

MASS TORTS UPDATE

Expert Analysis

## Recent Developments in Hair Product, Juul and Tylenol Litigations

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### Lawsuits Filed Regarding the Use of Hair Straightening Products and an Increased Risk of Uterine Cancer.

In 2022, a National Institutes of Health study found that women who reported frequent use of chemical hair straightening or relaxing products were more than twice as likely to develop uterine cancer as compared to those who did not use the products. Frequent use was defined as use of the hair straightening or relaxing products four or more times in the previous year. The researchers found no associations for other hair products—such as hair dyes, bleach, highlights or perms—and uterine

cancer in women. The study looked at approximately 33,500 women ages 35 to 74 years old. These women were followed for nearly 11 years, and 378 uterine cancer cases were diagnosed. Studies have also shown that use of chemical hair straightening products may lead to an increased risk of breast and ovarian cancer.

Approximately 60% of the women who reported use of chemical hair straightening or relaxing products self-identified as Black women. It is important to note that given the higher prevalence of use of these products among Black women, the adverse health effects may be more consequential for African American and/or Black women.

Chemical hair straightening and relaxing product formulations typically contain hazardous chemicals, including phthalates, parabens, bisphenol A, metals and formaldehyde. The endocrine-disrupting chemicals found in chemical hair straightener and relaxing products may have contributed to cancer



risk. Endocrine disruptors, such as formaldehyde and phthalates, interfere with hormone functions, such as the natural production of developmental, reproductive, immunity and neurological hormones.

As a result of injuries stemming from the use of chemical hair straightening products, several nationwide lawsuits, including one against L’Oreal, have been filed. The U.S. Judicial Panel on Multidistrict Litigation (JPML) is scheduled to hear oral arguments on Jan. 26, 2023. The JPML will determine whether the hair straightening lawsuits being filed in federal courts should be consolidated for pre-trial and discovery purposes as a Multidistrict Litigation, and if so, the JMPL will determine what

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federal jurisdiction will house the consolidated action.

**Consolidated Litigation Ordered by Judicial Panel for Multidistrict Litigation Where Tylenol (Acetaminophen) Use During Pregnancy Can Cause Autism in Children.** In October 2022, the Judicial Panel on Multidistrict Litigation (JPML) ordered the consolidation of *In re Acetaminophen ASD/ADHD Products Liability Litigation*, to the U.S. District Court, Southern District of New York, as Multidistrict Litigation No. 3043, before the Honorable Denise Cote. The Multidistrict Litigation consolidated similar cases for pre-trial and discovery purposes regarding Tylenol (Acetaminophen) use during pregnancy causing autism spectrum disorder and/or attention-deficit/hyperactivity disorder (ADHD) in children.

There are a number of currently filed lawsuits naming retailers who sell the over-the-counter Tylenol (Acetaminophen) as defendants. Some of these retailers include CVS Pharmacy, Rite Aid, Safeway, Target and Walgreens, as well as the manufacturer of brand name Tylenol, Johnson & Johnson. These lawsuits allege that retailers, in addition to the manufacturer, failed to warn pregnant users of acetaminophen's neurological risks to the fetus.

Several scientific publications provide further evidence to substantiate the plaintiffs' claims. One such study, published in 2018 by

the American Journal of Epidemiology, looked at over 130,000 pairs of mothers and children. They found a 20% higher associated risk of autism and a 30% higher associated risk of ADHD for children who had prolonged exposure to acetaminophen in the womb.

The consolidated action continues to develop with various motions, court hearings, and orders having occurred to-date. A discovery plan and schedule are expected to be

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put in place sometime in early 2023.

**Juul and Plaintiffs' Leadership Reach Settlement Agreement.** Juul Labs is a manufacturer of tobacco vaporizers and pods. Plaintiffs were filing cases against Juul for years, asserting they were harmed by its tobacco products. On Oct. 2, 2019, the Judicial Panel on Multidistrict Litigation issued an order creating a Multidistrict Litigation, consolidating and transferring all Juul cases to the Northern District of California. The Multidistrict Litigation is *In re Juul Labs Marketing, Sales Practices and Products Liability Litigation*, Case No. 3:19-md-02913-WHO (N.D. Cal.).

On Dec. 6, 2022, Juul and Plaintiffs' Leadership announced that they had reached a settlement agreement, through which Juul would provide funds to settle claims filed by roughly 10,000 plaintiffs.

Altria Group is a manufacturer of tobacco products, including Marlboro cigarettes. Because Altria has a 35% ownership interest in Juul, many lawsuits against Juul also named Altria as a defendant. Altria, however, is not a party to the broader settlement agreement between Juul and Plaintiffs. A bellwether trial is currently scheduled to proceed against Altria—without Juul—starting on April 17, 2023.

The bellwether currently scheduled to begin in April is *San Francisco Unified School District v. Juul Labs*, Case No. 3:19-cv-08177-WHO (N.D. Cal.). The Honorable William H. Orrick, U.S. District Judge for the Northern District of California is currently presiding over the matter.