

Boston Scientific Wins 2nd Pelvic Mesh Bellwether Trial

By **David Siegel**

Law360, New York (August 29, 2014, 1:38 PM ET) -- A Massachusetts jury found in favor of Boston Scientific Corp. on Friday in the second bellwether trial involving the company's pelvic mesh devices, finding that a transvaginal sling was not defectively designed and the company adequately warned of risks associated with the device.

Eric Anielak of Shook Hardy & Bacon LLP, who represents Boston Scientific, confirmed the Middlesex County jury returned a verdict clearing the company of all liability involving the Obtryx-brand sling following over two days of deliberations and a two-week trial. In July, another Middlesex County jury found in favor of Boston Scientific at a trial involving the Pinnacle Pelvic Floor Repair it.

A spokeswoman for Boston Scientific told Law360 the company welcomed the verdict.

"We are pleased that after considering the evidence, the jury found no design or warning defect with our pelvic repair product," spokeswoman Kelly Leadem said. "Transvaginal mesh remains an important treatment option for women who suffer from pelvic organ prolapse and stress urinary incontinence. "

Doug Monsour of the Monsour Law Firm, who represented plaintiff Maria Cardenas, told Law360 the court excluded testimony from the implanting doctor that he would not have used the Obtryx had he known the material data safety sheet sheet for its polypropylene had a warning stating it was not intended for permanent implant in the human body.

Monsour said this evidence is similar to materials the jury was precluded from seeing prior to the Albright trial, adding that the decision not to allow the jury to consider this information "absolutely" serves as grounds for an appeal of the verdict.

"We will continue to fight these cases," Monsour said.

Cardenas alleges she was injured from a defectively designed Obtryx transvaginal mesh sling and was only the second out of thousands of plaintiffs who have filed lawsuits alleging injuries from Boston Scientific's pelvic mesh products to actually take a case to trial. The company faces thousands of federal lawsuits over its pelvic mesh products, as well as suits in other state courts across the country.

Cardenas was represented by an entirely different legal team than Boston Scientific faced in July. Florida-based attorney Joe Osborne of Babbitt Johnson Osborne & Le Clainche PA and Doug Monsour from the Texas-based Monsour Law Firm served as lead trial counsel, backed up by local Massachusetts

counsel Michael Appel of Sugarman Rogers Barshak & Cohen PC, according to court dockets.

South Carolina-based Motley Rice LLC, Chicago-based Wexler Wallace LLP, Houston-based Fibich Hampton Leebron Briggs & Josephson LLP and local Massachusetts counsel from Jenner & Suggs LLC represented plaintiff Diane Albright at the first Boston Scientific bellwether trial in July.

At the Cardenas trial, Boston Scientific was represented by Shook Hardy & Bacon in addition to Boston-based Murphy & Riley PC, the same team that delivered the company a win at the Albright trial in July.

Along with over 500 cases pending in Massachusetts state court before Justice Diane M. Kottmyer, tens of thousands of cases involving mesh products manufactured by Boston Scientific, Johnson & Johnson and C.R. Bard Inc. have been consolidated in multidistrict litigation pending before U.S. District Judge Joseph Goodwin in West Virginia federal court.

Maria Cardenas is represented by Joe Osborne of Babbitt Johnson Osborne & Le Clainche PA, Doug Monsour of the Monsour Law Firm and Michael Appel of Sugarman Rogers Barshak & Cohen PC.

Boston Scientific Corp. is represented by Eric M. Anielak and Matthew D. Keenan of Shook Hardy & Bacon LLP and Susan Donnelly Murphy, Lisa Oliver White, Kevin M. Sullivan and David R. Greco of Murphy & Riley PC.

The case is Maria Cardenas v. Boston Scientific Corp., case number MICV2012-02912, in the Superior Court of the Commonwealth of Massachusetts, County of Middlesex.

--Editing by Philip Shea.