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## Pa. Ties Disputed in Pelvic Mesh Jurisdiction Fight

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A fight over whether 90 pelvic mesh cases pending in Philadelphia state court against a Johnson & Johnson subsidiary [should be transferred](#) to other jurisdictions in the wake of the U.S. Supreme Court's [game-changing decision](#) in *Bristol-Myers Squibb v. Superior Court of California* is focusing on the defendant's contacts with a third-party mesh supplier that is based in Pennsylvania.

J&J subsidiary Ethicon, which is facing about 120 cases in Philadelphia Court of Common Pleas'

[pelvic mesh mass tort program](#), on Monday outlined its arguments for why 90 of those cases—all of which are being brought by non-Pennsylvania residents—should be taken out of the venue. The brief comes less than a month after Philadelphia Judge Arnold New granted the defendant's request to re-open the jurisdiction issue in light of *Bristol-Myers Squibb*.

A key part of Ethicon's argument is that it had a limited contractual relationship with the Bucks County-based company Secant, which manufactured and then supplied to the defendant the Prolene filaments Ethicon used to create the allegedly problematic pelvic mesh products.

The defendant likened its relationship with Secant to drugmaker Bristol-Myers Squibb's relationship to the company that distributed Plavix—the drug at issue in *Bristol-Myers Squibb*.

In that ruling, the justices made clear that out-of-state plaintiffs can't sue companies where the defendants aren't considered to be "at home," or haven't conducted business directly linked to the claimed injury. The plaintiffs had noted Bristol-Myers Squibb's relationship with McKesson Corp., a California Plavix distributor, as a reason for the cases to remain in California. However, the justices said that relationship was not adequate to establish jurisdiction in the Golden State.

According to the brief Drinker Biddle & Reath attorney Kenneth Murphy filed on behalf of Ethicon, "Secant is far less relevant to plaintiffs' claims than McKesson was to the non-resident plaintiffs' claims in *Bristol-Myers Squibb*."

"Plaintiffs have not shown and cannot show Secant was anything other than an independent biomaterials supplier," Ethicon said. "The record reflects only what any contracting party would seek and expect: the delivery of what it has agreed to pay for and the means to assure the other side's compliance. Merely contracting to have mesh knitted from filament by an independent company does not confer jurisdiction."

However, Kline & Specter attorney Shanin Specter, a lead attorney representing the plaintiffs in Philadelphia's pelvic mesh mass tort program, challenged Ethicon's argument, saying "this is not a close call."

Specter, who has tried several pelvic mesh cases to multimillion-dollar verdicts against Ethicon in Philadelphia, noted that his firm challenged Ethicon's arguments in a brief filed to the Pennsylvania Superior Court last week in the case *Hammons v. Ethicon*, which came to a \$12.5 million verdict in late 2015.

In that brief, the plaintiff contended that the underlying due process considerations did not change after the *Bristol-Myers Squibb* decision, and the trial court weighed those same issues when it first decided Philadelphia had jurisdiction over the cases. The plaintiff specifically contended that Ethicon had worked closely with Secant officials, often meeting with them at their Pennsylvania facilities, and that the company also worked with Pennsylvania gynecologist Dr. Vincent Lucente to develop the mesh.

"Ethicon designed, tested and manufactured the mesh's physical properties in Pennsylvania. Yes, it did so through contracts with Secant and Dr. Lucente. But what matters is the activity itself," the plaintiff said in the brief. "Through those contracts, Ethicon chose Pennsylvania as the location where Ethicon directed the design, manufacturing, testing and overall production process for Prolift mesh. Ethicon chose Pennsylvania as the place where it funded extensive clinical studies and paid

for the services of a prominent Pennsylvania consultant."

In an emailed statement, Kristen Wallace, a spokeswoman for Ethicon, said, "Ethicon will vigorously defend itself in lawsuits concerning the use of our pelvic mesh products."

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