

## OAJ Mass Torts Section Article January 2015

### Active Mass Torts and Considerations to Take When Selecting Cases

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OAJ recently held its annual Winter Convention in Cleveland. For those of you who attended, thank you for coming. For those of you not able to make it, we hope to see you next year.

Among the many presentations at the OAJ Winter Convention were several discussing mass torts and mass torts-related issues and topics. As OAJ's mass torts chair, I was thrilled to see increased attendance at and interest in the mass torts presentations and presenters. What became clear to me again is that our bar in Ohio, along with the federal bench in Ohio, makes Ohio an important legal community in the national mass torts landscape.

I had the opportunity to speak at OAJ's Winter Convention. As you know, OAJ's primary purpose is to enrich the practices and professional opportunities of our members. In that vein, I presented on ways that OAJ members – firms and solo practitioners alike – may be able to capitalize on some of the opportunities the mass torts field can present. For anyone who is interested in receiving the materials presented at OAJ's Winter Convention, please reach out to me at [ndicello@spanglaw.com](mailto:ndicello@spanglaw.com). It is not just the big national firms that have a place in the mass tort marketplace. Small firms and solo practitioners can and do evaluate, obtain and file or refer mass tort cases.

At the convention I presented on some ideas and ways to evaluate mass tort projects. I presented on ways to investigate and obtain cases, and what to do with the cases once you have obtained or identified some. In this article I will discuss a few active mass torts and provide some insight into the factors and criteria one may consider in vetting these potential cases. Of course, this is no substitute for performing your own research and investigation and this article is not intended to discuss any applicable state laws that would apply to any potential claims.

#### **BENICAR® (olmesartan medoxomil)**

Brand Names:	Benicar®, Benicar HCT®, Tribenzor®, Azor®
Drug Use:	To control high blood pressure/hypertension
Manufacturer:	Daiichi Sankyo
Injury(ies):	Spruelike enteropathy (intestinal problems), including severe, chronic diarrhea, weight loss, vomiting, dehydration, malnutrition, nausea
Ingestion:	Symptoms can occur immediately and the drug has been associated with “acute” problems. Many investigators are interested, however, in chronic problems brought on by the drug as a result of at least 6 months of ingestion
Comments:	Benicar® (olmesartan) is an angiotensin II receptor antagonist. Benicar® is intended to keep blood vessels from narrowing, which lowers blood pressure and improves blood flow. Benicar® is used to treat high blood pressure (hypertension) in adults and children who are at least 6 years old.

The FDA instructed Daiichi Sankyo to revise its labeling of the drug. Since 2013 the drug label has warned about spruelike enteropathy-type symptoms.

Litigation: Cases are being filed. No MDL has been established at this time.

### **FLUOROQUINOLONES – Broad Spectrum Antibiotics**

Brand Names: Levaquin®, Avelox®

Drug Use: Broad Spectrum Antibiotics

Manufacturers: Janssen Pharmaceuticals (Levaquin®), Bayer Healthcare Pharmaceuticals (Avelox®)

Injury(ies): Peripheral neuropathy – damage to nerves in arms, hands, legs or feet.  
Symptoms: pain, burning, tingling, numbness, and weakness

Ingestion: Drugs are usually prescribed for a 7-14 day course. Symptoms can develop while on the medication or after discontinuing the medication. Some investigators will evaluate cases where symptoms developed up to 180 days within drug use

Comments: The FDA issued a drug safety communication warning about peripheral neuropathy associated with the use of fluoroquinolones. In some instances (e.g., MRSA infections, sepsis, surgical infections) the benefits of these antibiotic medications may likely exceed the risk of peripheral neuropathy and could dictate rejecting any given case.

Litigation: Cases are being filed. No MDL has been established at this time.

### **LIPITOR®**

Brand Name: Lipitor®

Drug Use: Cholesterol-lowering medication

Manufacturer: Pfizer

Injury(ies): New onset Type II Diabetes in women

Ingestion: Many patients are diagnosed with new onset type II Diabetes while taking the drug. Some investigators are vetting cases where the patient is diagnosed with type II diabetes up to 6 months after discontinuing use of the drug

Comments: Lipitor® is one of the most successful drugs – in terms of prescriptions filled – in history with billions in annual sales. Studies have suggested that there is no benefit for women in taking the drug to prevent high cholesterol. In 2012 the FDA issued a statement about statins (class of drug including Lipitor®) and their association with increased blood sugars. A patient's BMI and other risk factors

for developing diabetes must be evaluated. Some investigators, for example, use a BMI of less than 30 as a criterion for investigating these cases.

Litigation: An MDL has been established in South Carolina District Court, MDL No. 2502. No cases have yet to go to trial.

### **XARELTO®**

Brand Name: Xarelto®

Drug Use: Anticoagulant used to treat atrial-fibrillation and to prevent/treat DVT and PE, and to reduce the risk of DVT and PE after hip or knee replacement surgery

Manufacturer: Bayer HealthCare AG/Janssen Pharmaceuticals, Inc.

Injury(ies): Bleeding events – intracranial hemorrhage, epidural hematoma, gastrointestinal hemorrhage, retinal hemorrhage, adrenal bleeding

Ingestion: Injury can occur after taking a single dose. Some investigators will only consider cases where the event occurred within 3 days of taking the drug.

Comments: Like Pradaxa®, Xarelto® has been marketed as a more convenient alternative to Warfarin (Coumadin®) because it is said not to require any blood level monitoring. Pradaxa® was the subject of a now-settled MDL.

Litigation: An MDL was recently established in the Eastern District of Louisiana

Now more than ever before, there is substantial information available to investigate these drugs, the injuries associated with taking them, and the potential claims injured patients/consumers may have.