

Product Liability Group Of The Year: Motley Rice

By Emily Field

Law360 (December 16, 2020, 4:55 PM EST) -- Motley Rice LLC's work on securing a \$1.6 billion deal to end the vast majority of litigation over Bayer AG's Essure birth control device landed it a spot on Law360's 2020 Product Liability Practice Groups of the Year.

Motley Rice partner Fidelma Fitzpatrick, who served as lead counsel in the litigation consolidated in California state court, said that the firm was one of the first to begin handling cases over Essure in 2015, before the U.S. Food and Drug Administration said that Bayer should label the devices with "black box" warnings — the agency's strongest safety warnings.

Several years before Motley Rice became involved in the litigation, Fitzpatrick said that a vocal group of advocates who had problems with the device started finding each other on social media. They started raising public awareness and lobbying the FDA, Fitzpatrick said



"This litigation came about by a group of women who advocated for themselves," Fitzpatrick said. "It's really a testament to the solidarity that these women had in advocating for themselves and it was really revolutionary."

The women claimed the Essure coils, which are inserted into the fallopian tubes, have caused serious health problems, including the perforation of the uterus and fallopian tubes, abdominal pain, menstrual issues, miscarriages, and unintended pregnancies.

Bayer bought the Silicon Valley startup Conceptus Inc., which created the Essure devices, for \$1.2 billion in 2013, 11 years after the FDA approved the product. However, in 2015, the FDA convened a safety panel that weighed the risks of using the devices as birth control in response to a surge of complaints it received about them.

The deal includes litigation consolidated in California as well as in federal court in Pennsylvania and ends about 90% of the nearly 39,000 claims brought by women in the U.S.

A trial in the litigation was scheduled to start in March, but was put on hold due to the COVID-19 pandemic, Fitzpatrick said. In light of the delay and the travel restrictions, Fitzpatrick said the firm used the time to work with Bayer on reaching a settlement.

Bayer also pulled the device from the market in 2018, which made it easier to reach a settlement since it wasn't an active product, Fitzpatrick said.

Motley Rice has also continued to work this year on the multidistrict litigation over the opioid crisis, in which the firm represents dozens of counties, cities and other municipalities as co-lead counsel.

The municipalities in the litigation claim that drugmakers, distributors and pharmacies contributed to the opioid epidemic by promoting the benefits of the painkillers while downplaying their addiction risks and failing to monitor for suspiciously large orders of the drugs.

Motley Rice co-founder Joe Rice, a lead plaintiffs attorney in the MDL, said that the firm has continued to make progress in the litigation, despite the setbacks posed by the pandemic.

"It's been a complex year for multiple reasons, trying to manage moving states' cases on behalf of attorney generals ahead, trying to move the MDL, the subdivision bellwether cases and trying to work on a global resolution that is trying to resolve one of the most complex litigations that our system has ever had in the middle of a COVID pandemic and an increased opioid epidemic," Rice said.

A number of bellwether trials were supposed to start this year, but have been pushed back to 2021 due to coronavirus concerns.

For example, there have been multiple rulings by courts across the country finding that the defendants have not been forthcoming in discovery, Rice said.

"We're getting close to the transparency that the public deserves, and we're going to keep knocking on the door until we get those facts because the public has a right to know how we got into this mess," Rice said.

In addition to the setbacks and travel restrictions posed by the pandemic, the loss of Special Master Frances McGovern in February was another professional and personal hurdle, Rice said.

But the good news is that there are still significant settlement discussions taking place, and Rice is hopeful minor issues in the talks will be resolved by the end of the year, if not the first quarter of 2021.

--Editing by Jay Jackson Jr.