marketing expenses were \$20.9 billion last year, or \$57 million a day, he said. Photographer: Brent Lewin/Bloomberg

The total of \$11.1 million goes to Linda Gross, a South Dakota nurse who complained of constant pain and underwent 18 operations after J&J's Gynecare Prolift was implanted to shore up weakened pelvic muscles. On Feb. 25, the panel found that J&J and its Ethicon unit failed to warn her surgeon of the risks of the device and fraudulently misled her about the risks.

"Tell them to tell the truth," Gross attorney Adam Slater argued to jurors on Feb. 26. "Make sure you punish them for not telling the truth. Make sure you deter and discourage."

Ethicon will appeal the punitive verdict today as well as the Feb. 25 compensatory award, Sheri Woodruff, a company spokeswoman, said in an e-mail.

"The punitive damage award is unsupported by the evidence presented at trial," Woodruff said. "Ethicon acted appropriately in the research, development and marketing of the Prolift."

'Fell Short'

J&J, based in New Brunswick, New Jersey, claimed at trial that Prolift is safe and effective and that the company gave adequate warning of any risks associated with the device. Christy Jones, a J&J attorney, said the company hadn't acted with wanton and willful disregard to Gross, the legal standard required for punitive damages.

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"I understand that you have found that we could have done a better job and that we in fact fell short," Jones said Feb. 26. "My clients understand that. We hear you, I promise you."

Jones said that "while I confess to you from the bottom of my heart that it hurts, and we're disappointed in the verdict, we nonetheless appreciate what you have said and recognize and respect your verdict."

Gross's attorneys called a forensic economics expert, Frank Tinari, to testify about J&J's finances. Tinari said J&J had [assets](#) of \$121.3 billion and a net worth of \$64.8 billion through Dec. 31. Advertising and marketing expenses were \$20.9 billion last year, or \$57 million a day, he said.

Company Document

Under questioning by Gross's attorney, David Mazie, Tinari said that every 45 minutes the company spends the equivalent of the \$3.35 million award to Gross on marketing and advertising.

A J&J manager of financial reporting, Mark Schneider, testified his analysis of Prolift sales from 2005 through 2012 showed the total was \$128 million and profit was \$5.6 million.

On cross-examination, Mazie suggested Schneider's calculations were unreliable and underreported sales. He showed Schneider a company document saying sales in the first half of 2008 were \$55 million. Schneider said he hadn't seen it.

In his summation, Slater went through e-mails, memos and video depositions, including one of the device's creator, Axel Arnaud. Slater said Arnaud contradicted Ethicon's statement that Prolift posed "rare and small risks" of complications.

"I have given you 100 percent irrefutable evidence that you cannot reasonably say no to," Slater said. "This is clear and convincing evidence. This is irrefutable."

Jones said Ethicon tried to teach surgeons how to minimize the risk to patients, and sought through "instructions for use" to warn of the risks.

'That's Human'

The evidence doesn't show "J&J or Ethicon did not care about hurting women. And that's what the charge is," Jones told jurors, her hands held as if in prayer. "I'm asking you, indeed, I'm begging you, to think about what was done and why."

In his summation, Slater said, "They stood in front of you and said we're begging you. We're begging you. Every single day Linda Gross begs to be out of the prison that she's in of pain and all the things that have happened to her; every damn day. That's human. That's real."

Mazie said J&J is a "big giant" and jurors must send a "loud message" to punish the company for its conduct.

"It's for each and every one of you to send a message to them that this can never, ever happen again, because life and health is at risk," Mazie said. "You can send a message to Johnson & Johnson and Ethicon and tell them no more, no more, no more."

The case is Gross v. Gynecare Inc., Atl-L-6966-10, Superior Court of Atlantic County, New Jersey ([Atlantic City](#)).

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To contact the reporter on this story: David Voreacos in Atlantic City, New Jersey, at dvoreacos@bloomberg.net

To contact the editor responsible for this story: Michael Hytha at mhytha@bloomberg.net

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