CLIENT NEWSLETTER

Alley ◆ Clark ◆ Greiwe

SPRING 2009

IN BRIEF

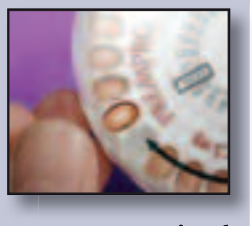
In This Edition

Important U.S. Supreme Court Decision Rejects Limits on Drug Lawsuits

We have been anxiously waiting many months for an important ruling by the United States Supreme Court in the case of *Wyeth v. Levine* regarding federal preemption. We were very concerned about the potential adverse effect this ruling could have on our clients' pending lawsuits against drug manufacturers. This includes our clients with HRT claims. On March 4, 2009, the Supreme Court rendered its decision and ruled that FDA approval of a drug product does not preempt state tort law claims with regard to the safety of an approved drug. The Supreme Court ruling is a win for plaintiffs and will also provide continued safeguards for all consumers who ingest an FDA approved drug. We are thrilled that this opinion will allow our clients and other individuals injured by unsafe drug products to continue to pursue claims in state courts.

New Study in *New England Journal of Medicine* confirms HRT breast cancer link

New study findings published in the *New England Journal of Medicine* on February 5, 2009, support the theory that the decline in U.S. breast cancer rates is largely related to a decline in combined hormone therapy use among postmenopausal women and was unrelated to changes in frequency of mammography. The study documented that women on hormones can reduce their risks of cancer simply by discontinuing the therapy. Data also indicated that postmenopausal women who take combined estrogen plus progestin for at least five years are nearly doubling their risk of developing breast cancer. This latest study is a follow up to the landmark Women's Health Initiative (WHI) study in 2002. After the WHI study was published, there was a dramatic drop in HRT use in the United States from 60 million prescriptions in 2001 to 20 million in 2005. This was followed by a drop in rates of breast cancer detection, but the decrease remained controversial since some scientists argued that the reduced cancer rates were the result of mammography use.



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EMERGING LITIGATION PROJECTS

New Home Drywall from China May be Toxic

During the housing boom in Florida between 2004 and 2006 and following the scramble for construction material following Hurricanes Katrina and Wilma in 2005, building suppliers began importing drywall from China to meet demand instead of using domestically produced drywall. Allegations suggest that an estimated 10 million square feet of Chinese-made drywall was used in new home construction in Florida during this time period. The Florida Health Department, environmental consultants, and more than a dozen new home builders are investigating complaints about imported Chinese drywall emitting noxious sulfur-based gases that may be corroding air conditioning coils, electrical systems, plumbing pipes, and other metal items and also raising the alarm of potential health danger from chronic exposure. This drywall problem has caused extensive damage to many homes since the only solution is gutting the entire home down to the studs and replacing electrical wiring and installing new drywall. Health officials are most concerned that the Chinese drywall fumes could be especially dangerous to the young and elderly.

Recently, Florida Senator Bill Nelson petitioned both the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) to investigate whether the Chinese drywall may be toxic. On February 20, 2009, the EPA launched a federal investigation into whether the sulfur-based gases emitted from the drywall are corroding household wiring and posing a safety hazard to home occupants. Several proposed class action lawsuits have been filed in the State of Florida against manufacturers of the drywall on behalf of hundreds of Florida homeowners who have reported problems with Chinese drywall in their homes. New reports indicate that American drywall companies may have purchased Chinese drywall and re-labeled it as their own product. At this time, the true extent of the Chinese drywall problem is not known. This once again highlights the recent rash of safety problems with Chinese exports, ranging from food to toys. The law firm of **Alley, Clark & Greiwe** is investigating claims of homeowners who suspect they have the imported Chinese drywall in their home. Please contact us for important information regarding your legal rights.

Could you have toxic drywall in your new home?

These are the signs to look for:

- Does your home have a foul odor similar to sulfur or rotten eggs?
- Have you suffered from respiratory issues, dry eyes, persistent cough, or nosebleeds since moving into your new home?
- Are the copper coils in your heating/air conditioner corroded or black or do you have copper wiring or metal pipes that show corrosion?
- Do you have repeated problems with your home air conditioning or other electrical systems?
- Do you have tarnished metal fixtures outside of the wallboards (including drains, shower heads, faucets)?

