

Yasmin / YAZ Class Actions, Individual Suits and/or an MDL: What does it all mean?

When most people hear about ongoing drug litigation, such as the litigation we are currently leading involving the birth control drugs, Yasmin, YAZ and their generic, Ocella, they often assume it is a “class action.” However, drug litigation **for those injured or killed by a defective drug** generally does not involve class actions, but rather individual lawsuits filed on behalf of those victims by leading drug litigation firms such as ours, which may result in multidistrict litigation (referred to as an “MDL”). This blog explains the difference between the various forms of lawsuits and methods of consolidation, as well as their application to the Yasmin / YAZ litigation.

If you or a loved one have suffered a serious injury or death, then you have an individual injury case. You should NOT rely on a class action filed by someone else to provide you with a remedy for your loss.

What is the difference between individual suits and class actions?

In a class action, one or more individuals, called “Class Representatives,” sue on behalf of everyone else with similar claims. The rest of the “Class” or “Class Members,” are not individually named in the suit. In order for a court to certify a class action, the proposed class of individuals or business entities must have suffered common damages and/or the particular product defect applies to all proposed class members in a uniform manner. Because drug litigation for those injured or killed by a defective drug often involves a variety of injuries and resulting damages, class actions are generally **not** appropriate for those who have suffered serious injuries or death. Instead, many class actions tend to be **consumer** class actions. For example, one person might sue on behalf of thousands of other people who were overcharged for a product as a result of an illegal price-fixing conspiracy. Additionally, employment class actions are common, which may be brought, for example, by a member of a company for illegal hiring or salary practices.

In a class action, if the named plaintiff (the “Class Representative”) wins at trial or resolves his/her claims, then all of the claims of the un-named Class members are likewise resolved, with the exception of those that exclude themselves from the Class. Consumer class actions often result in “coupon settlements,” which usually allow the plaintiffs to receive limited benefits, such as a small check or a coupon for future services or products with the defendant company.

The claims brought by our firm for injury and death resulting from Yasmin, YAZ and Ocella, are not class actions, but rather individual lawsuits. A few lawyers have filed consumer class actions for Yasmin and YAZ, but these have to do with monetary reimbursement for violations of consumer protection and advertising laws and do not seek compensation for the injuries and deaths that have been caused from the drug. In contrast, our individual Yasmin and YAZ claims for severe injury and death are being pursued and will eventually be tried individually, (unlike a class action where there is only one trial). That is, each Yasmin and YAZ plaintiff will have her claim evaluated and settled or tried based on the merits of the injury and the facts of the case. If the case is not settled she will have her day in court and is able to request the jury to award full and fair compensation for her loss.

What is an MDL?

MDL is an abbreviation for Multidistrict Litigation. If enough individual lawsuits for a defective drug are filed in federal court against the same manufacturer for the same drug, a federal court, manufacturer, and/or plaintiff's lawyer might ask the Judicial Panel on Multidistrict Litigation to "consolidate" all of the cases in an "MDL" before a single judge.

An MDL is not a class action. Instead, it is a way that the courts can collectively handle multiple lawsuits involving the same drug. There are some similarities however.

Suing a billion dollar drug company with almost unlimited resources who will fight at every turn is expensive. A single victim or her attorney would unlikely be able to finance such litigation alone. The combination of claims in a single forum increases the plaintiffs' leverage by permitting counsel to pool their resources and to work for the plaintiffs' common benefit.

An MDL also promotes efficiency and consistency of rulings. Instead of one hundred or even one thousand cases pending in different courts across the county, the litigation is coordinated and important decisions are made by a single court, saving substantial time and expenses and insuring consistent rulings.

How is an MDL formed?

Although the Clerk of the Judicial Panel on Multidistrict Litigation is permanently stationed in Washington, D.C., the Judicial Panel on Multidistrict Litigation meets in different cities in the United States on a periodic basis to review requests that cases be consolidated. After an MDL request is made, a hearing will be held to determine whether to create the MDL proceeding.

If the panel agrees after the hearing to create an MDL, it will also decide where the MDL will be located. The judge who gets all the federal cases assigned to him is known as the "transferee judge." The judges throughout the United States who send cases to the MDL judge are known as the "transferor judges" or "transferor courts." The panel's selection of the transferee court that is in charge of the MDL may affect the outcome of the litigation. There are friendly jurisdictions and not-so-friendly ones. Parties try to influence the panel by proposing, when they can, a single, consensus choice for the transferee court, or at least one offered by all plaintiffs and one by all defendants.

