SOKOLOVE/CO-COUNSEL

2013 Significant Verdicts & Settlements

SETTLEMENT	CASE TYPE	CO-COUNSEL FIRM
$47,300,000	Mesothelioma and other Asbestos-related diseases	Multiple co-counsel firms
$5,000,000	Cerebral Palsy	Lubin & Meyer PC, Boston, MA
$2,453,777	Failure to Diagnose	Lubin & Meyer PC, Boston, MA
Confidential Settlement	Birth Injury	Thornton & Naumes LLP, Boston MA
$750,000	Failure to Diagnose	Blume Goldfaden Berkowitz Donnelly Fried & Forte, Chatham, NJ
$600,000	Automobile Accident	Law Office of Steven P. Brendemuehl, Natick, MA
$500,000	Nursing Home	Shuttlesworth Lasseter LLC, Birmingham, AL

Consumer Fraud

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Sokolove Law created unique marketing campaigns to target victims of consumer fraud. Each campaign had a different integrated media channel approach.

Sometimes we needed to incorporate direct mail and social media. For other efforts, we employed TV to create broad awareness, and then used a multichannel combination. These campaigns offered cost effective and highly qualified leads for our co-counsel firms.

MDL for you?

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But remember, with MDLs "it's not all rainbows and lollipops," says Miracle. "They don't always succeed and there are varying degrees of success."

There can be disagreements among the attorneys handling the case or its administration. And, as Abrams points out, you may not always be in love with the leadership teams, or agree with how they are handling the case. "Sometimes things come up and you didn't foresee the quality of cases," she says.

Nevertheless, MDL is a tool worth considering as part of an overall litigation success strategy. "It's always an arrow in the quiver, but not the only one," says Miracle.

Tylenol® is a registered trademark of McNeil Consumer Healthcare, a division of McNeil PPC Inc.

Mirena® is a registered trademark Bayer HealthCare Pharmaceuticals Inc.

Zoloft® is a registered trademark of Pfizer Inc.

Pradaxa® is a registered trademark of Boehringer Ingelheim Pharma GmbH & Co. KG

Propecia® is a registered trademark of Merck & Co. Inc.

Stryker Rejuvenate® and ABG II® are registered trademarks of Stryker Corp.

GranuFlo® or NaturaLyte® are registered trademarks of Fresenius Medical Care Holdings Inc.

SOKOLOVE LAW

1-800-305-4009

under investigation

Sokolove Law is currently investigating potential litigation and case generation opportunities for injuries or losses arising from the following:

Telephone Consumer Protection Act

Litigation involving violations of the TCPA, a federal law that protects consumers against unsolicited faxes, prerecorded calls, or autodialed calls and texts.

DePuy LPS™ Lower Extremity Dovetail Intercalary Component

Claims of device fracture, infection, loss of function, loss of limb, revision surgery, or other serious injury by patients implanted with DePuy's LPS (Limb Preservation System) Lower Extremity Dovetail Intercalary Component, recently the subject of an FDA Class I Recall.

Unpaid Internships

Litigation against for-profit employers, on behalf of interns who allege federal and state wage violations. These include unpaid regular time, unpaid overtime, missed meal or rest breaks, and unreimbursed business expenses.

DePuy LPS™ Lower Extremity Dovetail Intercalary Component is a registered trademark of DePuy Orthopaedics Inc.

Co-Counsel Opportunities

Sokolove Law annually oversees many successful campaigns for a number of case types, including pharmaceuticals, medical devices, birth injury, nursing home, and consumer fraud — to name a few. But remember, even our most established case types were once unique and new. Our philosophy has always been to find where the next success is going to be. Because of this, we welcome your ideas for new campaigns.

We're willing to develop and perform a market test for the best new case types. So, if you've had success with a particular case type or practice area, and believe that your success is scalable, we'd like to be the first to know about it. If you recognize a potential opportunity and believe there is a repeatable fact pattern, call us. If we agree it is a viable campaign, we'll work with you, on a confidential basis, to test your ideas in national or regional markets.

We look forward to the conversation.

SOKOLOVE SUCCESS

SOKOLOVE MEANS SUCCESS. *Volume 16, Fall 2013*

Is Multidistrict Litigation for Your Firm?

According to statistics from the Judicial Panel on Multidistrict Litigation (JPML), last year the panel created 57 new MDLs. Those included mass tort litigation involving the SSRI antidepressant Zoloft®, the blood-thinner Pradaxa®, and the hair loss drug Propecia®, as well as the creation of four separate MDLs targeting pelvic mesh manufacturers American Medical Systems Inc., Ethicon Inc., Boston Scientific Corp. and Coloplast Corp., respectively.

This year alone, we have already seen the creation of several more pharmaceutical and medical device MDLs, including those involving the pain-reliever Tylenol®, the Mirena® IUD, and Stryker's recalled Rejuvenate® hip implant device.

