



Birth Control Lawsuits Affecting Memphians

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REBEKAH HEARN | The Daily News

The latest “problem drug” TV commercials about Yaz, Yasmin and Ocella – which are known to cause blood clots, strokes and even death in some women – have been tough to miss.

The birth control pills are manufactured by Bayer Healthcare and Barr Laboratories.

Meanwhile, Memphis-based personal injury firm Nahon, Saharovich & Trotz PLC has seen “several dozen cases and we get more every day,” said Russell D. Marlin of NST’s mass tort litigation group, which is primarily responsible for handling the multitude of cases.

However, because of their sheer volume, the cases are being handled as multidistrict litigation.

“The federal court system, in order to deal with the volume of cases that are being filed, gathers them all together in front of one federal judge (in Illinois). ...” Marlin said. “That’s called a multidistrict litigation. Once they’re in that process, the cases are still technically individual cases, but ... the judge appoints a steering committee of just a few plaintiffs’ lawyers who handle discovery against the defendant, so the defendant doesn’t have to give a thousand depositions if there are a thousand cases.

“They can turn over the documents once, give their depositions once, and then the plaintiffs would share the information.”

The cases are filed in the districts where victims live and are transferred to Illinois, where the federal Judicial Panel for Multidistrict Litigation has chosen to consolidate them.

“(The panel) picks a judge who they think is qualified and has room on his docket to handle the load,” Marlin said. “The parties usually suggest someone, but then the federal judicial panel will select who they think it ought to belong to, and that’s where it goes.”

NST is still the firm of record for the plaintiffs, although the cases are being gathered in Illinois federal court.

“The idea is that somewhere way down the line, either the case settles on a global basis like Vioxx or some of the other cases that have settled, or they get remanded back to (the district) they came from for trial,” Marlin said.

Sad stories

The women filing the suits range in age from early teens to their 30s and 40s, Marlin said.

“You can be placed on birth control for a number of reasons other than birth control, but it’s really hard to sit down with a family with a daughter who’s had a serious health complication at a young age, and now she has to deal with the consequences of that,” he said.

Yaz, Yasmin and Ocella have specifically been associated with heart attack, stroke, pulmonary embolism (blood clots in the lung), gallbladder complications and sudden death. The drugs are prescribed for birth control reasons and also “to treat moderate acne and treat pre-menstrual dysphoric disorder (PMDD),” according to NST’s Web site, www.NSTlaw.com.

The active ingredient in all three drugs is drospirenone, which makes those medications carry nearly twice the risk of blood clots compared to other birth control pills. Drospirenone is also linked to gallbladder problems.

The U.S. Food and Drug Administration in 2008 sent a letter to Bayer and Barr, warning them their advertisements of the drugs were misleading. This year, Bayer was required to produce a multimillion-dollar advertising campaign to accurately state the risks of the medications.

Marlin said the most common complaints NST has seen are gallbladder disease and blood clots, and he said the firm is also handling a few cases involving heart attacks or strokes.

“With looking at injuries ... there’s a pretty broad range of medical expenses. Sometimes they have a gallbladder removal and there’s no complications and it’s ... relatively straightforward. But then, if there are complications and you get into blood clots, that causes other problems, (and) the expenses can be really high.

“So we just have to analyze each case on its own merit, but we obviously seek medical expenses, the woman’s pain and suffering for what they’re going through, mental anguish, and in the wrongful death cases, we’d seek their loss of enjoyment of life.”

Marlin said he doesn’t believe his team at NST is handling any cases dealing with a wrongful death.

Doctors who prescribed the medications aren’t being held liable. Marlin said no type of medical malpractice suits are being filed because many doctors did not know the risks when they prescribed the drugs.

“Some of the new studies that came out that really brought this to everyone’s attention kind of make it easier for doctors to say, ‘Ah-ha, I was having trouble figuring out why this was, and now it’s easier to see,’” Marlin said. “In my experience, a lot of doctors themselves feel a little let down that they weren’t given more information about the drug before they started prescribing it.

“Because often – and I don’t know the specifics in this case yet because the discovery hasn’t been done – but it’s not unusual to see the company at least had reason to suspect these problems before the drug hit the market.”

Test of endurance

Marlin said the first hearing on the cases was just a couple of weeks ago, when they started getting to know Chief Judge [David Herndon](#), who appointed a steering committee to direct the discovery process against the defendants.

“(It’s) a long process because it’s a huge company and it was an important drug in their repertoire, so unfortunately these cases are measured in years, not months,” Marlin said.

The next step is a status conference, also before the Illinois federal judge, where they will start the process of negotiating what information each party is going to provide as well as the logistics of getting those documents and analyzing them.

“I would expect sometime after the first of the year, the fact sheet will probably get approved and the women will have to start providing their detailed information,” Marlin said. “As far as the company’s documents, I don’t know where that stands, but that usually starts pretty quickly as well. The long process is having teams of lawyers read those documents and figure out what they mean.”

Marlin has faith in his team and his own background. He has worked on breast implant cases, Fen-phen, Vioxx, Digitech and heart valves. Multidistrict litigation is not a new area for him.

“Everybody involved has all done this before,” he said.

He mentioned the firm has launched a regional campaign – Tennessee, Mississippi and Arkansas – to let women and their families know it is helping with lawsuits regarding the medicines.

One of the most difficult parts of these cases is knowing the victims and their families are counting heavily on the attorneys – Marlin and his team, in this case – to maximize a recovery for them, he said.

“They really have no other recourse,” he said. “There’s not an insurance company – like in a car accident case – there’s no insurance company standing by to negotiate with. Either we can help them, or they don’t get help. So just dealing with the responsibility and making sure every woman gets treated fairly is probably the hardest thing.”