



ROBINS  KAPLAN^{LLP}

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INSIDE THIS ISSUE

**PROPOSED \$590M
OPIOID SETTLEMENT
FOR TRIBAL NATIONS**

INSIDE THIS ISSUE

2. **PROPOSED \$590M OPIOID SETTLEMENT FOR TRIBAL NATIONS**
4. **KATE JAYCOX ELECTED TO SERVE AS THE CHAIR OF THE AMERICAN ASSOCIATION FOR JUSTICE WOMEN TRIAL LAWYER'S CAUCUS**
5. **MASS TORT INVESTIGATIONS**
6. **PHILIPS SLEEP MACHINE & MECHANICAL VENTILATOR DEVICE RECALL**
7. **CASE RESULTS**
8. **AWARDS AND RECOGNITION**

Past results are reported to provide the reader with an indication of the type of litigation in which we practice and does not and should not be construed to create an expectation of result in any other case as all cases are dependent upon their own unique fact situation and applicable law. This publication is not intended as, and should not be used by you as, legal advice, but rather as a touchstone for reflection and discussion with others about these important issues. Pursuant to requirements related to practice before the U. S. Internal Revenue Service, any tax advice contained in this communication is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U. S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

ROBINS KAPLAN LLP ANNOUNCES PROPOSED \$590M OPIOID SETTLEMENT FOR TRIBAL NATIONS

BY TARA SUTTON



In January of 2018, Robins Kaplan LLP filed a lawsuit against the nation's largest opioid manufacturers and distributors on behalf of three Tribal Nations in South Dakota. It was one of the first complaints filed by a Tribe over the opioid epidemic. Hundreds of additional Tribes have now followed suit — along with cities, states, and counties — resulting in the largest piece of civil litigation in United States history. The unprecedented level of participation by Tribes is a testament to the painful suffering so many Tribes have endured because of the opioid epidemic in their communities.

Early in the litigation, Robins Kaplan LLP was appointed to serve on the plaintiffs' Tribal Leadership Committee. In that capacity, Tara Sutton and Tim Purdon have tenaciously advocated for the firm's Tribal clients and on behalf of all Tribes. Tara Sutton spent months participating in mediation sessions to reach a resolution that recognizes the disparate impact Tribes have suffered.

On the strength of this work, Robins Kaplan LLP is pleased to announce a proposed \$439 million settlement of the national opioid litigation claims by Tribes brought against AmerisourceBergen Corp., McKesson Corp., Cardinal Health, Inc. ("Distributors") and a proposed \$150 million settlement of the national opioid litigation claims by Tribes brought against the following companies: Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc.; N/K/A Janssen Pharmaceuticals, Inc. ("Janssen"); Johnson & Johnson; and Ortho-McNeil-Janssen Pharmaceuticals, Inc. The proposed settlement, which must be agreed to by the sovereign governments of Tribes, comes at a critical time to address the addiction and prevention needs of residents, as drug overdose deaths in the U.S. rose nearly 30 percent in 2020, according to preliminary data from the Centers for Disease Control.

Janssen has agreed to resolve the Tribal claims for \$150,000,000, payable over two years. The Distributors resolved the Tribal claims for \$439,964,500, payable over

seven years. The agreement includes a provision by which all federally recognized Tribes will be eligible to participate in both settlements, regardless of whether the Tribe has previously filed suit against the settling Defendants. These two settlements are initial, partial settlements while Tribal opioid claims against several other Defendants remain pending in the consolidated multi-district litigation venued in federal court in Cleveland, Ohio.

"This initial settlement for Tribes in the national opioid litigation is a crucial first step in delivering some measure of justice to the Tribes and reservation communities across the United States that have been ground zero for the opioid epidemic," said Tara Sutton, chair of Robins Kaplan LLP's Mass Tort Group. Ms. Sutton acted as one of the negotiators for the plaintiffs' Tribal Leadership Committee in the negotiations with the settling Distributors.

Tim Purdon, the co-chair of Robins Kaplan LLP's American Indian Law and Policy Group, added, "At Robins Kaplan, we were one of the first to identify the opportunity for Tribes to exercise their sovereignty by bringing suit, just as state attorneys general did, against the companies that created and drove the opioid epidemic. This is the first time in history that Tribal Nations in these numbers have participated in nationwide mass tort litigation at this scale." The Robins Kaplan LLP American Indian Law and Policy Group was co-founded by Purdon, the former United States Attorney for North Dakota, and Brendan Johnson, the former United States Attorney in South Dakota, when the two joined the firm in 2015.

The historic settlement reached by the Tribal Leadership Committee garnered national attention and was covered by *CBS News*, *NBC News*, *The Wall Street Journal*, *Associated Press*, *The Star Tribune*, *The Washington Post*, and *CNN*.