So, like it or not, at some point your pharmaceutical or medical device case may become part of a federal MDL. Although there are cons to MDL participation, in some instances, it clearly can be advantageous, as a couple of experienced attorneys note. "It's a relatively simple way to get cases easily filed and coordinated without the heavy lifting," says Trent Miracle, partner at Simmons Browder Gianaris Angelides & Barnerd LLC, based in Alton, Ill.

It's also particularly useful for medical device and pharmaceutical litigation where there is one defendant and there are similarities in the cases. However, if you are already well along with your case in a state court, you may not see the advantages of participating in an MDL, notes Rachel Abrams, partner at Levin Simes LLP, a San Francisco-based practice. And since the MDL judicial panel chooses the case venue, the location can be a "crap shoot," says Abrams. So be prepared for potential long-distance participation.

Once the case venue is set, the MDL leadership and the court select the crucial bellwether case (or cases), which indicate future trends for the litigation. Even if you don't directly handle the bellwether, you can still play a guiding role by joining in the case leadership committee. "As a practical matter," says Miracle, "we like to be involved in directing the case. It's a good way to learn the liability case and put pressure on the defendant."

Recently created MDLs involving Sokolove Law co-counsel:

- In Re: Mirena IUD Products Liability Litigation
- In Re: Stryker Rejuvenate and ABG II® Hip Implant Products
- In Re: Fresenius GranuFlo®/ NaturaLyte® Dialysate Products
- In Re: Incretin-Based Therapies Products Liability Litigation

The experience itself can be beneficial. "Interacting with national counsel defending Merck or Pfizer is never a bad thing," he says. "You always want to know the players on that side of the aisle, and have more intelligence when it comes to resolving the cases." But leadership can be costly, says Miracle, requiring an investment of $100,000 to $250,000 (per participating firm) to cover such things as depositions, expert reports, and testimony.

If you aren't working on a bellwether case, your role in discovery and preparation for the case will obviously be limited. But as Abrams points out, you can work on the teams handling the experts, or the electronic discovery teams. This way, you can have your "finger on the pulse," she says.

For women, there are unique leadership and career opportunities in taking management roles in MDLs, says Abrams. Many plaintiff steering committees are male dominated — even in MDLs involving women's health, such as the contraceptive Mirena. Defense teams frequently use women as their lead counsel. To counter this, a plaintiffs' MDL team should employ the same strategy. (Abrams is on the plaintiff steering committees for both the transvaginal mesh and Mirena MDLs.)

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inside this issue

SOKOLOVE LAW

Co-Counsel SPOTlight

Dugan, Babij & Tolley LLC, Timonium, Maryland

Dugan, Babij & Tolley LLC has earned the reputation of being a top national medical malpractice firm. Since the firm's founding in 1981, it has done great things throughout the country for victims of avoidable birth injury, medical malpractice, catastrophic accidents, and other injustices. Its attorneys have recovered hundreds of millions of dollars on behalf of their clients.

As a member of the Sokolove national Birth Injury network, the firm has obtained over $50 million in settlements for our mutual clients. In one Sokolove brachial plexus case, the firm obtained an initial $20 million award — eviscerated, unfortunately, by Maryland's cap on pain and suffering.

In 2009, the Maryland Association for Justice named Henry Dugan Jr., Bruce Babij, and George S. Tolley III "Trial Lawyers of the Year" for their outstanding and dedicated representation of a child who'd suffered a brain injury from obstetrical malpractice. The team won a $13.1 million award — one of the largest jury verdicts in Maryland's medical malpractice history.

Partners of Dugan, Babij & Tolley LLC

"Our partnership with Sokolove Law has allowed us to meet and serve victims of medical malpractice whom we may otherwise have never encountered," says Dugan. "The elegant simplicity of our working relationship is a source of pleasure — and proof how the Sokolove team stands for professional competence."

"We're proud of our association with Henry and his team of professionals," says Sokolove Law CEO Mike Skoler. "They have zealously pursued justice for their clients — many of whom are innocent children. Henry's diligence has well earned him the informal title of 'The Chairman of the Board.'"

Contributing Editor

State Pharma Claims Further Limited – for Now

By Dr. Brian Russell, Psychologist and Attorney

I've been on a long crusade against the excessive and "off-label" marketing and prescription of psychopharmaceuticals. These practices result in serious damage to Americans. So, whenever possible, I use my media platforms to raise awareness of this profit-driven epidemic.

Accordingly, when the U.S. Supreme Court hands down a relevant decision — as it recently did in *Mutual Pharmaceutical Co. Inc. v. Bartlett* — I take notice. The *Mutual Pharmaceutical* ruling covers product-liability claims against generic pharmaceutical manufacturers. Claims based on defective product designs filed in state courts are preempted by relevant federal regulations and approvals. That's because generic drug manufacturers are required by federal law to only replicate the formulas and labels of the originals.

