

ROBINS, KAPLAN, MILLER & CIRESI L.L.P., ALLIED FIRMS OBTAIN STRYKER HIP IMPLANT SETTLEMENT; COULD TOP \$1.4 BILLION



On November 3, 2014, Stryker agreed to pay potentially more than \$1.4 billion to settle claims by patients who were injured by Stryker's Rejuvenate and ABG II modular hip implants. The settlement was finalized after four months of secret negotiations between Stryker and Robins, Kaplan, Miller & Ciresi L.L.P.'s Tara Sutton along with her co-counsel in the New Jersey consolidated Stryker litigation.

Details of the settlement—reached on behalf of approximately 3,000 patients who were implanted with the modular Rejuvenate or ABG II implants and have undergone a revision surgery—were made public by Bergen County, N.J. Superior Court Judge Brian Martinotti.

Most qualifying patients can expect compensation of at least \$300,000 per failed implant. The settlement is groundbreaking for a couple of reasons. First, it provides significant additional compensation for patients who suffered complications during their revision surgeries as well as payments for future complications that occur over the next two years. Second, there is no overall cap on Stryker's liability under the settlement program.

Judge Brian Martinotti from the beginning proactively encouraged settlement of the litigation. He quickly established an innovative bellwether mediation process that resulted in the settlement of 20 out of 21 mediated cases. These mediation results precipitated the global settlement negotiations between Stryker and NJ counsel and became the building blocks for the global settlement program. More details about the settlement, and a copy of the settlement agreement, can be found at <http://rejuvenatehipsettlement.com/category/settlement/>.

DEPUY ASR HIP \$2.475 BILLION SETTLEMENT AND LITIGATION UPDATE



A settlement program valued at approximately \$2.475 billion was reached in November 2013 in the DePuy ASR hip implant litigation -- after 3 years of litigation and two bellwether trials resulting in one plaintiff verdict and one defense verdict.¹ Qualifying individuals whose ASR devices were revised on or before August 31, 2013 were eligible to decide whether to participate in the settlement program. Over 7,500 people have now enrolled in this settlement program. The settlement includes a Part A Base Award of \$250,000 and a Part B Supplemental Award for extraordinary injuries. A unique benefit of this settlement program is that defendants have assumed responsibility for and will be resolving qualified liens. Defendants' payments to qualified lienholders are separate from, and in addition to, the Part A and Part B payments of approximately \$2.475 billion that will be distributed to eligible injured people.

Robins, Kaplan, Miller & Ciresi L.L.P.'s Kate Jaycox continues to lead our litigation for clients whose ASR device was revised after August 31, 2013 or whose ASR device has not yet been revised. On October 30, 2014, the Court issued an Order requiring those with a non-revised ASR to elect to either proceed with discovery which had previously been stayed, or to dismiss their cases without prejudice subject to a tolling provision allowing re-filing if the ASR device is revised in the future.

1. For full details, see <https://www.usasrhipsettlement.com>.

THE ROBINS JUSTICE REPORT

SELECT CASES & RESULTS



\$4.5 MILLION SETTLEMENT FOR SEVERE BRAIN INJURY AND MOVEMENT DISORDER

Chris Messerly and **Melissa Wendland** helped provide for the future of an adolescent boy who suffered a severe brain injury and movement disorder. The boy developed depression and other emotional issues, and health care providers were concerned he may attempt suicide. He was hospitalized for his safety, but his mother soon learned that the hospital was planning on discharging her son. She was alarmed and filed a complaint with the hospital, stating that he would not be safe if discharged. Shortly after the complaint, those at the hospital responsible for the boy's safety did not look after him carefully and he went into his bathroom and attempted to hang himself with his bed sheet and the shower curtain. He was found, but not before he suffered a brain injury and severe movement disorder due to lack of oxygen to his brain. With the \$4.5 million settlement, those who paid his significant medical expenses (Medical Assistance and private insurance) were paid back. Most importantly, a trust was set up to make sure the boy would receive the care he needs for the rest of his life.

\$1.85 MILLION SETTLEMENT FOR DEATH OF 25-YEAR-OLD

An unmarried 25-year-old woman walking in a crosswalk in Minneapolis was run over and killed by a vehicle making a turn. Her survivors include her parents and a sister. **Phil Sieff** settled the case for \$1,850,000 shortly after he filed a complaint. The family intends on using the funds to continue their deceased daughter's devotion to supporting organizations trying to eliminate childhood cancer.

\$1.84 MILLION SETTLEMENT FOR DEATH OF 20-YEAR-OLD

Parents from France sent their 20-year-old daughter to Minnesota on a study-abroad program. On her first day here, while in a cross-walk, she was run over and killed by a distracted driver. Surviving this beautiful young woman were her parents, her twin sister, a brother, and grandfather. Without starting a lawsuit, **Chris Messerly** settled the case for the family for \$1.84 million. The family plans to use the funds to honor their daughter and to fight distracted driving.

