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Plaintiffs Law Firms Tightening Scrutiny of Med Mal Cases

The current climate in Pennsylvania's courtrooms is forcing many of the state's plaintiffs firms to be more selective in the medical malpractice cases they take on, and also has them looking to areas like mass torts and class actions for new business.

Nearly eight years after the state enacted medical malpractice reform measures and in the wake of one of the worst economic downturns in history, the number of plaintiffs verdicts has continued to dwindle in many venues statewide, leading several of Pennsylvania's largest plaintiffs firms to screen those cases more rigorously.

Alan M. Feldman of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig in Philadelphia said his firm has tightened its scrutiny of new med mal cases in response to news reports of what he called "very disappointing results," particularly in Pennsylvania's suburban counties and in other states' courts.

"Because a lot of our work is regional and involves some travel, it's particularly important to know if a case is likely to have a good result," he said, adding that his firm is wary of the fact that trying a case that ultimately results in a defense verdict leaves it with nothing but a "disappointed client and an unhappy referring lawyer."

Still, despite its increasingly discerning eye, the firm is as busy as ever with med mal cases, Feldman said.

"We're not seeing any drop in the number of cases we're handling, but I understand certificate of merit requirements and other things have stemmed the flow of new cases" in general, he said.

The Administrative Office of Pennsylvania Courts reported last year that there were 1,533 med mal filings in 2009, a new low representing a 42 percent decline since 2000.

On the other side of the state, Timothy P. Conboy of Caroselli Beachler McTiernan & Conboy in Pittsburgh said the number of inquiries his firm has been receiving

regarding alleged medical errors has actually increased, but the quality of cases has lessened on the whole.

According to Conboy, the firm has continued to receive an influx of calls regarding hospital- and health care facility-acquired infections, which he said are "not viable" cases "because of the difficulty of actually proving how infection is acquired."

In most cases, he said, it's impossible.

"So despite receiving more calls, we're not filing more cases," he said.

[Tom Kline](#) of Kline & Specter in Philadelphia said his firm has also ramped up its med mal case screening process, but credited its team of seven physician lawyers with the ability to find merit in cases other firms might be quick to pass on.

Kline said it's true that the odds are "generally stacked against the plaintiff" in many suburban counties.

"But what I've found is that there's still significant interest in settling cases for significant value throughout the entire commonwealth of Pennsylvania in suburban and rural counties when the case has real merit," he said. "And so, selection becomes key in these cases."

Kline said his firm has been handling a growing number of cases outside of Philadelphia, particularly in Southwest Pennsylvania and, in particular, Pittsburgh.

Sol H. Weiss of Anapol Schwartz Weiss Cohan Feldman & Smalley in Philadelphia said his firm has become pickier about the med mal cases it accepts because of increasingly tough juries both inside and outside the city, a phenomenon he attributes largely to jurors' reluctance to deliver large plaintiffs verdicts during a recession.

But, Weiss said, things may be turning around.

"The economy was sour for a while, but it's coming back and, as a result, we've seen some nice verdicts recently," he said.

Michael B. Leh of the Locks Law Firm in Philadelphia said that while his firm still focuses primarily on mass torts, it has been making an effort to handle more med mal cases.

Still, while the firm is interested in growing the med mal side of its practice, it has also been increasingly selective about the cases it agrees to take on, according to Leh.

But Leh's firm and many of the other large plaintiffs boutiques in Pennsylvania continue to be busy in areas of litigation beyond med mal, particularly in mass torts and class actions.

Leh said that, to his knowledge, the Locks Law Firm is the only firm in the country so far to have filed suit in the Artimplant Artelon Spacer litigation, which involves a medical device implant designed to treat severe osteoarthritis that allegedly rendered patients unable to use their thumbs.

Meanwhile, Kline said his firm is in the midst of "intensive discovery in Philadelphia, New York and London" regarding denture cream litigation, which alleges that the zinc content in GlaxoSmithKline's Poligrip and Proctor & Gamble's Fixodent products has caused severe neurological symptoms in users.

Kline called the litigation a "major post-Vioxx project" that has required the firm to hire additional lawyers on a contract basis to perform document review.

Weiss said his firm has continued to be busy with several pharmaceutical and medical device mass torts including those involving allegedly defective hip and knee replacements, as well as hernia patches.

One of its most recent mass torts involves Ortho-McNeil's anti-seizure drug Topamax, which is alleged to cause cleft palate or cleft lip in unborn children, Weiss said.

"The volume [of mass tort cases] has, thank goodness, kept its pace," he said.

Meanwhile, class actions have also been a major source of business for several Pennsylvania firms.

Caroselli Beachler, for example, has filed several class action suits in the past week alone.

On March 14, the firm sued the Pennsylvania state government, alleging it unlawfully redirected tobacco settlement funds intended to go toward the state's adult Basic Insurance Coverage Program.

Earlier this month, the firm filed a class action suit against Excelsa Health, the parent company of Westmoreland Hospital in Greensburg, Pa., and two of its doctors, alleging patients were encouraged to consent to unnecessary cardiac catheterization and stent placement surgeries.

Meanwhile, Leh said his firm is currently collaborating with its affiliated firm, New York City-based Goldsmith Citorides & Rodriguez, on a class action against the Chiari Institute in Great Neck, N.Y., alleging it performed unnecessary, experimental brain surgeries without informed consent.

Stephen Sheller of Sheller P.C. in Philadelphia said he had a class approved by the Minnesota Court of Appeals on Dec. 28 in a suit that alleges Philip Morris Inc. deceived smokers by marketing low-tar or "light" cigarettes as a healthier form of tobacco.

Of course, while mass torts and class actions have been active, plaintiffs firms across Pennsylvania said there's also no shortage of individual cases to keep them busy.

Robert J. Mongeluzzi of Saltz Mongeluzzi Barrett & Bendesky in Philadelphia, for example, said his firm is handling cases involving the Philadelphia duck boat crash that occurred last year, as well as the recent deaths of a Lancaster County man who was killed when the car he was riding in during a test drive crashed and an Ohio man who died after falling inside a University of Pennsylvania fraternity house.

Weiss said Anapol Schwartz shareholder Bernard Smalley is currently working on a case involving Karna Mongar, who allegedly died at the hands of Dr. Kermit Gosnell, the owner of a Philadelphia abortion clinic who was recently charged with eight counts of murder.

Conboy said his firm has been surprised at the continuously high volume of asbestos cases coming in.

"We continue to receive phone calls from people who received mesothelioma and lung cancer 20 or 30 years ago in industrial environments," he said.

Conboy chalked this phenomenon up to Western Pennsylvania's industrial past, particularly steel manufacturing.

"That was our driving source of employment 20 or 30 years ago," he said.

"Unfortunately, people who worked in those steel mills are now paying the price."