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Top Women

Lawyers 2011



ERIN M. BOSMAN

MORRISON & FOERSTER LLP

Location: San Diego

Practice type: Litigation

Practice specialty: Product liability, with specialization in pharmaceuticals and aviation

A major challenge facing Bosman these days has been trying to protect her pharmaceutical clients from being

tattered with the same brush when a particular drug is called into question.

In the past year, her practice has focused on mass tort pharmaceutical litigation and dealing with issues of product identification.

"Most of the cases involve hundreds of different individual claims, sometimes thousands, either in individual courts or coordinated in multi-district litigation," Bosman said.

Often what happens, she said, is that after a recall of a drug, or some medical literature is released on a product, "there will be a flood of complaints," Bosman said.

With many types of drugs, she said, "you will have five, 10, 20 different manufactures."

"Plaintiffs try to move quickly, and throw in a group of defendants who may have manufactured the drug," she said. "We're not getting individual allegations that this plaintiff got this defendant's drug. A lot of my practice in hundreds of these cases is moving to dismiss these claims for failure to properly identify the product, and not meeting pleading standards set down by the Supreme Court."

At the heart of all this, are rulings that have been handed down in recent years that state that the "allegations can't be a sheer possibility, but they must be a plausibility," she said. "In order to meet the federal standard, this can't be pure speculation. What is required is a plausible claim for relief."

In other words, there has to be a direct link to the defendant, the drug and the individual who took it, she said.

"When you're filing claims, it's a lot easier to throw in five defendants and sort it out down the line," Bosman said. "We're saying, 'You don't go there and use discovery against us to prove your case. You need to do your foot work ahead of time. You have to be able to factually support the claims you file.'"

While the rulings haven't been specifically directed at drugs and product liability, Bosman said that they should apply equally to those clients.

"We've taken these standards and are pushing them to apply to product liability and pharmaceutical cases," she said. "It's something beneficial to the clients and it will continue to gain traction. It's been something that has really put the burden back on the plaintiffs counsel, but the burden should be on the plaintiff when they file that complaint."

A lot of money is at stake, she said, and this is why it's important to pull back at the very beginning.

"When you think about the costs the client has to incur, the manufacturing of a product, this is expensive," Bosman said. "The battle is to get them out when they are not the proper defendant."

Although the legal concept may sound reasonable, she said, it hasn't been easy.

"This has been a very hard road," Bosman said. "But we're starting to get some success throughout the country in state and federal courts under this."

Among her major cases, Bosman is serving as national counsel for APP Pharmaceuticals and Abraxis BioScience in hundreds of product liability cases filed in numerous jurisdictions nationwide, involving pain pump matters.

— Pat Broderick