\$1.54 MILLION RECOVERY FOLLOWING HEAD-ON CRASH

Patrick Stoneking represented a young husband and father who was injured on his way home from work in southwestern Minnesota. The man suffered a brain injury with a personality change that severely altered his life and took away his ability to work. The case involved multiple levels of insurance coverage, and the at-fault driver's umbrella carrier offered only \$10,000 before Pat filed a federal lawsuit. The case settled shortly before the October trial date, resulting in an additional \$950,000 recovery on behalf of Pat's clients.

\$1.175 MILLION SETTLEMENT FOR JET SKI MISHAP

An 18-year-old female passenger on a jet-ski fell backwards off the jet-ski. The pressurized water from the jet-ski caused her serious colon injuries, requiring surgery and a colostomy bag for six months. **Phil Sieff** settled the case before litigation for \$1,175,000. The client will use the money for her schooling.

\$400,000 SETTLEMENT FOR INFANT WRONGFUL DEATH CASE

Peter Schmit and **Patrick Stoneking** represented the family of a baby who died at age nine months due to the defendants' failure to promptly diagnose and treat meningococcal meningitis. The baby was at the hospital for approximately 15 hours with signs and symptoms of a serious bacterial infection. When finally taken from the emergency room and admitted to pediatrics, he had deteriorated; antibiotics were started 2 ½ to 3 hours later. By then it was too late.

\$200,000 SETTLEMENT FOR DEATH OF 74-YEAR-OLD

K.W., age 74, was at a Minnesota nursing home for rehabilitation as she underwent palliative chemotherapy for her terminal breast cancer. She also had a number of other serious medical conditions that limited her life expectancy. K.W. had signed a Provider Orders for Life Sustaining Treatment (POLST), in which she gave the directive to provide "CPR/Attempt Resuscitation" if she had no pulse or was not breathing. A nursing assistant discovered K.W. to have irregular breathing and informed a nurse, who came in K.W.'s room and panicked. The nurse did not initiate CPR or any other life-saving procedures and instead, watched K.W. die. The Minnesota Department of Health conducted an investigation and documented neglect. This case settled shortly after it was put in suit for \$200,000.

BELLWETHER TRIALS IN MASS TORT LITIGATION By Troy Tatting



When a scientific article exposes a defect, Adverse Event Reports mount, or the FDA recalls a drug or medical device, we hear from hundreds of injured individuals in need of justice. As large numbers of cases are filed, the Judicial Panel on Multidistrict Litigation (JPML) typically transfers them to one United States District Court for common, generalized discovery.¹ Upon transfer, a mass tort multidistrict litigation (MDL) is born.

But then what happens? Enter the “bellwether” trial. The term derives from an Old English word for a male sheep—a wether.² The bellwether was the leader of his flock. He wore a bell, which rang when he walked, and other sheep followed. The ultimate success of this leader was determined “by whether the flock had confidence that the wether would not lead them astray, and so it is in the mass tort context.”¹

After generalized discovery, the judge can dissolve an MDL and send cases back to their home courts for trial. Frequently, however, MDL judges set bellwether cases for case-specific discovery and trial. Bellwethers help facilitate settlement “by testing essential elements of each side’s litigation strategy and establishing representative settlement values.”² The first bellwether for trial is typically a “plaintiffs’ pick” case, and the second is usually a “defense pick.”

Preparing a bellwether case for trial is a monumental task. Cash-flush pharmaceutical and medical device corporations vigorously defend their multi-million-dollar products. At Robins, Kaplan, Miller & Ciresi L.L.P., our exceptional talent and resources have allowed us to conduct bellwether cases successfully. In 2012 and 2013, we successfully resolved two bellwethers in the Chantix MDL. Most of the remaining 2,700 cases resolved thereafter for a reported \$273 million.³ We currently have three plaintiffs’ picks in the GranuFlo MDL. In 2008, we had three bellwethers in the Mirapex litigation, the first resulting in an \$8.2M verdict, and thereafter confidentially resolved cases for 280 clients. Our history of successful execution of bellwethers allows us to better serve our clients and co-counsel.

1. Fallon et al., *Bellwether Trials in Multidistrict Litigation*, 82 *Tulane Law Rev.* 2323, 2324 (2008).
2. Rothstein & Borden, *Managing Multidistrict Litigation in Products Liability Cases, A Pocket Guide for Transferee Judges*, 44 (Federal Judicial Center 2011).
3. http://blog.al.com/spotnews/2013/03/pfizer_settles_80_percent_of_t.html (last visited Oct. 30, 2014).