Generally, the transferee court (also called the "MDL court") will then set standing orders or pretrial orders informing the lawyers involved of the ground rules, deadlines and procedures that the Court expects the litigants to follow. Although there may be hundreds or even thousands of cases in an MDL, if the Court makes a ruling, it generally applies to all of the cases. Indeed, this is one of the purposes of the MDL, as it is much more efficient to have one ruling on a general issue than possibly hundreds of conflicting rulings by many judges on the exact same issue.

Typically hierarchies of plaintiff "executive" and/or "steering" committees made of leading and experienced drug litigation lawyers, such as our firm, are then appointed. These committees are often referred to simply as the "PEC" and/or the "PSC." These PEC and/or PSC are responsible

for representing all the claimants in the MDL and managing the substance of the litigation. Under the supervision and direction of the PEC and/or PSC, volunteer lawyers will assist in reviewing documents, taking depositions, writing briefs, and developing and prosecuting the common aspects of the litigation. Ultimately, they will prepare and provide to all MDL plaintiffs a trial package consisting of documents that the plaintiff's attorney will need to try his or her case.

In an MDL, all of the information-gathering and investigation is done at the same time on behalf of all of the plaintiffs. This is referred to as the "discovery" process and is designed to obtain the basic facts of the case. The MDL Judge also rules on discovery disputes and decides critical issues, including whether there is sufficient evidence for the claims to proceed to a jury trial.

During and/or at the conclusion of this process, the MDL Judge often works with both sides in an attempt to reach a global settlement (which if successful, may be a matrix based on various factors involved in each specific case and decided by neutral masters or arbiters who have experience in this area). To assist in trying to reach a settlement, the MDL Judge may even have a few jury trials on cases that were actually filed in his or her own court. Some MDL cases are settled individually, others as a group. Each claimant is typically free to accept or reject the award, but if they accept it, then they give up their claim and release the manufacturer of any further liability.

It is important to understand, however, that a settlement does not always occur in an MDL. If settlement cannot be reached, each of the cases is sent back for trial, to the court where it was originally filed. The only cases that would not be remanded are those cases originally filed in the court with the MDL Judge is seated. Unlike a class action where there is only one trial, MDL cases are tried individually. That is, each plaintiff gets his or her day in court.

What experience does Zoll, Kranz & Borgess, LLC have with MDLs?

Our firm has been recognized on a national level for its work in MDLs. As a recent example, on February 14, 2008, Zoll, Kranz & Borgess, LLC was the first law firm in the nation to file suit against Baxter Healthcare Corporation and other related companies regarding contaminated batches of its drug, Heparin, and is now leading Heparin MDL 1953 in its position as Liaison Counsel and Chair of the Plaintiffs' Executive Committee. In April of 2008, the firm was honored to have three of its clients speak before Congress at an investigational hearing on tainted Heparin entitled, "The Heparin Disaster: Chinese Counterfeits and American Failures." Their stories have also been featured in news media, including on ABC Nightly News, Nightline, CNN, Bloomberg News and in Time Magazine.

Other MDL involvement includes, but is not limited to, the Plaintiffs' Steering Committee for In Re: Yamaha Motor Corp. Rhino ATV, MDL No. 2016, acting as special counsel on behalf of Plaintiffs in In re: Inter-Op Hip Prosthesis Liability Litigation (Sulzer) MDL Docket No. 01-CV-9000, on the Discovery Committee in In re: Vioxx® Products Liability Litigation MDL Docket No. 1657, and involvement in Ford Crown Victoria, Bextra/Celebrex, and other mass tort litigation projects.

What is the status of the Yasmin / YAZ litigation?

Zoll, Kranz & Borgess, LLC is one of the first of the few law firms to have filed Yasmin and YAZ cases, and has filed the most cases in the country to date. Many of the filed cases have been assigned to Chief Judge James G. Carr of the United States District Court in the Northern District of Ohio.

We have had our first case management conference with Chief Judge Carr, who has taken an active interest in the YASMIN/YAZ litigation. We are currently working on preliminary orders that will help set the stage for the litigation and expect to start receiving information/documents from Bayer as early as August of 2009. We are also continuing to investigate the drugs and strongly believe that the statistics and other data prove a much higher incidence of stroke, PE, DVT, gallbladder complications and other “adverse events” for YASMIN and YAZ over most other birth control pills, despite Bayer’s contrary advertising.

Although an MDL has not yet been requested, it is expected that an MDL will be requested shortly and our firm will be seeking a leadership role in any national litigation. We will continue to update you on the litigation.

If you or someone you love have suffered a serious injury that may be attributable to Yaz, Yasmin or Ocella (the generic version), you should immediately seek the advice of an experienced attorney.