

DAILY BUSINESS REVIEW

PROFILES IN LAW

Fresh off Big Pharma Victory, Defense Lawyer Braces for Similar Fights Fueled by Lit Funding

by Michael A. Mora

A Miami attorney, who prevailed on behalf of pharmaceutical client GlaxoSmithKline in Massachusetts federal court after years of litigation, is expecting only a short breather.

Hildy Sastre, a partner at Shook, Hardy & Bacon in Miami, argued the winning motion in the multidistrict litigation, or MDLs, involving her client GlaxoSmithKline, whose product, Zofran, allegedly caused birth defects in more than 450 babies whose mothers used the medication during pregnancy.

But while the GlaxoSmithKline MDL appeared to have concluded, Sastre is expecting a crush of appeals and new MDLs, thanks to a trend of third-party litigation funding.

“We’re seeing MDLs grow candidly into record-setting numbers in the tens of thousands or hun-

dreds of thousands of cases. As those MDLs get bigger, it is literally this self-serving cycle that as their size increases, the ability to obtain additional funding is increasing,” Sastre said. “They have gone up most dramatically in the last 10 years. There is no question that is a result of attorney advertising and third-party litigation funding.”

‘YOU EITHER WON OR YOU LOST’

But while Sastre’s leadership was key to the outcome of the case, there was a time when the Miami litigator had no intention of becoming an attorney. It dated back to when Sastre’s father died while Sastre was still in her teens, and her mother assumed the role of head of the household.

At a young age, Sastre learned from competing in sports that “you either won or you lost.” It was a motto that stuck with her when she realized in high school that she might want to pursue a career in either the legal or medical fields.

As Sastre started her undergraduate education at Florida State University, she flirted with the idea of pursuing a career in both disciplines, but ultimately decided she wanted to become an attorney.

Still, cases involving science and medical issues fascinated her, and she credited her relentless work ethic for her excelling at



J. ALBERT DIAZ

“You’re going to see the exposure of the underbelly of the plaintiff practice in the coming years,” said Hildy Sastre, a partner at Shook, Hardy & Bacon.

Georgetown University in pursuit of her Juris Doctor degree.

“Everyone around you, once you got to that level of just a few hundred kids starting their first year of class at Georgetown Law School, they’re all very bright and hard-working,” Sastre said. “There may not be anything special about you any longer, once you get into that setting.”

After law school, Sastre moved to Miami from Washington, D.C., to start her legal career at Anderson Moss. At the boutique law firm, Sastre said she had the “privilege to be raised professionally” by Edward Moss, a named partner, as she observed and worked with him in his cases.

HILDY SASTRE

Born: Los Angeles, 1970

Children: Connor and Tyler

Spouse: Michael Sastre

Education: Georgetown University, J.D., 1994; Florida State University, B.A., 1991

Experience: Partner, Shook, Hardy & Bacon, 1998-present; Associate, Anderson, Moss, Sherouse & Petros, 1994-1998

Moss, she said, was one of the best trial lawyers in the country.

'GRIT'

Sastre achieved early success in representing Raytheon Aircraft Services against Aero Consulting Corp. and Hartford Holding Corp. in Miami-Dade Circuit Court.

The case involved claims of breach of contract, fraud and conspiracy, and Sastre took many depositions and deposed experts in the litigation. She still prevailed for her client, even though her personal life intruded on her legal career.

"I was getting ready to go try that case literally almost nine months pregnant with my second child," Sastre said. "Not having been physically capable of doing that, I had to be hospitalized and had the baby. The case was continued, and then shortly after that, I had a chance to come back and try that case. I got a directed verdict."

Sastre and her husband, Michael, have two children, Connor and Tyler.

She said the litigation involving Raytheon showed her passion for the law and her drive to win.

"A lot of it comes down to pure hard work, determination and what are you able to do to represent your client to the best of your ability," Sastre said. "That grit is something that has been a part of me since I was young."

THIRD-PARTY FUNDERS

William P. Geraghty, a partner at Shook, Hardy & Bacon in Miami, has known Sastre for more than two decades, including when he faced off against her in discovery battles while they were both associates in separate law firms. Anderson Moss eventually merged with Shook, Hardy & Bacon.

"We were both coming up on the ropes, figuring out how to be lawyers, and making a name for ourselves in an effort to become partners at the law firm," Geraghty said.

However, the attorneys rarely worked together in court cases until their paths crossed in the Zofran MDL about two years ago. Geraghty said Sastre was more heavily involved in the litigation than he was.

Geraghty added that around the time he joined the team working on the case, it was close to the first bellwether trial. And Sastre was no novice at defending litigation at that stage. She was often called upon to act as trial counsel in bellwether trials and cases of first impression.

Plaintiff attorneys alleged in the lawsuit that Zofran, which the U.S. Food and Drug Administration green-lighted in 1991 for the treatment of nausea and vomiting related to chemotherapy and surgery, had resulted in heart defects, cleft lip and cleft palate in babies born to women who took the prescription medication.

Allegations also suggested that GlaxoSmithKline failed to warn doctors of the side effects of the drug when used by women to treat morning sickness in their first trimester of pregnancy. But before the litigation could go to trial, Sastre argued the summary judgment motion on which she prevailed, resulting in the dismissal of the federal MDL.

In Boston, U.S. District Judge F. Dennis Saylor IV found on June 1 that all of the plaintiffs' state law claims of failure to provide an adequate warning label were preempted by federal law. Under federal law, the court determined that no such warning was required based upon the FDA ruling that it would not approve a change to the drug's label to include a warning about a possible adverse effect on a fetus when the drug was ingested during pregnancy.

Now, Sastre and her colleagues are waiting to see if the plaintiffs will appeal the ruling.

There is a discussion underway at the federal MDL level that would

require additional disclosure for litigation funding in similar cases. Sastre said the most desirable outcome from the defense perspective would be to see the actual agreements litigation funders reach with their plaintiff lawyer clients.

"Third-party funders take more control of the decisions that are made in the related litigation than we actually hear about," Sastre said. "It begs the question of who is really the true party in interest. It's something right now, as a decision came out of New Jersey state court that this sort of information has to be disclosed."

The new rules in New Jersey will require in August that attorneys who receive financial assistance from nonparties for legal fees and expenses must disclose the funder's name and address, whether the funder's approval is needed for litigation or settlement decisions, and what terms and conditions apply to such approvals.

Those in favor of litigation funding, such as a trade group for legal lenders, said the ruling in New Jersey would create more problems than it solves; and that other judicial districts should be more open and transparent than the Garden State as they decide on whether to place more regulations on litigation funding.

Still, Sastre said she expects to see a record-setting number of cases filed in the next couple of years in the areas she actively litigates, including product and medical liability, along with the pharmaceutical and consumer product space.

"Nobody has gone so far to say that the litigation funding agreements have to be produced," Sastre said. "You're going to see the exposure of the underbelly of the plaintiff practice in the coming years."

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