

Personal Injury Law Podcast

by Rosenfeld Injury Lawyers

Zantac Lawsuits Update

Jonathan Rosenfeld :

Hi, I am Jonathan Rosenfeld and I am an attorney, and I am with my good friend and colleague Marty Gould today. We are here to talk about probably one of the largest and most prolific drug recalls in the United States ever, certainly in recent history, and that involves the popular heartburn medication Zantac.

Jonathan Rosenfeld :

Marty is very active with the Zantac litigation, and he is here today to discuss the status of the litigation who qualifies for this and to sort of give us some insight as to how these cases may play out.

Jonathan Rosenfeld :

Marty, first off, thank you for joining me today. I appreciate it, and could you just briefly introduce yourself, and let us know a little bit about the background and just what Zantac is and bring us up to date with the current status of the recall on Zantac?

Marty Gould:

John, thanks for the introduction. I'm of counsel with Rosenfeld Injury Lawyers. Our team represents hundreds and hundreds of individuals that have cancer that we believe was caused by a Zantac consumption or generic. Zantac was a very popular heartburn and acid reflux medication.

Marty Gould:

Millions and millions of people have used Zantac for those purposes, and recent studies have shown that there's a connection between an ingredient in Zantac, ranitidine, and cancer. It's the chemical structure of the Zantac tablet that once it's consumed, and once it's mixed with water in your body, it causes what's called NDMA, a very toxic substance that is linked to cancer.

Marty Gould:

For that reason, people that have been taking Zantac, many of these people for years and years on a frequent basis, are now getting cancer. Typically, it's a stomach cancer, bladder cancer, stomach cancer, but also the blood-based cancers such as liver cancer. Right now, there's a litigation that's being handled, a multi-district litigation, where all the Zantac cases are being filed in the Southern District of Florida.

Marty Gould:

Anyone who has a case, they're filing their claims there, and the lawyers are litigating those cases now. We're still in the earlier stages, and there's trials that are expected to start going in probably 2022.

Jonathan Rosenfeld :

Now, you mentioned that these cases are filed in what's called a multi-district litigation or MDL. I want to talk with you about the differences between an MDL that some people may not be familiar with and a traditional lawsuit. First off, I guess, as a starting point, I guess, what is an MDL case?

Marty Gould:

Sure. Multi-district litigation is essentially a type of case where all the cases may be a little bit different, so if you've been taking Zantac for one year, several times a week, and somebody else has been taking Zantac for 10 years on a daily basis, you may have a different type of case because your exposure was different. If you have a family history of cancer, that may be a relevant fact.

Marty Gould:

Everyone's case is a little bit different. Everyone's injuries are a little different. Some people tragically are filing a case on behalf of a loved one who's deceased, who has died because of cancer linked to Zantac. Others may just have an early diagnosis, so the injuries are different every case.

Marty Gould:

A multi-district litigation, essentially, consolidates all the different cases into one courtroom for efficiency purposes. It's typically done in a federal courthouse. In this case, it's a federal courthouse in the Southern District of Florida.

Marty Gould:

To avoid having rulings in many different states, in many different jurisdictions that could be conflicting, you'll have one judge who will oversee the litigation. Will set various deadlines, and essentially, the cases are litigated in a fashion where there's bellwether cases. The steering committee that's litigating most of these cases will choose a certain number of cases, that will be the first cases to be litigated, the first cases to go to trial.

Marty Gould:

Once these bellwether cases are concluded, that usually allows the rest of the plaintiffs to know what the potential values of these cases are, and it usually drives settlements. If there's successful results at trial, it usually results in a settlement agreements or settlement discussions on other people that have cancer that was linked to Zantac.

Jonathan Rosenfeld :

Right now, we have this MDL that's been filed in Florida, but we also have a recall that was issued by the food and Drug Administration, the FDA, related to Zantac, and that would happen in 2000... I'm sorry, in September 13, 2019, the FDA issued that recall. Why, I guess, did the FDA issued this recall, and what is the impact that you see in terms of the recall on the pending litigation?