CURRENT MASS TORT INVESTIGATIONS



Please see our website for more information about the cases we are currently investigating or litigating, and call a member of our Mass Tort team with any questions or case evaluation referrals.

- Benicar – Blood pressure medication associated with severe intestinal problems.¹
- GranuFlo and Naturalyte Dialysis Products – Recalled dialystate products used in kidney dialysis that can cause metabolic alkalosis, which can lead to cardiopulmonary arrest and death. ²
- Hip Implants – Metallois and premature device failure with damage to bone or tissue can occur with certain hip implants.³ The firm is litigating implant cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.
- Power Morcellator – Surgical tool used in laparoscopic and robotic hysterectomies and fibroid removal procedures that may promote the spread of undetected uterine cancer. ⁴
- Tide and All Laundry Detergent Pods – Study shows more than 17,000 children have eaten or inhaled the pods, with serious medical consequences reported including 2 deaths. ⁵
- Viagra – Study shows use increases Melanoma Risk.⁶

1. <http://www.fda.gov/Drugs/DrugSafety/ucm359477.htm>
2. <http://www.fda.gov/Drugs/DrugSafety/ucm305630.htm>; <http://www.fda.gov/newsEvents/Newsroom/PressAnnouncements/ucm393689.htm>
3. <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ImplantsandProsthetics/MetalonMetalHipImplants/ucm241604.htm>
4. “Pediatric Exposure to Laundry Detergent Pods,” A. Veldez et al, *Journal of Pediatrics*, Volume 134, Number 6, Dec. 2014.
5. <http://www.fda.gov/Safety/Recalls/ucm311043.htm#>
6. Wen-Qing Li, PhD., et al., *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men, A Prospective Cohort Study*, *JAMA Intern. Med.* (April 7, 2014)

THE ROBINS JUSTICE REPORT

THIS ISSUE'S SPOTLIGHTS

In each issue of The Robins Justice Report we highlight our people—both an attorney and another professional—so that you can learn more about our skill sets and backgrounds. More than 25 attorneys are in the Personal Injury, Medical Malpractice and Mass Tort practice groups at Robins, Kaplan, Miller & Ciresi L.L.P. We hope you enjoy getting to know us better.



UP & COMING: KATE JAYCOX

With its “Up & Coming” recognition, Minnesota Lawyer identifies attorneys who have made a difference and who demonstrate professional accomplishments, leadership, and service to the community and legal profession. Recently, the firm’s litigator Kate Jaycox earned an “Up & Coming” designation.

As litigator in the Mass Tort department for the past 10 years, Kate represents individuals and families injured by defective drugs and medical devices. She also represents companies in complex business litigation and dedicates significant pro bono time to cases involving child protection. Kate serves as chair of firm’s Mentorship Committee and in leadership roles with the Minnesota Association of Justice and the American Association of Justice.



MELISSA WENDLAND RECEIVES EXCELLENCE AWARD

Melissa Wendland has received the “Excellence Award” from the Minnesota Association of Justice. This award is given to an attorney who has devoted significant amounts of time and tireless effort to activities that benefit the organization, has a strong record of community service and has a personal commitment to excellence.

Melissa was recognized for her diligent efforts to pass a law that conformed professional negligence statutes to changes in recent amendments to Minnesota’s civil procedure rules. The change in the law is a small but significant one, and returned the law to the status quo in light of the civil law amendments. She was involved from start to finish in changing the law, including testifying in Senate and House committees. She also has been a frequent CLE presenter around the state on best practices for Minnesota’s Civil Procedure rules.



MEET OUR NEW MEDICAL ANALYST DR. KRISTIN JOHNSON

Kristin is a licensed medical doctor. She graduated from the University of Wisconsin Medical School and completed her residency in Pathology and fellowships in Cardiovascular and Forensic Pathology.

As a medical doctor with Pathology and Forensic Pathology training, Kristin possesses a unique skill set that can help our clients, particularly those with complex Wrongful Death claims.

Her parents both went to law school at the University of Wisconsin-Madison, and that is where she also received her undergraduate and medical school degrees. She currently keeps busy with her four-month-old puppy, Bucky, planning for her upcoming wedding, and getting into spin classes.

Past results are reported to provide the reader with an indication of the type of litigation in which we practice and does not and should not be construed to create an expectation of result in any other case as all cases are dependent upon their own unique fact situation and applicable law. This publication is not intended as, and should not be used by you as, legal advice, but rather as a touchstone for reflection and discussion with others about these important issues. Pursuant to requirements related to practice before the U. S. Internal Revenue Service, any tax advice contained in this communication is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U. S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.