

## **Mass Tort Case Update – December 2018**

There are several mass tort cases being litigated across the country that may be of interest to OAJ members. It is important to have current information on these cases to help identify potential cases in your office. This article provides abbreviated updates on the larger mass tort cases from around the country. Included in the article are the three hernia mesh litigations pending in various courts across the country – Physiomesh, Atrium C-Qur, and Bard Mesh Products. All three of these litigations allege various defects in hernia mesh products leading to additional surgeries and other serious health problems.

### **Physiomesh Hernia Mesh**

The Physiomesh litigation is a consolidated Multi-District Litigation (“MDL”) pending in District Court in the Northern District of Georgia. The MDL is assigned to the Honorable Judge Richard W. Story. Recently, Defendants finished Plaintiff depositions on the initial bellwether selections. Plaintiffs are currently deposing corporate executives of Ethicon, Inc. and Johnson & Johnson. Additionally, the parties are in the process of conducting treating physician depositions. Following the conclusion of treating physician depositions, the parties will begin disclosing and deposing experts in February 2019. In late 2019, the parties will gear up to begin initial bellwether trials.

### **Atrium C-Qur Hernia Mesh**

The Atrium C-Qur litigation is a consolidated MDL pending in District Court in the District of New Hampshire. The MDL is assigned to the Honorable Judge Landya B. McCafferty. Plaintiffs are in the process of responding to Defendants’ motions to dismiss filed based on statute of limitations issues and plausibility of certain claims under New Hampshire law. Corporate depositions are being taken around the country of corporate executives from Atrium Medical Corporation. Additionally, both parties made their selections for bellwether cases. In 2020, the parties will gear up to begin initial bellwether trials.

### **Bard Hernia Mesh Products**

The Bard Mesh Products litigation is a consolidated litigation pending in State Court in Rhode Island. The consolidated litigation is assigned to Superior Court Presiding Justice Alice Gibney. Plaintiffs are currently in the process of responding to the recent discovery order entered by the court and serving initial Plaintiff Profile Forms (“PPFs”). The PPFs are due every sixty days after filing. Recently, a handful of cases were selected for trial. More recently, the JPML consolidated cases pending in Federal Court to the Southern District of Ohio.

### **Abilify**

Abilify lawsuits are pending both in the MDL in District Court for the Northern District of Florida before the Honorable Judge M. Casey Rogers and in state court in New Jersey. This

past summer, Judge Rogers ordered the parties to begin to set the framework to resolve all cases in the MDL by September 1, 2018. With that deadline passed and no global resolution reached, Judge Rogers ordered the parties to begin to prepare cases for trial from a second discovery and bellwether trial pool of forty cases. Of these cases, six cases were selected from the second discovery pool to proceed with fast-tracked discovery and trials to be set for the summer of 2019. The parties continue to work to select an additional group of cases to be prepared for bellwether trials from the second discovery pool. Judge Rogers has also ordered all Plaintiffs filed in the MDL to complete additional discovery in the form of a supplemental Plaintiff Profile Form to give both parties more information about the cases filed. Plaintiffs allege that Abilify causes an increase in impulsive behaviors including gambling, shopping, and deviant sexual behavior.

### **Roundup**

Roundup cases are consolidated in a number of venues across the country and litigation is picking up as individual Plaintiff's cases continue to be set for trial. Cases are already set for trial in 2019 across the country with the first 2019 trial set for February 2019. This trial is scheduled in the consolidated MDL in District Court for the Northern District of California before the Honorable Judge Vince Chhabria. A second case is set to be tried in the MDL in May of 2019. Trial dates are also set in both California and Missouri state court litigations in March 2019 and April 2019, respectively. The first Roundup trial ended in August 2018 with a Plaintiff's verdict for a California school groundskeeper with a jury finding that his non-Hodgkin's lymphoma was as a result of his exposure to Monsanto's Roundup. Plaintiffs continue to file their cases in both federal and state courts across the country after being diagnosed with non-Hodgkin's lymphoma after exposure to Monsanto's Roundup.

### **Talcum Powder**

A recent report from Reuters claims that Johnson & Johnson knew that its talcum powder products contained Asbestos for the last several decades. Cases are currently being filed in the MDL in District Court for the District of New Jersey in before the Honorable Judge Freda L. Wolfson and in State Courts around the country. There have been several trials in different venues including a trial on behalf of 22 women in the city of St. Louis that resulted in a \$4.7 billion verdict. Plaintiffs allege that products containing talcum powder including J&J's baby powder cause ovarian cancer.