Marty Gould:

There are studies going back to the '80s that linked NDMA and Zantac to cancer, and as of late, because lawsuits were filed, the US Food and Drug Administration started its own investigation, and September 13, 2019, they essentially published a public warning about the link. There was additional research and lab testing.

Marty Gould:

The levels of NDMA found were significantly higher than which was deemed to be safe for a body to consume, certainly very alarming. The FDA certainly announced that this was a potential health hazard.

Marty Gould:

In the wake of the FDA safety warnings, the drug manufacturers for Zantac and its generic brands pulled off the drug from shelves across the country. Walmart, Walgreens, CVS, many of the big retailers pulled the drug because the consensus was it wasn't safe to be consumed.

Marty Gould:

The unfortunate reality is that, while people now aren't being exposed to Zantac and the cancer-causing substances within the tablets, we still have thousands and thousands of people that have been using Zantac for years and have existing injuries. That's what these cases are about. It's about compensating people for their past harms and for their current harms.

Jonathan Rosenfeld :

Let me ask you this, so you mentioned that, first off, Zantac has been on the market since the 1980s, so this has been on the market for a long time. I guess as a consequence of the patents are on the original drug expiring, now we have different manufacturers and generic versions of this that were on the market. Is that correct?

Marty Gould:

That's correct. You had various drug manufacturers that were producing Zantac or a generic version of it, ranitidine, Sanofi, GlaxoSmithKline, [Oringer 00:09:03], and the claims are essentially falling into two categories, defective design or manufacturer of that drug, that it was defective. It was harmful. It shouldn't have been sold to the public in the first place.

Marty Gould:

The second part of that is the failure to warn consumers, because people are taking these drugs because the advertisements are saying, look, this is a safe drug, and I can remember some of the Zantac commercials. They had somebody with a fire extinguisher, and he's using it and it's,

"Hey, this is going to extinguish your heartburn and your acid reflux. It's a safe drug to use."
That was the message, and that wasn't the case.

Marty Gould:

I think through the discovery process, we'll get more specifics. When did these drug manufacturers first know that it wasn't harmful? If there's studies out there from the '80s saying that there was that potential harmful cancer-causing link, there's good reason to believe that the manufacturers had that information, and because they were selling it to millions and millions of consumers, they didn't act on that information.

Jonathan Rosenfeld :

I guess at this point, if you took Zantac or the generic equivalent, first off, does it make any difference in terms of pursuing a legal claim? In other words, if I took Zantac manufactured by Sanofi or by Glaxo, does it make any difference in terms of my legal rights, in terms of filing a lawsuit at this point?

Marty Gould:

Well, John, as you know, we represent hundreds and hundreds of plaintiffs who have used either the name brand or the generic. There are legal differences, and that's why I think it's important for people to speak with a lawyer to understand what the potential legal ramifications are if you were only consuming a generic, but there's a few things to keep in mind.

Marty Gould:

When we sign a case, the first thing we tell people is, for one, do you have any Zantac in the house? Do you have any ranitidine in the house? Were you prescribed it? We've had many clients that still have the bottle, preserved the bottle. That's going to be evidence in the case. It's something we certainly want to hold on to.

Marty Gould:

Then, I guess, the next part of that is proving the use of the drug, medical records. Some people were prescribed it. Other people maybe, because it was sold over the counter, weren't prescribed it, but had reported to other primary care physician or other doctors when they were asked, are you on any drugs prescribed or over counter? They mentioned Zantac.

Marty Gould:

Those are some things to keep in mind, but there is a difference in terms of the cases, if it's generic versus name brand. That's why it's important to speak to a lawyer about that.

Jonathan Rosenfeld :

Now, these cases are filed, and they're pending in this MDL in Southern District of Florida. Can you give us a little insight as to how these cases are handled in terms of an MDL, what the court really does to sort of get a grasp of these cases?

Jonathan Rosenfeld :

We have people from really all over the country who have been impacted and what the court is doing in terms of unifying these cases and getting a grasp as to how people have been impacted. Logistically, it seems like a little bit of a nightmare to have all these different people and all these different cases and everything else.