With the *Mutual Pharmaceutical* decision, the Court expanded its 2011 ruling in *PLIVA Inc. v. Mensing.* This precludes state claims against generic pharmaceutical manufacturers, when based on defective labels. The *Mutual Pharmaceutical* ruling also further narrowed the Court's 2009 decision in *Wyeth v. Levine.* That ruling allowed state claims (based on defective labels or designs) against manufacturers of original or "branded" drugs but did not address generic versions.

A *Mutual Pharmaceutical* footnote may make it possible for states to intervene under one condition. That condition is if a generic drug could be deemed so pervasively hazardous that the only way to avoid liability is to discontinue it. However, the Court rejected the argument that the drug taken by Bartlett should have been discontinued. Thus, for now, *Mutual Pharmaceutical* generally precludes state claims against generic drug manufacturers.

However, the U.S. Food and Drug Administration seems ready to permit generic drug manufacturers to update their warning labels. The updated labeling would reflect any of the risks identified after the discontinuation of the original versions of the drugs. Because of the various hurdles, it will probably take until 2014 for potential changes to take effect.

If manufacturers of generic pharmaceuticals are permitted to update their warning labels, *PLIVA* essentially will be obviated. So, if and when federal regulations allow generic drug manufacturers to update their labels, logic dictates that they should be liable for negligence when they don't make the updates.

However, we must remember that even when logic dictates, it often takes a while for jurisprudence to listen to it.

Brian Russell, Ph.D., J.D., M.B.A., is a psychologist, attorney, expert witness, litigation consultant, and TV personality. For more information, visit www.drbrianrussell.com.

CAMPAIGN HIGHLIGHT

Seeking Justice for Consumer Fraud Victims

On many fronts, unsuspecting consumers are easy prey to banks, product manufacturers, brokerage houses, insurers, and financial services companies. Consumers face an array of shady business practices, from investment and insurance fraud, to identity theft and to bad faith breach of contracts, and so on.

For decades, Sokolove Law and its co-counsel have exposed some of these ongoing consumer abuses. Through our marketing efforts, we've raised awareness about the various types of exploitation. We've also reached and helped people who may not otherwise have had an opportunity to pursue justice.

Below, you can see highlights from some of our most successful campaigns:

- **Bad faith insurance fraud**
  - We effectively targeted consumers with relevant messaging through TV, radio, print, paid search, and mobile media channels.
  - Ninety-six percent of cases retained generated fees for co-counsel.
- **Securities and mutual fund fraud**
  - We focused on broad-reaching media, with TV driving nearly 92 percent of qualified lead volume.
  - Our team also incorporated social media, mobile, and email channels to reach a younger segment of the core audience.
- **401(k) breach of fiduciary duty**
  - We secured the lead plaintiff in a class action against a national investment firm.
  - We launched a geo-targeted campaign using local TV, radio, and LinkedIn to locate the firm's ex-employees.
- **Bank overdraft fees**
  - We targeted 15 small and midsize banks that had unfairly sequenced their customers' banking transactions to charge excessive overdraft fees.
  - This campaign generated more than 600 leads in four months.
- **Unfair debt collection practices**
  - The campaign focused on debt collection companies and banks that violated the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act.
  - During a five-month campaign, we delivered over 6,000 qualified leads to co-counsel.
  - We successfully generated retained cases at a cost of $77 per case.
- **Auto repossession**
  - We used a single-state direct mail campaign targeting lenders whose repossession notifications violated state statutes.
  - We successfully generated three lead plaintiffs for actions against two lenders.

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Operations Update

New CRM System Means Better Leads

To serve our co-counsel more efficiently, Sokolove Law is rolling out a new customer relationship management system, Salesforce.com.

"We know the challenges our partners face when interacting with new clients," says Director of Operations at Sokolove Law Stephanie Weiss. "We want them to have all the information they need, so we're going to leverage Salesforce.com, an industry leader. The system will help us improve our service levels, give us better analytical capabilities, and make us a more effective marketer."

Some of the benefits and features we expect include:

- **Greater availability:** The new system will virtually eliminate unplanned down time. This means few to no lost calls, a better caller experience, and improved conversion rates.
- **Scalability:** The system only requires a browser, so new users can be added on the fly. This will allow us to rapidly respond to major events, such as plant explosions or major transportation accidents, as they happen.
- **Better leads:** The new system lets us search through and validate prospect data. We can get more qualified leads in your hands, with accurate contact data, faster than ever.

"Salesforce.com offers a platform to support our long-term growth," says Weiss. "We expect that the system will let us perform more in-depth analysis on our case data. Armed with extensive and validated information, we can quickly get insights into what is working best, and improve it."

The call center agent console is already live. The Salesforce.com implementation will wrap by January 2014.