

MASS TORTS UPDATE

Expert Analysis

Opioid, Sexual Abuse, Weed Killer and IUD Litigation Developments

In our last quarterly mass tort update, we touched on the Elmiron and Allergan multi-district litigations and the Boy Scouts of America and Purdue Pharma bankruptcies. We also discussed the Texas power outage litigation. This edition discusses Purdue, Pornhub, Paraquat and Paragard.

Purdue Bankruptcy Moves to Voting Phase

The Purdue Chapter 11 reorganization bankruptcy plan moved forward in early June with the approval of solicitation materials by U.S. Bankruptcy Judge Drain. The solicitation materials were sent to over 600,000 creditors with a ballot to vote to approve or deny the proposed plan. If approved, the plan would dissolve the Purdue company and reestablish it as a public trust. The plan includes a proposed settlement that Purdue believes is worth well over \$10 billion. The Sackler family members will also be contributing \$4.275 billion to the bankruptcy trust. The Purdue bankruptcy will provide compensation to over 100,000 people that have been injured as a result of the opioid crisis. The total amount of the proposed settlement for

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the personal injury claimants is between \$700 million and \$750 million. The bankruptcy court is scheduled to review the

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plan on August 9, 2021 after the voting deadline of July 14, 2021. *In re: Purdue Pharma L. P.*, No. 19-23649-rdd (S.D.N.Y).

Michigan Sexual Abuse Cases

Sexual abuse allegations at universities around the United States are on the rise. Institutional sexual abuse involves power because perpetrators use their positions of authority to victimize those who look up to them. The effects of this abuse can lead to long-lasting psychological harm.

One of the most recent cases to come to light surround University of Michigan's football team doctor, Robert Anderson, from the years 1966 to 2003. Many football players, including a two-time Super Bowl champion and a former world class wrestler, allege Dr. Anderson sexually assaulted them during examinations. In early June, survivors of the abuse called for an investigation by the state's attorney general into school employees who may have known of the abuse and allegedly did nothing. One example being alleged is the football coach knew about the abuse by the team doctor but did nothing to stop it, even though his son told him he was abused by the doctor at the time. A university-commissioned report revealed that the doctor had engaged in sexual misconduct with patients on multiple occasions. The University Michigan Board of Regents president apologized for Anderson's abuse.

Paraquat: One Sip Can Kill

On June 7th, the Judicial Panel on Multidistrict Litigation ordered that the 91 cases related to paraquat, a toxic fast acting herbicide, be centralized in the Southern District of Illinois. Chief Justice Nancy J. Rosenstengel has been assigned to handle these complex cases. The initial conference was held on

June 23, 2021. CMO No. 1, *In re: Paraquat Prods. Liab. Litig.*, No. 3:21-md-3004-NJR, (S.D. Ill. June 10, 2021).

Paraquat has been used in the United States since 1964 to kill broadleaf weeds and grasses and has been restricted to commercial use due to its high toxicity. Paraquat was banned in over 20 countries across the world yet it is still being used in the United States today even though the EPA noted that one small sip of paraquat could be fatal. U.S. Environmental Protection Agency, *Paraquat Dichloride*.

Over the last decade, paraquat and other herbicides have been linked through scientific studies to causing multiple side effects and the development of Parkinson's disease. One study in California noted that people exposed to paraquat and maneb at a younger age had an increased risk of developing Parkinson's disease of 200 to 600%. Gatto, Nicole M. et al., *Well-Water Consumption and Parkinson's Disease in Rural California*, Environmental Health Perspectives 117.12 (2009): 1912-1918. Web. 19 July 2017. Another study found that paraquat damages DNA and impairs mitochondrial respiration, which could contribute to the cause of Parkinson's disease. Sanders, Laurie H. et al., *Editor's Highlight: Base Excision Repair Variants and Pesticide Exposure Increase Parkinson's Disease Risk*, Toxicological Sciences 158.1 (2017): 188-198.

Paraquat is currently undergoing registration review, an EPA program that re-evaluates all pesticides on a 15-year cycle. The EPA will also be issuing an Interim Decision regarding any required mitigation measures related to the use of paraquat.

Judge Rules for Direct Filing Of Paragard Complaints

Paragard, a copper intrauterine device (IUD), was marketed for years

as quick, easy, and safe to remove. Women were told the IUD could be quickly removed at any time which would allow the woman to become pregnant the same day. These representations are allegedly false as the IUD has a propensity to break, especially during removal. Breakage may require one or more surgical procedure to remove the broken pieces from a woman's body. Plaintiffs in the Paragard MDL allege that defendants had received thousands of adverse reports and knew or should have known of the propensity of the IUD to break yet failed to warn women about these issues. Pls.' Opp'n to Defs.' Mot. to Dismiss, *In re: Paragard IUD Prods. Liab. Litig.*, No. 1:20-md-02974-LMM, (N.D. Ga. June 21, 2021).

There are currently 222 cases filed in the MDL but it is anticipated that over 1,000 lawsuits will be filed. Judge Leigh Martin May of the Northern District of Georgia filed a Case Management Order in mid-June that allows direct filing of short form complaints into the Paragard MDL. The short form complaints may only be used to file against five specific Teva and Cooper entities. Service of the short form complaint remains the same and must be made in accordance with the previously filed Case Management Order Regarding Service.

Other Orders recently filed in the Paragard MDL include an Order approving Plaintiffs' common benefit for attorneys' fees and expenses and an Order regarding the production of electronically stored information. The parties are still working together to finalize a Plaintiff Profile Form and Plaintiff Fact Sheet.

Are Pornhub and MindGeek The New Sopranos?

With sexual trafficking lawsuits on the rise, a lawsuit was recently filed against Pornhub, and its parent company MindGeek, by 34 women alleging that the

website knowingly profited from videos depicting rape, child sexual exploitation, sex trafficking, and other nonconsensual sexual content. Compl., *Fleites v. MindGeek*, No. 2:21-cv-04920 (C.D. Cal. June 17, 2021). The suit alleges that MindGeek is the most dominant online pornography company and the largest human trafficking venture in the world. Plaintiffs claim that MindGeek knowingly and intentionally profited from the horrendous exploitation and abuse of tens of thousands of victims, comparing MindGeek to a classical criminal enterprise run "just like the Sopranos."

Federal law mandates that producers of pornographic material verify the age of all performers, as well as refrain from selling any pornographic material that does not contain the required age verification disclosure. However, plaintiffs claim that MindGeek has never restricted uploaders, or users, to adults. The lawsuit cites claims under RICO (Racketeer Influenced Corrupt Organization) and the Victims of Trafficking and Violence Protection Act of 2000 which provide a private right of action for victims of human trafficking against any entity that engages in trafficking or benefits from a trafficking venture.

MindGeek and Pornhub have previously been investigated by Canada's Office of the Privacy Commissioner over allegations of exploitive content and child pornography. Pornhub removed millions of videos from its platform in December 2020, allegedly after Visa and Mastercard cut ties with it after finding illicit material on the site. MindGeek has denied all accusations of wrongdoing. MindGeek draws 170 million visitors a day and generates \$460 million in annual revenue.