"This initial settlement for Tribes in the national opioid litigation is a crucial first step in delivering some measure of justice to the Tribes and reservation communities across the United States that have been ground zero for the opioid epidemic."

- TARA SUTTON, CHAIR OF ROBINS KAPLAN LLP'S MASS TORT GROUP





KATE JAYCOX ELECTED TO SERVE AS THE CHAIR OF THE AMERICAN ASSOCIATION FOR JUSTICE WOMEN TRIAL LAWYER'S CAUCUS

BY CAROLINE MOOS

Robins Kaplan Partner Kate Jaycox has been elected to chair the American Association for Justice (AAJ) Women Trial Lawyer's Caucus (WTLC), an organization comprising 4,100 female trial lawyers throughout the country. She was installed at AAJ's Annual Convention this past summer in Las Vegas.

At the February 2022 AAJ Winter Convention in Palm Springs, California, the WTLC presented its biennial Women's Leadership Summit under Kate's leadership. The summit was a huge success, with over 175 registrants — the most in its history — for the two-day program. In lieu of paying attendance fees, registrants donated over \$4,300 to the Mike Eidson Law Student Scholarship. From this fund, the WTLC annually awards \$5,000 to a female student entering her third year of law school who has demonstrated a commitment to a career as a trial lawyer.

Kate also emceed the Women's Caucus Brunch, open to all AAJ Winter Convention attendees. At the event, Congresswoman Katie Porter (D-CA) spoke about the importance of AAJ's mission and celebrated the success of a recently passed congressional bill to end forced arbitration in cases of sexual assault and harassment.

Kate currently also serves as the vice president of the Minnesota Association for Justice (MAJ). For more than a decade, she has served on both the AAJ Board of Governors and MAJ's Executive Committee and Board of Governors. She has received multiple awards from AAJ and MAJ, including AAJ's "Above and Beyond" award in 2018 and 2020, MAJ "Member of the Year" in 2017, and AAJ New Lawyer's Division Excellence Award in 2013 and 2014. Kate is also a 2016 graduate of AAJ's Leadership Academy.

In her legal practice, Kate represents hundreds of individuals and families who have been injured by the pharmaceutical and medical device industry. She focuses on complex civil litigation, products liability, and personal injury mass tort cases. She is currently leading the *In Re Injectafer* consolidated litigation in the Eastern District of Pennsylvania and has served on various litigation leadership committees in multi-district litigations, including in Zofran (D. Mass), Chantix (N.D. Ala), DePuy ASR (N.D. Ohio), and DePuy Pinnacle (N.D. Tex). She was named "Lawyer of the Year" in 2021 for Mass Torts/Class Actions - Plaintiffs; listed in the Best Lawyers in America since 2018; named a Minnesota Super Lawyer since 2018; and named a "Minnesota Rising Star" by Super Lawyers from 2010 to 2014.



MASS TORT INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort Group if you have any questions or know of any individuals whose case should be evaluated.

BAUSCH & LOMB AREDS 2 PRESERVISION EYE VITAMINS: Robins Kaplan LLP is investigating a potential link between the use of this nonprescription product and serious injury. Bausch & Lomb AREDS 2 Preservision Eye Vitamins are typically used for eye health – specifically macular degeneration. However, the high levels of zinc in the product can result in copper deficiency. We are investigating a potential link between copper deficiency and serious injury, including myelopathy and neuropathy.

ELMIRON: The painful bladder syndrome drug Elmiron updated its labeling to warn that pigmentary changes in the retina have been identified with long-term use of the drug,¹ nearly two years after the journal of the American Academy of Ophthalmology published an article linking Elmiron to pigmentary maculopathy² (which may cause permanent vision changes, such as difficulty reading, slow adjustment to changes in lighting, and blurred vision).

INJECTAFER: This intravenous iron supplement prescribed to patients with iron deficiency anemia has been linked to severe hypophosphatemia — a dangerously low level of phosphorus in the blood that can cause life-threatening complications.

KEYBOARD DUSTING SPRAYS: After huffing keyboard dusting spray, drivers have lost control of their vehicle, resulting in deaths and injuries to innocent bystanders.

1. U.S. Food and Drug Administration, June 16, 2020 Supplemental Elmiron Package Insert. DRUGS@FDA, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/020193s014lbl.pdf.

2. William A. Pearce et al., Pigmentary Maculopathy Associated with Chronic Exposure to Pentosan Polysulfate Sodium. OPTHALMOLOGY. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>.





