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## **MPP Wins Summary Judgment in Coordinated Product Liability / Fraud Actions on Behalf of 14 Individual Former Officers, Directors and Employees of Medical Device Company**

Morris Polich & Purdy LLP San Diego partner Gerald Schneeweis and a team of attorneys, including partners David Vendler and Megan Wynne and associates Ashley Escudero and Andrew Chivinski, have won a recent decisive victory on behalf of all 14 individual clients in product liability / fraud litigation stemming from the plaintiffs' injection of a product that had been manufactured by a now-defunct company. The litigation, at its height, involved as many as 80 separate U.S. and foreign plaintiffs who brought lawsuits in 38 courtrooms scattered among seven different counties, and included 25 different defendants. These defendants included our clients, the former manufacturer of the products, the 14 individual former employees, directors and an outside sales representative. The fundamental legal argument that we were finally able to persuade the court to accept was that absent a separate fraudulent act directed at plaintiffs or their physician, an individual who works for or is an agent of a manufacturer is not liable for personal injuries allegedly caused by the *company's* product under any theory of product liability. There is precious little caselaw on this specific point, and we are happy that San Diego Superior Court Judge Timothy Taylor—a dedicated and thoughtful jurist—reached this result in his comprehensive and detailed trial court decision.

Over the plaintiffs' counsel's strenuous objections, the cases were eventually coordinated as a California Judicial Council Coordinated Proceeding (JCCP) before Judge Taylor. The plaintiffs' 106 page complaints alleged, among other things, that the prescription-only products with which they had been injected by their physicians were defectively designed, manufactured and labeled, causing them severe dermatological and facial injuries, and in some cases, lost income and business opportunity. Most of the complaints also alleged that the company, the individual defendants and the investor defendants engaged in a fraudulent transaction when the manufacturer ceased doing business in July 2010 and executed an assignment for the benefit of creditors, whereby a separate company formed by a Silicon Valley liquidating firm then sold its remaining assets to a third-party purchaser.

On behalf of the individual defendants, we demurred to the complaint in 2011, primarily on the grounds that as individuals, they could not be held liable under a product liability theory for alleged injuries plaintiffs claimed as a result of the injection of a product made by the *company*, and not by them individually. The court mostly overruled the demurrer, and the individuals were forced to defend the litigation and to produce a massive amount of documents, including several millions of pages of ESI of their former company. Several of our individual clients were deposed and two of them testified as witnesses in a separate six-day bench trial on whether the sale of the unrelated product line was fraudulent, and / or whether any acted as the “alter ego” of the company in this transaction. In June 2013, following the bench trial, the court issued judgment on its extremely-detailed statement of decision, which found that there was no “alter ego” shown whatsoever, that the transactions were not “fraudulent” in any respect, and that the third-party was not the “successor” of the filler product line alleged to have caused the plaintiffs’ injuries.

In September 2013, we brought a motion for summary judgment, arguing that:

- 1) as a matter of law and good public policy, there can be no strict product liability on the part of the individual defendants for a product that is manufactured by the company for whom they were employees or agents—and not by them as individuals;
- 2) as a matter of law, the individuals themselves owed the plaintiffs no separate duty as employees or agents of the manufacturer, where they had no direct contact with them and were not free to change any of the characteristics of the product;
- 3) there was no evidence of any misrepresentation made by any of the 14 individual defendants to either the plaintiffs’ physicians or to the plaintiffs themselves prior to the injection of the product by their physician;
- 4) the findings from the earlier bench trial collaterally estopped plaintiffs from arguing that the individuals could be held liable under either an alter ego or fraudulent transfer theory.

On December 16, 2013, following oral argument, Judge Taylor issued his 10-page written order granting all of our 14 clients summary judgment on all claims asserted by the remaining plaintiffs, and separately also granting summary adjudication as to each and every cause of action. We are obviously extremely proud of this decisive result and what it means for our clients—who have endured this litigation for over

three years as individual defendants—when the company they worked for or consulted with has long been out of existence.

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