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Low Turnout for 'Low T' Drug Lawsuit Filings, Attorneys Say

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Of the Legal staff

Several attorneys in the products liability arena say there are significantly fewer testosterone therapy drug cases being filed nationwide than initially expected.

While maintaining that the cases still have multidistrict litigation and mass tort potential, lawyers attribute the relatively small number of cases to the difficulties in litigating "low T" drug claims, especially in linking heart attacks and strokes—the alleged injuries—to the drugs and not other health factors present in men over 50, the primary users of the drugs.

Additionally, some users combine different testosterone medications, making it harder to prove which drugmaker is specifically liable for the alleged injuries, lawyers say.

Sheller P.C. founder Stephen Sheller said his firm plans to stay involved in litigation over the drugs but does not anticipate taking on hundreds of cases.

"You're dealing with older men," Sheller said, noting that another difficulty is that some of the medications had label warnings detail-

ing possible side effects. "It just strikes me as having potentially huge problems in causation." Despite the potential causation issues, Sheller said his firm is working with lawyers across the country to thoroughly investigate potential cases.

Attorney Steve Faries handles testosterone drug litigation for Houston-based Matthews & Associates, a firm that has been involved in products liability cases in Philadelphia, such as litigation surrounding Janssen Pharmaceuticals' Topamax.

"You're looking at multiple manufacturers and multiple products; that makes it complex especially on the front end," Faries said. "It's hard to confirm what specific medication and manufacturers the [users] took."

Faries noted that proving general and specific causation is always the most challenging portion of a plaintiff's case and an intense study of the existing medical literature on low T drugs is necessary in the absence of an official U.S. Food and Drug Administration stance on the medications.

The FDA is in the midst of an investigation into the possible cardiovascular effects of testosterone therapy drugs. In terms of the

strength of the cases, Faries said, "I think the studies that have been published today, plus the FDA's heightened concern, [show] there's scientific certainty of the increased risk posed by the drugs."

Faries added that there would most likely be a "significant review" by the plaintiffs bar of the advertising practices associated with testosterone therapy drugs as well as whether doctors were given inadequate instructions on pre-screening their patients for use of the drugs.

The Matthews firm is investigating roughly 300 claims, Faries said, a handful of which will be filed in the Philadelphia Court of Common Pleas against Chesterbrook, Pa.-based Auxilium Pharmaceuticals, maker of Testim testosterone gel.

... Kline & Specter co-founder Thomas R. Kline said he was surprised by the lack of volume of the cases. "I have spoken to many lawyers across the country and the consensus that I gathered was the same as our experience," Kline said, "that there have been fewer cases than expected." Another possible reason that testosterone drug cases are experiencing a low turnout in filings, Kline said, is the reluc-

tance of some men to publicly acknowledge that they use the products. Kline said his firm's investigation of low T drug claims thus far has been "steady, slow and cautious" and that no suits have been filed yet.

However, Kline said he is convinced an MDL and mass tort will be formed, adding, "The question here isn't whether there will be mass tort litigation, but how large and significant it will be and how attractive it will be for lawyers who are very careful and discriminating in the mass torts they want to be in."

... Arlene Fickler, a products liability defense attorney and partner at Schnader Harrison Segal & Lewis, told The Legal in March that, in terms of whether the cases had class action potential, "I think it is unlikely that we can see class actions being certified from these claims because it's getting harder and harder to get a class in any type of litigation, but especially in personal injury litigation where the injuries are allegedly so substantial. ... It certainly demands individual attention that couldn't be handled in a class."

Defense attorney Albert G. Bixler of Eckert Seamans Cherin & Mellott previously told The Legal that, based on his observations, the AndroGel cases do have the potential to grow large in number as it is a widely used product.

"But whether they're cases that have a lot of merit, I don't know," he added.