PHILIPS SLEEP MACHINE & MECHANICAL VENTILATOR DEVICE RECALL

ONGOING ROBINS KAPLAN INVESTIGATION

BY RAYNA E. KESSLER

On June 14, 2021, Philips Respironics recalled certain continuous positive airway pressure (CPAP) machines, ventilators, and bilevel positive airway pressure (also known as Bilevel PAP, BiPAP, or BPAP) machines because of potential health risks.¹ Most of these machines were used by patients to treat obstructive sleep apnea and other breathing difficulties while asleep. The Philips Respironics recall is a Class I recall, the most serious type of recall. Specifically, Class I recalls have a reasonable probability of causing serious adverse health consequences or death.

According to Philips, these recalled devices contain polyester-based polyurethane sound abatement foam (“PE-PUR Foam”) that may degrade or off-gas with use or while cleaning. The potential risks of inhaling chemicals from the PE-PUR Foam includes toxic or cancer-causing effects to organs such as kidneys and liver.² Other respiratory injuries include inflammatory response, asthma, and a hypersensitivity reaction.³ Philips reported to physicians that PE-PUR Foam particles “may cause irritation and airway inflammation, and this may be particularly important for patients with underlying lung diseases or reduced cardiopulmonary reserve.”⁴

Nationally, there are approximately 3 to 4 million devices affected by the Philips recall.⁵ These recalled devices include the following devices made between 2009 and April 26, 2021:

- A-Series BiPAP A30
- A-Series BiPAP A40 (ventilator)
- A-Series BiPAP Hybrid A30
- A-Series BiPAP V30 Auto (ventilator)
- C-Series ASV (ventilator)
- C-Series S/T and AVAPS
- DreamStation
- DreamStation ASV
- DreamStation Go

- DreamStation ST, AVAPS
- Dorma 400
- Dorma 500
- E30
- Garbin Plus, Aeris, LifeVent (ventilator)
- OmniLab Advanced+
- REMstar SE Auto
- SystemOne ASV4
- SystemOne (Q-Series)
- Trilogy 100 (ventilator)
- Trilogy 200 (ventilator)

For patients who are using its Bilevel PAP and CPAP machines, Philips is advising that they discontinue and consult with their physicians to determine the benefits of continuing therapy and potential risks.⁶ For patients using Philips’ life-sustaining mechanical ventilators, Philips advised that they “DO NOT discontinue or alter prescribed therapy, without consulting physicians to determine appropriate next steps.”⁷

Shortly after the recall, Glenn Danas, Esq., from Robins Kaplan filed consumer class action claims to seek recovery for the losses sustained by all purchasers and users of recalled devices, as well as medical monitoring damages, where applicable. Present in all these actions is whether the millions of recalled devices are now rendered worthless because of the degradation and off-gassing of the PE-PUR Foam. In addition, our national mass tort practice group is actively investigating injuries related to these recalled devices, including cancer and respiratory claims.

Robins Kaplan welcomes the opportunity to discuss these recalled devices for class action and/or personal injury claims further with your law firm, as well as any potential client referrals. Please contact our New York mass tort partner, Rayna E. Kessler, Esq., at (212) 980-7431 or RKessler@RobinsKaplan.com.

1. <https://www.fda.gov/medical-devices/safety-communications/philips-respironics-cpap-bipap-and-ventilator-recalls-frequently-asked-questions>
2. <https://www.fda.gov/medical-devices/safety-communications/update-certain-philips-respironics-ventilators-bipap-and-cpap-machines-recalled-due-potential-health>
3. Id.
4. Philips Sleep and Respiratory Care Update – Clinical information for physicians, June 14, 2021, [philipsrecall-clinical-information-for-physicians-and-providers.pdf](https://www.philips.com/healthcare/e/sleep/communications/srcupdate#section_2) (accessed June 27, 2021).
5. Associated Press, Philips recalls ventilators, sleep apnea machines due to health risks, NBC NEWS, <https://www.nbcnews.com/business/consumer/philips-recalls-ventilators-sleep-apnea-machines-duehealth-risks-n1270725> (accessed June 27, 2021). Medical Device recall notification (U.S. only) / field safety notice (International Markets), PHILIPS RESPIRONICS (June 14, 2021), https://www.usa.philips.com/healthcare/e/sleep/communications/srcupdate#section_2 (accessed June 27, 2021) (Questions and answers).
6. Id.

CASE RESULTS

\$27.8 MILLION JURY VERDICT SECURED IN PERSONAL INJURY CASE ON BEHALF OF TWIN CITIES DOCTOR

A Robins Kaplan trial team led by Patrick Arenz secured a \$27.8 million verdict, including \$10 million in punitive damages, for Dr. Richard Tholen, a top Twin Cities plastic surgeon, who endured an amputated leg after he was denied emergency evacuation by Assist America Inc., the nation's largest provider of global medical emergency services. The *Star Tribune* reports the nearly \$28 million verdict as one of the largest, if not the largest, in a personal injury case in Minnesota history.



