

## Summer 2018 Newsletter



### *BP and Halliburton Settlement Updates*

***BP Continues Delays Making Summer 2018 Completion Goal Unlikely.*** The claims process in the BP Settlement Program continues to wind down. There are still several thousand claims left to be processed, most of which are claims for businesses. Several steps have been taken to expedite these reviews, but BP continues to delay whenever possible. The original goal was to have all these claims concluded by the summer of 2018. However, that goal seems highly unlikely given BP's current behavior.

***Halliburton and Transocean Gearing Up to Distribute \$1.2 Billion.*** The settlement program involving Halliburton and Transocean (HESI / TO) is still in the process of being established and finalized. Both defendants collectively set aside over \$1.2 billion dollars for this program. Of that, \$902 million will be distributed to certain plaintiffs as punitive damages and \$337 million will be distributed pro rata to existing Deepwater Horizon economic loss claimants. Damage models are still being finalized and implemented, but the conventional wisdom is gulf-front property owners who recovered in the BP settlement will also recover in the HESI / TO Settlement Program. Those claimants do not have to take any action, as all claims and supporting information are being transferred from the BP Settlement Program to the new HESI / TO Settlement Program. In the most recent status report filed with the court, the Claims Administrator still believes the first determinations will begin sometime in the Fall of 2018. For our clients, we will continue to monitor the program and provide updates when appropriate.

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### *Judge Grants Appeal of Ruling Limiting BCBS Defense in Antitrust Litigation*

On June 12, U.S. District Judge Proctor granted BCBS' interlocutory, or pre-trial, appeal of the April 5 decision by Judge Proctor to apply the per se standard of review to the Blues' geographic market allocation and output restrictions. With few exceptions, the per se standard of antitrust law presumes a violation and disallows defendants from asserting procompetitive benefits of the conduct to overcome the presumption.

“**...an immediate appeal from the order may materially advance the ultimate termination of this litigation.**”

**- U.S. District Judge Proctor**

Granting the appeal allows the U.S. 11<sup>th</sup> Circuit Court of Appeals to make a decision on the issue pre-trial and potentially may help lead to a quicker resolution of the litigation.

The attorneys at Shelby Roden are involved in the multi-district litigation as a member of the Litigation Committee of the Plaintiffs' Steering Committee for healthcare providers.

### *Total Damages Awarded to Talcum Powder Victims Continues to Rise*

Over the last five decades, nearly 40 peer-reviewed papers have been published in medical journals studying a potential link between talcum powder and ovarian cancer. There are currently thousands of lawsuits pending on behalf of people who developed ovarian cancer after exposure to talcum powder products. As of July 2018, juries have awarded more than \$5 billion to people who blamed talcum powder use for causing cancer. Juries continue to find that companies like Johnson & Johnson, Vanderbilt Minerals, and Colgate-Palmolive knew or should have known about the products' risks. However, these companies did little or nothing to warn consumers about the dangers of their products. All federal cases have been consolidated in the US District Court of New Jersey under the supervision of Judge Freda Wolfson.

Shelby Roden has been involved in litigation from the beginning, filing one of the first lawsuits in the state of Alabama. We continue to monitor the developments in state court actions, as well as in MDL 2738.

As of July 2018, juries have awarded more than \$5 billion to individuals injured by talcum powder products

**\$5 Billion**

If you or a loved one has had ovarian cancer, this litigation potentially affects you and we would be happy to answer any questions you have.

### *Other Developing Matters We're Following*

***Trial for Man Alleging Monsanto's Roundup Causes Cancer Begins.*** On July 9, opening statements began in DeWayne Johnson's trial against Monsanto alleging its weed killer caused him to develop non-Hodgkin lymphoma (NHL). The trial is being held in San Francisco. The case is the first case to go to trial amongst a number of lawsuits with similar claims. Mr. Johnson, a school groundskeeper, alleges he contracted NHL as a result of using the product from 2012 to 2015.

The major issue at trial is going to be whether glyphosate, the primary input in Roundup, can cause cancer. In 2015, the World Health Organization's International Agency for Research on Cancer classified glyphosate as a "probable" carcinogen.

The lawsuit could be disruptive to Monsanto Co. and its German parent company, Bayer AG. Bayer acquired Monsanto on June 7 of this year.

Monsanto relied on Roundup to bring in \$4.8 billion of revenue in 2015. According to the U.S. Geological Survey, more than 2.6 billion pounds of the chemical was spread on U.S. farmlands between 1992 and 2012.