UPDATE ON CURRENT LITIGATION PROJECTS:

Update on Individual Tobacco Lawsuits

On February 18, 2009, a Broward County jury ordered Philip Morris to pay $8 million to Elaine Hess, the widow of a smoker who died of lung cancer due to his addiction to nicotine that caused him to chain smoke two packs of cigarettes daily for decades. In apportioning fault for Stuart Hess' death, the jury found him 58% responsible and Phillip Morris 42% responsible. Mrs. Hess was awarded $3 million in compensatory damages and $5 million in punitive damages. Philip Morris has vowed to challenge the verdict on appeal. The *Hess v. R.J. Reynolds* case is the first trial of approximately 8,000 cases filed against Big Tobacco in the Florida court system. These cases were filed after the Florida Supreme Court disbanded a class action of an estimated 700,000 Floridians in *Engle v. Liggett Group, Inc.* in 2006. Another 25 *Engle* tobacco cases are on trial dockets in Fort Lauderdale, Tampa, and Jacksonville and should go to trial before the end of April 2009. Hopefully dozens of other cases will be set for trial before the end of the year. **Alley, Clark & Greiwe** currently has several *Engle* tobacco lawsuits scheduled for trial in 2009, and we are working diligently to get other cases set for trial as quickly as possible. We will be in touch with each of our clients with a pending lawsuit as your individual case is prepared and selected for trial. It is important to understand this litigation will be a very long battle. It may be ongoing for many years due to the significant backlog of tobacco cases as well as budget cuts facing local court systems, not to mention the appellate litigation that may follow any successful plaintiff's verdict.

Recent Verdicts & Settlements

The attorneys at **Alley, Clark & Greiwe** handle a diverse nature of personal injury claims including medical malpractice, automobile & motorcycle accidents, medical device and pharmaceutical litigation, and complex products liability litigation. We hope that you will contact our office for a free consultation if you are in need of an attorney. The following cases have recently been resolved by our attorneys:

$680,000 settlement in a confidential pharmaceutical litigation case.

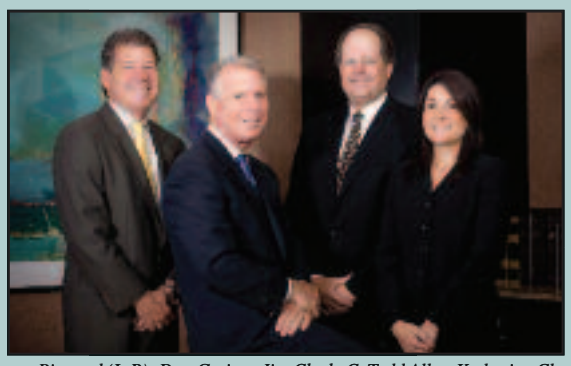
$575,000.00 settlement reached in a wrongful death claim of a woman who was admitted to the hospital for low back surgery. During surgery, the anesthesiologist provided inadequate, inappropriate, or no "fluid management" and allowed the patient to suffer a massive hemorrhage. The patient languished and deteriorated over the course of 53 days following the surgery and ultimately died. The anesthesiologist's policy was limited to $500,000.

$525,000 settlement in a confidential product liability case involving a recalled drug.

$460,000 settlement in a product liability case.

$250,000 policy limits settlement reached in a birth-related brachial plexus injury which resulted from excessive traction forces applied during the birthing process.

$250,000 settlement after a physician prescribed an extreme amount of powerful narcotics to a patient.



Attorneys Pictured (L-R): Don Greiwe, Jim Clark, C. Todd Alley, Katherine Chambers

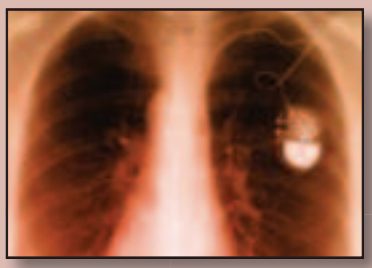
Moving Soon? Please be sure to keep us updated with any changes to your address or phone numbers.

UPDATE ON CURRENT LITIGATION PROJECTS:

Medtronic Sprint Fidelis Defibrillator Lead Lawsuits

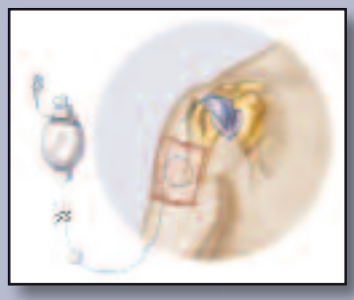
Medtronic defibrillator lead lawsuits pending across the country were previously consolidated before Judge Richard H. Kyle of the U.S. District Court for the District of Minnesota. Early on in this litigation, Medtronic filed a motion to dismiss these lawsuits on the basis that federal regulatory preemption blocked the filing of these types of cases in state court since the FDA had already approved the Medtronic lead device under federal regulations. The danger of federal preemption is its ability to undermine consumer-friendly state or local laws that help protect public health and safety in favor of weaker federal laws that provide little to no oversight of large corporations such as Medtronic. The public pays the price when these preemption arguments prevail. Unfortunately, on January 5, 2009, Judge Kyle issued a ruling in favor of Medtronic whereby all individual lawsuits pending against Medtronic were dismissed with prejudice. It is interesting to note that Judge Kyle's son is an attorney for a defense firm which includes Medtronic among its clients.

