

NC Jury Hands Boston Scientific Win In Pelvic Mesh Case

By **Jody Godoy**

Law360, New York (October 19, 2015, 7:41 PM ET) -- Boston Scientific fended off a suit by a woman who claims she was injured by one of company's vaginal mesh products on Friday when a North Carolina federal jury found in favor of the company on all counts.

The jury found that Martha Carlson hadn't proved her design defect or breach of warranty claims. The verdict ended the woman's case over Boston Scientific's Uphold Vaginal Support System, which it marketed as a thinner and lighter alternative to typical synthetic mesh devices.

Boston Scientific spokesman Tom Keppeler said the company is pleased with the outcome, while attorneys for Carlson looked ahead to the next case deemed to be ready for trial after consolidated proceedings in multidistrict litigation against the company.

"While disappointed, especially for our client, this is the first in many upcoming cases set for trial," Jeff Larimore, an attorney for Carlson, told Law360. "We look forward to our next trial which we think will conclusively prove that Boston Scientific marketed an unsafe product that has hurt thousands of American women."

Carlson's case had been consolidated in May with Ramona Winebarger's suit, though Winebarger settled after Boston Scientific sought to introduce evidence of her eight-year sentence for her first husband's murder in 1995.

The suit was part of the consolidated litigation before U.S. Judge Joseph Goodwin in West Virginia federal court until he transferred it to North Carolina in April.

Boston Scientific told the court in September that the dismissal of Winebarger's claims limited the kind of evidence Carlson could seek from the company.

Because Winebarger's failure to warn claim was dismissed, Boston Scientific asked the court to exclude testimony regarding whether the company notified Carlson's doctors of a safety data sheet that came with the raw polypropylene resin it used to make the Uphold device.

U.S. District Judge Richard Voorhees refused to the limit evidence of the safety data sheets, saying that Judge Goodwin had already considered the issue in MDL proceedings and had called Boston Scientific's argument "wholly unconvincing."

“Notwithstanding BSC’s persistence, the undersigned does not intend to re-litigate every issue one of the parties is unhappy with,” Judge Vorhees said. “To do so would defeat the purpose of the MDL consolidated pretrial proceedings.”

Judge Vorhees also shot down most of Boston Scientific's other bids to limit evidence in the trial, but allowed the company to raise specific objections to much of the evidence at trial.

In another case recently sent to trial after being part of the MDL, Boston Scientific recently told a Wisconsin federal court that a plaintiff was attempting to reopen discovery after it closed.

Carlson is represented by Jeffery J. Larrimore, Mark R. Mueller and Andres C. Pereira of Mueller Law PLLC and Charles McB. Sasser of The Sasser Law Firm PA.

Boston Scientific is represented by Leslie C. Packer of Ellis & Winters LLP, Molly Craig of Hood Law Firm LLC and Jon Strongman of Shook Hardy & Bacon.

The case is Winebarger et al. v. Boston Scientific Corp., case number 5:15-cv-00057, in the U.S. District Court for the Western District of North Carolina.

--Editing by Emily Kokoll.