PATRICK ARENZ

\$1.1 MILLION SETTLEMENT IN MEDICAL MALPRACTICE CASE

Peter Schmit and Seth Zawila represented a woman who presented to a hospital with severe abdominal pain over several days. Medical providers failed to appropriately intervene, and the woman's pain became severe ischemia of the bowel. We settled at early mediation with one group of defendants for \$1,100,000. We will shortly be filing suit against the remaining defendants.



PETER SCHMIT

\$900,000 SETTLEMENT IN MEDICAL MALPRACTICE CASE

Peter Schmit and Seth Zawila represented a man who underwent a spine procedure. During the procedure, a type of medical monitoring known as intraoperative neuromonitoring identified a highly alarming loss of responsive signal in the man's nerves. Despite this loss of responsiveness, medical providers did not intervene and the man was rendered an incomplete quadriplegic. After taking depositions, and just months before trial, we secured a settlement with one defendant on behalf of the man and his family for \$900,000. We settled with the other for an undisclosed sum.



SETH ZAWILA

\$1.75 MILLION RESOLUTION FOR TBI CLIENT

Tony Schrank and Tim Purdon resolved a bicycle vs. truck traumatic brain injury matter for \$1.75 million.



TONY SCHRANK

PERSONAL INJURY SETTLEMENT IN DOG BITE CASE

Liz Fors settled a case on behalf of a three-year-old boy who was attacked by his neighbor's dog while visiting the neighbor with his older brother and mom. He had significant wounds on his face, which were surgically repaired. An infection set in, requiring two days inpatient care on intravenous antibiotics. Since the attack, the boy is hyper-vigilant of his surroundings, looking for dogs that might bite him. He doesn't want to talk about the "owies" from the dog, even after therapy to help process the trauma. We confidentially settled the case.



TIM PURDON

MEDICAL MALPRACTICE SETTLEMENT FOR FAILURE TO DISCOVER RESPIRATORY ARREST, RESULTING IN COMA

Mark Hallberg and Seth Zawila confidentially settled a medical malpractice case involving a client who suffered respiratory arrest during a medical procedure. The client underwent surgery at an ambulatory surgery center. The anesthetist failed to recognize that our client lost the ability to protect his airway and our client suffered respiratory and cardiac arrest. As a result of the prolonged respiratory arrest, our client suffered a profound anoxic brain injury and is in a coma. Our firm secured a structured settlement that provides a monthly benefit for the rest of our client's life.



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AWARDS AND RECOGNITION

RON SCHUTZ, TARA SUTTON NAMED TO *LAWDRAGON* “500 LEADING LAWYERS IN AMERICA” GUIDE

Lawdragon has listed **Ronald J. Schutz** and **Tara Sutton** in its “500 Leading Lawyers in America” guide. According to the legal media company, the guide is the leading source to the nation’s best lawyers and judges. Those named represent less than one-half of one percent of the legal profession, placing them among the most elite group of legal professionals.

BRANDON VAUGHN NAMED A 2022 MOST INFLUENTIAL BLACK LAWYER BY *SAVOY MAGAZINE*

Brandon Vaughn has been named to *Savoy Magazine*’s 2022 Most Influential Black Lawyers list. This list features the “best of the best” of Black lawyers who are partners within leading national law firms or who serve as corporate or general counsel for Fortune 1000 companies.

MINNESOTA LAWYER HONORS EIGHT ROBINS KAPLAN ATTORNEYS AS 2021 ATTORNEYS OF THE YEAR

Patrick Arenz and a team of attorneys including **Jeff Gleason**, **Munir Meghjee**, **Jamie Kurtz**, **Nathaniel Moore**, **Jason Pfeiffer**, **Haynes Hansen**, and **Jaime Wing** have been named 2021 Attorneys of the Year by *Minnesota Lawyer*. This annual award recognizes recipients’ leadership skills, involvement in noteworthy cases, and commitment to public service.

TONY SCHRANK PROMOTED TO PARTNER

Tony Schrank has been promoted to partner, effective January 1, 2022. Schrank is a personal injury and wrongful death trial attorney who helps clients who have been injured or lost a family member due to another party’s fault. He has handled approximately 100 depositions, argued dispositive and significant motions, first chaired arbitrations, succeeded in mediations, and tried cases to verdict.

THREE ROBINS KAPLAN PARTNERS RECEIVE 2021 MINNESOTA LAWYER ICON AWARD

K. Craig Wildfang, **Teresa Fariss McClain**, and **Bob Bennett** were honored at the *Minnesota Lawyer* ICON Awards event on December 9 at the Hyatt Regency Minneapolis. The award recognizes attorneys or business leaders who have exhibited distinctive excellence that puts them at the top of Minnesota’s legal and business communities.



Photo credit: Finance & Commerce