Building on the momentum of the recent U.S. Supreme Court opinion in *Wyeth v. Levine* (see cover page), Democratic lawmakers have moved to overturn a 2008 Supreme Court decision in *Riegel v. Medtronic* where it was ruled that people injured by defective medical devices could not sue in state courts if the devices were approved by the FDA. Since the 2008 ruling, judges nationwide have dismissed a number of product liability lawsuits filed by patients against medical device companies. Changing legislation is the only way to protect consumers and allow legal recourse when they suffer injuries from defective products or devices since the FDA has proven time and again that its resources are limited and it is incapable of keeping dangerous drugs and medical devices off the market.



Joint Pain Pumps

We have received many phone calls from clients who have suffered devastating injuries from receiving a pain pump following joint repair surgery. Pain pump catheters are inserted during joint surgery and left in the joint for several days to provide pain medicine directly into the joint space. Numerous lawsuits are pending in the United States against various companies regarding inadequate warnings and safety information of using shoulder pain pumps, knee pain pumps, and pain pumps in small joints after surgery. The law firm of **Alley, Clark & Greiwe** is currently investigating claims of persons who have used pain pumps following joint surgery and developed symptoms of chondrolysis, a painful and permanent condition that is caused by the deterioration of cartilage covering the bones in the synovial joint following the use of a pain pump. The cartilage dies and cannot regenerate, leaving a painful bone-on-bone condition. Symptoms of chondrolysis include joint weakness, stiffness, pain and decreased range of motion, and there may be a clicking, popping or grinding of the joint when in motion.



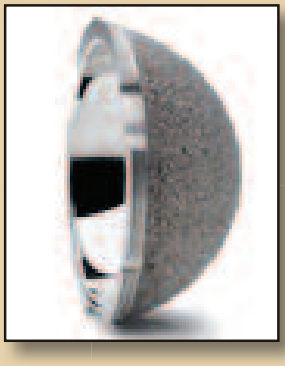
If you have received a pain pump following joint repair surgery and suffer from symptoms of chondrolysis, please contact the law firm of **Alley, Clark & Greiwe** immediately for important information regarding your legal rights.

EMERGING LITIGATION PROJECTS

Zimmer Durom Cup Hip Implant

The Zimmer Durom Acetabular Component (also called the Durom Cup) is a metal hip socket and was implanted in an estimated 12,000 patients between March of 2006 and July of 2008. The metal-on-metal hip implant is unique from traditional hip implants made of ceramic or plastic in that the Durom Cup is a solid metal cup made from cobalt chromium alloy and is sprayed with a titanium plasma coating used for fixation to the bone. The metal-on-metal design helps to prevent the problem of wear and tear common with traditional hip implants.

Problems with the Durom Cup surfaced in April of 2008 when many patients had to undergo painful revision hip replacement surgeries due to a loosening of the Durom cup from the bone. Because the Durom Cup was easily removable during revision surgeries, it is likely that the hip bone was unable to incorporate the implant due to manufacturing defects in the cup's design and/or surface coating. Doctors suggest that hundreds of patients who were implanted with the Durom Cup may need revision hip surgeries in the coming years. On July 22, 2008, Zimmer temporarily suspended its marketing and distribution of the Durom Cup.



If you or a loved one have been implanted with a Durom Cup hip implant device and have experienced pain more than three months following surgery, please contact the law firm of **Alley, Clark & Greiwe** for important information regarding your legal rights.

Yasmin Oral Contraceptive (Yas or Yaz)

Since its release on May 11, 2001, Yasmin has been one of the most popular oral contraceptives with sales topping $570 million in 2007. Yasmin is different from other birth control pills because it is a progesterone and estrogen combination birth control pill containing the progestin drospirenone. Drospirenone causes elevated blood levels of potassium which may lead to serious health problems. In fact, Yasmin has recently been under heavy scrutiny for possible links to serious side effects including stroke, pulmonary embolism, deep vein thrombosis (DVT), heart attack, and even death. If you have been hospitalized for one of these serious injuries while you were taking Yasmin and have no previous family history of these problems, you are not a smoker, and you do not have a history of cardiovascular, kidney, and liver problems, please contact **Alley, Clark & Greiwe** for important information about your legal rights.

New FDA Drug Warnings

If you or a loved one have taken one of these medications and suffered serious health problems, please contact the law firm of **Alley, Clark & Greiwe** for important information regarding your legal rights:

Raptiva (efalizumab) – The FDA recently issued a public health advisory for patients using the psoriasis drug Raptiva concerning three confirmed, and one possible report of a rare brain infection. The FDA strongly recommends that health care professionals carefully monitor patients on Raptiva, as well as those who have discontinued the drug, for any signs or symptoms of neurologic disease.

Zonegran (Zonisamide) – This epilepsy drug has come under fire by federal health regulators who warned the medication can cause a serious blood disorder known as metabolic acidosis which can have adverse effects on the kidneys, bones and can retard growth in children. Risks appear to be more frequent and severe in younger patients according to the FDA.

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