The result of the trial will not impact other lawsuits, but it may serve as a guide for the hundreds of lawsuits already filed and to be filed for similarly situated individuals.

***Yale Study Finds Flint Residents' Lead Exposure Impacted Fertility and Birth Outcomes.*** The Flint water crisis began in 2014 when the city switched its water source to the Flint river, which was not properly treated for lead. This crisis, according to the study, has caused a 12% decrease in fertility and a 58% increase in fetal death rates amongst Flint, MI residents. The study adds to the already long list of negative consequences of lead exposure.

### ***Firm Insights: Overview of Particular Pitfalls in Heavy Metal Exposure Cases***

Exposure to heavy metals, like mercury or lead, whether the exposure is in the home, on the job, or through environmental contamination can cause a number of health complications. These complications can damage virtually any bodily system, including but not limited to cardiovascular, digestive and renal, immune, nervous, endocrine, and reproductive (examples in chart below).

Handling cases for individuals injured by exposure to a heavy metal has particular pitfalls known to a specialized attorney. Though there are many pitfalls in these types of cases, this article provides an overview of a few of them.

First, the statute of limitations, or the time to file a case, can be especially problematic. The time begins to run *when symptoms manifest themselves*. Despite the fact that an individual may not connect illness with heavy metal exposure caused by another party at the time symptoms are first noticed,

the statute begins to run when symptoms first show themselves. If heavy metal exposure is suspected as cause of illness, it is important to contact an attorney as soon as possible for legal advice and to investigate potential causes of illness.

Though common in many cases not involving exposure to heavy metals, ruling out other potential causes can be especially difficult. One of the reasons this difficulty exists is, many times, the exposure injuries occur in the population regularly with many different potential causes, such as cancer. To make it more complicated, the exposure can play a role even if not the sole actor.

The third pitfall highlighted in this article is what's known as the dose-response relationship. Put simply, a lawyer must prove the actual level of exposure of the injured party and that the level of exposure, according to science, is sufficient to cause the injury alleged.

#### **Examples of Health Complications Caused by Exposure to Heavy Metals**

##### **Cardiovascular System**

Exposure may lead to cardiomyopathy, chest pain, heart attack, pulmonary fibrosis and other heart conditions

##### **Digestive and Renal Systems**

Numerous kidney injuries (and kidney failure) and an inability to digest food appropriately has been associated with exposure

##### **Immune System**

Exposure may lead to inability to fight off or an inappropriate response to illness (associated with a number of immune or auto-immune conditions)

##### **Brain and Nervous System**

Exposure leads to lower energy levels, emotional/behavioral change, memory loss, concentration issues, and other conditions

##### **Endocrine System**

May affect the pituitary, thyroid, and adrenal glands and pancreas causing, for example, hormonal imbalances, Addison's disease, or depression

##### **Reproductive System**

Exposure may lead to reduced fertility, miscarriages, or sexual dysfunction



### *About Shelby • Roden*

Based in Birmingham, AL, the attorneys at Shelby Roden have been proudly serving individuals, families and businesses throughout the nation for over 40 years. Our firm's mission is to provide the best legal counsel using the best practices and methods possible. We also believe in getting to know our clients and understanding their unique goals and needs. By doing so, we are able to provide results beyond our clients' expectations.

As a firm, Shelby Roden primarily specializes in Toxic Exposure, Environmental Contamination, and Commercial Litigation areas of the law. Our team of attorneys have successfully protected our clients' interests having obtained over \$1 billion on their behalf. As a team, our attorneys contribute insight from their various legal backgrounds allowing us to comprehensively serve our clients and to adequately address the legal challenges they encounter.

The firm also seeks to be active in charitable endeavors. For example, in 1992, the firm played a key role in establishing the Alabama Civil Justice Foundation (ACJF), which serves as a key source of grant funds to charitable organizations throughout Alabama. Since inception, ACJF has donated over \$10 million to those in need throughout the state of Alabama. In addition, the firm established the Village Creek Greenway Fund, a \$1 million fund on behalf of the Freshwater Land Trust, for the support of environmental, flood mitigation, and recreation projects along Village Creek.

### *Disclaimer*

Case descriptions and recoveries presented in this newsletter are not an indication of future results. Every case is different and must be evaluated on its own facts and circumstances as they apply to the law. You may provide information regarding your need of legal representation; however, contacting Shelby Roden, LLC through website forms or through email does not create an attorney-client relationship, and it is not intended to do so. No contents of this newsletter constitute legal advice. Please contact our attorneys for legal advice. ***Finally, no representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.***