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Long, winding road for class actions

CASES TAKE YEARS TO RESOLVE, EXHAUSTING LAWYERS, CLIENTS

MONICA MENDOZA

MMendoza@BizJournals.com

303-803-9230, @MMendozaDenBiz

Wheeler Trigg O'Donnell attorney Mike Williams started working on a Whirlpool product class action defense case in 2008.

Now, eight years later as one of the Whirlpool cases is set to wrap up with a proposed settlement, he reflects about all that happened in the years since he got on the Whirlpool case – which made claims that front load washers contain a defect causing mold and mildew.

“When the case started I didn’t have kids,” he said. “Now, I have three and gray hair.”

A funny thing happens on the way to a civil trial – years can go by. And while it’s not unusual for cases to take many years to settle or go to trial, it always seems shocking when it happens.

“I never anticipate these cases going on as long as they do,” Williams said.

Every year an estimated 15 million civil lawsuits are filed. Some of those cases will make it to trial within 18 months. But some civil cases will drag on for years. The long cases take a toll on plaintiffs and defendants. But they also take a toll on attorneys, who become deeply invested in them for years.

“Law school teaches you precious little about being a civil litigator,” Williams said.

What keeps trial lawyers going is passion for the case, they said.

“Talking about the case with the clients and colleagues, going over the facts and the story you are going to tell, re-energizes you,” Williams said. “Because you remember why you made the recommendation to the client to fight – which is you believed you had a winner.”

There is no clock running on civil cases like in criminal cases. There are spurts of activity, with peaks and valleys and the attorneys involved all seem to recall the losses more than victories along the way.

You have to be able to compartmentalize a case that lasts that long, Williams said.

“When things don’t go perfectly, there is a lot of emotional pain and trauma from getting a result you weren’t expecting,” Williams said. “The high points for me are the real deep valleys and then the final victory where we patiently waited and believed that eventually the jury would side with our company or client.”



Wheeler Trigg O'Donnell attorney Andrew Myers has worked on two cases involving the antidepressant Zoloft. He said, “It’s an incredibly important issue for people’s health – the medicine people need when they are depressed. We recognize that this is a public health issue.”

Everything else is a blur, he said. “It’s exhausting.”

Sometimes when attorneys get to the end of a case, there isn’t the same moment of fanfare as winning in a trial because usually there is some kind of settlement, said Wheeler Trigg O'Donnell attorney Andrew Myers, who defends drug companies and medical device makers.

He has spent his entire career at the firm working on two multi-district cases – one that claimed Pfizer’s prescription antidepressant causes a person to commit suicide and one that claimed it caused birth defects in babies whose moms used the drug.

There, of course, are other cases in between, he said. But since 2005, he has read every medical study on the drug, case studies on suicide and medical journals about birth defects, learning everything he can for the two cases.

“It’s an incredibly important issue for people’s health – the medicine people need when they are depressed,” he said. “We recognize that this is a public health issue.”

“More than thinking about time, I think about what is involved, what the trajectory might be,” Myers said. “That is, do we have a bunch of trials, do we get things dismissed. Do we settle things?”

“There is a realization that it will take a very long time.”

A federal judge granted summary judgment to Pfizer April 5, effectively ending the 300 cases claiming Zoloft caused babies’ heart defects. The plaintiffs did not have the sufficient evidence to proceed to trial.

Jim Puga, a medical malpractice lawyer with Leventhal & Puga, said he doesn’t need to look far for motivation on long cases – just right into the eyes of the people he is representing, he said.

“You go visit your clients, you go spend time with these little children, you talk with the parents,” he said.

Puga said he’s motivated by an uneven playing field – one that he said favors physicians and hospitals, driven by insurance companies.

“In terms of your commitment, your emotional intellectual commitment to the case, you are all-in,” Puga said. “I don’t think you can do it right or well unless you go all-in.”

Puga worked for two years on a case representing a seven-year-old girl and her mother in a lawsuit that said the incorrect dose of medication was administered to the child before surgery and resulted in disabling and crippling neurological, brain and physical injuries.

In April 2015, a jury ordered Children’s Hospital Colorado to pay \$17.8 million to the girl. Puga said it was largest malpractice verdict in Colorado history.

Now, he’s preparing for the appeal and he’s mentally ready for a long-fight.

“It’s the satisfaction from taking on the powerful interests for a true injured person – through no fault of their own, particularly when it comes to babies – that there will come a day,” he said. “It may be years down the road, when those parents put their arms around you and say, you changed our lives forever. (It’s) know(ing) that moment will come.”