

A Brief history of Pharmaceutical Group Actions in England & Wales

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Product Liability Directive 1985

Harmonising Product Liability Rules across EU Member States

Incorporation:

UK: 1 March 1988 – Consumer Protection Act 1987

France: 23 May 1998 – Law Number 389-98

→ Strict Liability Regime = the producer of a defective product is strictly liable for any damage caused by the use of that product by an individual

Thalidomide



- 8-10,000 children born with severe defects including absence of limbs
- Claim brought in negligence – allegation that Distillers had been negligent in researching, testing and marketing of the drug
- 65 Cases settled in 1968, followed by establishment of settlement fund
- Led to the setting up of the Commission on Safety of Medicines, providing formal licensing and regulation of medicines in the UK

Opren

- Proceedings issued 1985
- First Group Action where court imposed case management powers
 - single judge to manage the group litigation
 - master pleadings
 - individual statements of claim
 - medical reports on liability and causation
- 1987 – first tranche of cases settled
- 1992 – Remaining cases time-barred by Court of Appeal

HIV Haemophilia Litigation

- 1982 – first reports of haemophiliacs with HIV Virus
- 1985 – Test for HIV virus becomes available → possible to exclude infected donors
- 1987 – UK Government sets up £10 million no fault compensation scheme
- Single Case Managing Judge
 - Preliminary indications, not binding orders
 - Steering committees of Claimant and Defendant lawyers
 - June 1989 - first procedural hearing
 - January 1991 – trial listing

Benzodiazepine Group Litigation

- 1953 – first Benzodiazepine discovered
- 1988 – launch of group action with 17,000 claims
 - Preliminary commentary instead of formal Defence
 - Each claim to be fully pleaded – Master Pleading unacceptable
 - Cut-off date imposed for applying for Legal Aid
 - Legal Aid Board represented at relevant hearings
 - Judge considers both cause of action and risk/benefit when deciding whether to strike out
- 1993 – Legal Aid withdrawn (£35 million)

Norplant Group Litigation

October 1993 - Product Launched

May 1995 – Norplant Action Group (NAG) formed

The Norplant Costs Order:

- If a claimant drops out of the group she will not be able to recover her share of generic costs from the defendant, even if the remaining claimants succeed on generic issues at trial – and will be liable for a proportionate share of the defendant's costs
- February 1999 – Trial Date
BUT Legal Aid withdrawn following exchange of expert evidence
- April 1999 - Norplant withdrawn

MMR Vaccine Group Litigation

- Register of Claimants
- Costs sharing order
 - Appealed
 - Discontinuing claimants' entitlement to recover share of generic costs to be left until after trial BUT
 - no automatic entitlement of individual claimants to recover share of common costs regardless of whether or not their cases succeed
- August 2003 – Legal Services Commission (formerly Legal Aid Board) removes public funding
- Legal Aid Withdrawn - £15 million

The Future



Reform of group actions

- Sector specific reform in UK eg financial services industry
- Costs – Contingency Fees?
- Third Party Funding?