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Ethicon, J&J remove pelvic mesh suit from Phila. CCP to federal court

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By JON CAMPISI

Drug company Johnson & Johnson and medical device manufacturer


Eric H. Weitz

Ethicon Inc. have filed a removal petition in U.S. District Court in Philadelphia stating that a South Carolina woman's product liability claim involving allegations of faulty pelvic mesh belongs in that venue, not the Philadelphia Court of Common Pleas.

Judy Abrams, of Honea Path, S.C., filed suit in early February in Common Pleas Court over claims that she was injured in February 2009 after a physician implanted the defendants' Gynecare Prolift +M Pelvic Floor Repairing System inside of her body during a surgery at AnMed Health Medical Center in Anderson, S.C.

The lawsuit, which was filed by lead attorney Eric H. Weitz, of the Philadelphia firm Messa & Associates, alleges that Abrams, as a result of the defendants' conduct, has been injured "catastrophically," and that she sustained severe and permanent pain, suffering, disability, impairment and loss of life's enjoyment.

The complaint says that patients implanted with the defendants' product have suffered from mesh erosion, mesh exposure, mesh contraction, infection, inflammation, scar tissue, organ perforation, pelvic floor damage and other problems associated with the device.

Despite knowledge of the catastrophic injuries and complications caused by the pelvic mesh, however, the defendants have continued to market and sell their products while failing to adequately warn of its dangers.

The suit even points out that in January 2012, the U.S. Food and Drug Administration ordered the defendants to conduct randomized, controlled clinical testing of the pelvic mesh products and mesh components or to be ordered to cease their manufacturer, marketing and sale.

As of the date of the filing of the complaint, the plaintiff's lawyers' note, it is unknown whether Ethicon or Secant Medical, another defendant, ever began or completed any of the clinical testing ordered by the FDA.

The defense's removal petition, filed on March 17 by Drinker Biddle & Reath attorneys Kenneth A. Murphy, Melissa A. Graff and Andrew P. Reeve, states that the lawsuit should play out in federal court for various reasons.

For starters, the defense attorneys contend that regardless of the assertion that the plaintiff's monetary damages claim falls within the jurisdiction of a Pennsylvania state court, it's clear that the woman is actually seeking damages in excess of $75,000, the amount triggering federal court jurisdiction.

The petition also states that there is complete diversity of citizenship between the plaintiff and the "properly joined" defendants.

As for the other defendants, the attorneys wrote that Bucks County-based Secant Medical was fraudulently joined to the litigation because it has no involvement with the Ethicon pelvic mesh product that is the subject of the lawsuit.

A plaintiff such as Abrams, the lawyers wrote, cannot defeat a defendant's federal right of removal by fraudulently joining a forum defendant such as Secant in this case.

As proof of fraudulent joinder, the defense lawyers attached to the petition the affidavit of a man identified as Marc Kisielnicki, who notes that Ethicon

manufactured and sold the Prolift +M pelvic mesh device prior to "decommercialization" of the product in 2012.

Secant, the petition states, was not involved in any manner in the knitting of the composite material that was utilized to make the mesh device, and Johnson & Johnson never used any materials provided by Secant in the making of the Prolift +M.

"Because no cause of action exists against it, Secant is an unnecessary and dispensable party to the dispute between Plaintiff and Removing Defendants," the petition states.

The state case ID number is 140200307 and the federal case number is 2:14-cv-01599-PD.

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