

MAY 10, 2023



Life Cycle of a Product Liability Lawsuit: Overview and Practical Advice

Presented by

Alicia Donahue | Shook, Hardy & Bacon

Chris Johnson | Shook, Hardy & Bacon

Melissa O'Sullivan | Genentech

SHOOK
HARDY & BACON

Speakers



Alicia Donahue

Partner | San Francisco
adonahue@shb.com



Melissa O'Sullivan

Senior Counsel, Litigation
Genentech



Chris Johnson

Managing Partner | San Francisco
cjohnson@shb.com

Overview

- Risk Assessment
 - Pre-Suit Demand
 - Lawsuit Is Filed
 - Pre-Answer Motions
 - Removal
 - Answer
 - Discovery
 - Mediation and Arbitration
 - Summary Judgment and Expert Motions
 - Trial and Trial Prep
 - Post-Trial Motions/Appeals
-
- | |
|--------------|
| 3-6 Months |
| 10-20 Months |
| 2-3 Months |
| 6-12 Months |

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Risk Assessment

CORPORATE COUNSEL

COMMENTARY

HAVE YOU BEEN TASKED WITH GETTING BETTER LEGAL OUTCOMES FOR YOUR COMPANY?

ALON ISRAELY



Did your company recently suffer a substantial loss? Or a near miss?

THE AMERICAN LAWYER

NEWS

Are Your Case Counts Increasing?

ANNA ZHANG





Is One of Your Businesses Having a Dissimilar Claims Experience from Another like Business in Your Company?

Forbes

Is Your Litigation Spend Getting Out of Control?

THE WALL STREET JOURNAL.

Do You Know Everything about the Company You've Just Acquired?

Benefits of a Litigation Risk Assessment

Preserve institutional
knowledge

Cost savings

Identify key
company witness

Identify potential
expert witness

Analyze key
documents

Prepare for discovery

Identify key issues

Make informed strategic
litigation decisions

Resource for future
decision-making

Areas of Inquiry

- Regulatory Affairs
- Medical Affairs
- Clinical Development/Clinical Trial Operations
- Marketing
- Safety Surveillance

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Pre-Suit Demand

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Lawsuit Is Filed

Service of Process

- California Code of Civil Procedure § 415.10
 - A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.
 - The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective.

Motions for Preference

- California Code of Civil Procedure § 36
 - (a) A party to a civil action who is **over 70 years of age** may petition the court for a preference...
 - (b) A civil action to recover damages for wrongful death or personal injury shall be entitled to preference upon the motion of any party to the action who is **under 14 years of age**...
 - (d) In its discretion, the court may also grant a motion for preference that is accompanied by clear and convincing medical documentation that concludes that one of the parties suffers from an **illness or condition raising substantial medical doubt of survival of that party beyond six months**, and that satisfies the court that the interests of justice will be served by granting the preference.
 - (f) Upon the granting of such a motion for preference, the court shall set the matter for trial **not more than 120 days** from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Removal

Removal

- Federal Question (28 U.S. Code § 1331)
 - The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
- Diversity Jurisdiction (28 U.S. Code § 1332)
 - “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs...” and there is complete diversity.

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Pre-Answer Motions

Demurrer or Motion to Dismiss

- A demurrer is a responsive pleading filed by a party to challenge the legal sufficiency of a complaint, cross-complaint, or answer (Cal. Civ. Proc. Code §§ 422.10, 430.10, 430.20, 430.40, and 589; *Lewis v. Safeway, Inc.*, 235 Cal. App. 4th 385, 388 (2015)).
- A demurrer filed in California state court is the procedural equivalent of a federal motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure (FRCP) (*Swahn Group, Inc. v. Segal*, 183 Cal. App. 4th 831, 844 (2010)).

Preemption

- Flows from the Supremacy Clause of the U.S. Constitution.
- “[I]nvalidates state laws that interfere with, or are contrary to, federal law.” *Hillsborough County, Florida v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712, (1985).
- Three types: (1) express preemption; (2) field preemption; (3) conflict preemption.

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Answer

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Discovery

Types of Discovery

- Interrogatories (Cal. Civ. Proc. Code § 2033.710-2033.740)
- Requests for Admission (Cal. Civ. Proc. Code § 2033.010-2033.080)
- Request for Production of Documents and Things (Cal. Civ. Proc. Code § § 2031.010)
- Depositions (§ 2025.220- § 2025.570)
 - Corporate Representative (Cal. Civ. Proc. Code § 2025.230)
- Physical or Mental Examination (Cal. Civ. Proc. Code § 2032.010-2032.650)
- Expert Witnesses (Cal. Civ. Proc. Code § 2034.210 - 2034.310)

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Mediation and Arbitration

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Motions to Limit or Exclude Expert Testimony

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Summary Judgment and Expert Motions

Summary Judgment

- California Code of Civil Procedure § 437c
 - A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Trial and Trial Prep

LIFE CYCLE OF A PRODUCT LIABILITY LAWSUIT:
OVERVIEW AND PRACTICAL ADVICE

Post-Trial Motions/Appeals

HEALTH | SCIENCE | TECHNOLOGY |
**Critical
in a crisis,
creative
in court.®**
SHB.COM |