

Bailey Glasser LLP Obtains Dismissal of Fee Appeal in Pelvic Repair MDL

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With a common-benefit fund at stake likely to exceed \$500 million, Bailey Glasser secured dismissal from the US Fourth Circuit Court of Appeals of a challenge to an attorney fee award in one of the largest Multi-District Litigation (MDL) proceedings in history. See Order, *In re: Ethicon, Inc.*, No. 19-1224(L) (4th Cir. June 14, 2019). The seven proceedings consolidated in the MDL comprise more than 100,000 individual claimants seeking compensation for pelvic mesh products alleged to have been defective.

The dismissal was obtained on the basis of an appeal waiver included within the 2012 agreed Management Order approved and entered by the district court, setting forth procedures, guidelines, and limitations for law firms' submission of applications for reimbursement of litigation fees and expenses inuring to the claimants' common benefit. Prior to entry, the members of Plaintiffs' Steering Committee (PSC) reviewed the Management Order and consented to all of its terms. Judgments and settlements obtained in the MDL were distributed subject to a 5% holdback for inclusion in the common benefit fund. On January 30, 2019, the district court exercised the plenary discretion accorded it under the Management Order to grant the petition of the Common Benefit Fee and Cost Committee (FCC) to award the full 5%.

Though it had agreed to the appeal waiver as a member of the PSC, Kline & Specter, P.C. (K&S) appealed the fee award to the Fourth Circuit. Bailey Glasser moved on behalf of the FCC to dismiss the appeal based on the agreed waiver. A unanimous panel of the Fourth Circuit concurred with the FCC, holding that "K&S knowingly and voluntarily agreed to be bound by the district court's attorneys' fees and expenses determinations." Accordingly, the Fourth Circuit granted the motion and entered an Order dismissing the appeal. K&S petitioned for panel rehearing and for rehearing by the full Fourth Circuit sitting en banc, but, on July 15, 2019, the court denied those petitions. The Fourth Circuit's dismissal Order provides compelling precedent to thwart future appellate attacks on MDL fee awards and allocations made under similar circumstances.

BAILEY GLASSER LLP OBTAINS DISMISSAL OF FEE APPEAL IN PELVIC REPAIR MDL

The Bailey Glasser team included Ben Bailey and Ray Franks.

Attorneys

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Practice Areas

MDL Panels

Medical Device & Drugs