Jonathan Rosenfeld :

As a person who has been impacted, either individually or if I have a family member who may have been impacted, and I'm looking at this and saying like, oh boy, do I even want to get involved? Can you just give some insight as to what a plaintiff could expect if they were to get involved with the case?

Marty Gould:

Sure. Step one is, we have an internal questionnaire that we have potential clients fill out, which asks a lot of the questions that the court is going to want to know, the type of cancer the individual has, when they used the drug, how often they use it, are they still using it, and that's essentially the information that we're going to have to submit to the court.

Marty Gould:

Judge Rosenberg from the Southern District of Florida, the federal judge who's overseeing the case, has essentially issued a questionnaire. It's called a census plus form that all claimants have to complete and file in the Zantac case. Those questions are the questions that we have our clients answer, when they used it, how often, for how long, what's their diagnosis.

Marty Gould:

From there, that allows the court, the defense and the lawyers, to have a better idea of each individual's claim. It provides a basis to verify the claims and make sure that the ones we have are legitimate claims that we can ideally get compensation for.

Marty Gould:

With that, there may be a second phase to the case, where after the census plus form is submitted, we may have a more detailed questionnaire that we have to submit to the court, sometimes with you attached medical records, verifying your cancer diagnosis and any medical records that list Zantac as a drug that you use, whether it was prescribed, or perhaps you referenced it to a doctor.

Marty Gould:

That's not the only way you can prove use. Your testimony is evidence, so many people don't keep receipts. Maybe they didn't tell their doctors they're taking it because it's over the counter. You can still have a case, even if you don't have that. Your testimony is evidence. If you have family members that knew you were taking it, their witnesses, they can provide evidence.

Marty Gould:

There's many ways in which we go about proving your use and litigating your case. It starts with that initial intake to find out whether you meet the certain criteria that we believe would put you in a position to file a claim.

Jonathan Rosenfeld :

Now, before you even get to the point where you're filing a claim, I guess the first step is, hey, are you eligible? When I'm talking about eligible, I'm talking about the timeframe for bringing a case. Every single case is governed by a statute of limitations, and the statute of limitations in these cases, it varies by where the person lives. Is that correct?

Marty Gould:

That's correct. Even though there is a multi-district litigation in Florida, that doesn't mean that Florida law is controlling here. Every case, every claim in every client's case can be a little bit different, because you're applying laws often from that state in which the individual had experienced the harm, where they were consuming the Zantac.

Marty Gould:

If you were consuming the Zantac while you were living in Illinois and then you were diagnosed with cancer, and then you move to Michigan or Florida, the law that would apply in terms of the statute of limitations would likely be Illinois law, but every case is a little bit different. It's important to speak with a lawyer to help you find out whether there's an issue with the statute limitations.

Marty Gould:

With cases against drug companies, such as this or Roundup or Losartan, many people have consumed the drug decades earlier, and they consumed it for a long period of time. It's not like being in a car accident where if you were hit by a car, you knew that you were injured the day of the accident. There is a period of time, a latency period, where you may not be diagnosed with cancer.

Marty Gould:

It's the worst news to get. It's a very traumatic situation, but you may not get that diagnosis until 10 years after you had been taking Zantac. There's something called the discovery rule in many states, a point in time where you discovered that you were injured and discovered why you were injured. That could trigger the running of the statute of limitations.

Marty Gould:

Every case is a little bit different, but if you had consumed it a long time ago, that may not close the door to pursue a case, and you should certainly call lawyer and find out if you still can.

Jonathan Rosenfeld :

Interesting. One of the ancillary issues here is we have a whole nother group of potential plaintiffs who may have taken Zantac or the generic equivalent, and they may have developed a cancer and they may have have died from that cancer.

Jonathan Rosenfeld :

In those situations, can the family of the deceased pursue a claim at this point? Can they pursue a wrongful death claim if their loved one took Zantac in the past? They may not have been aware of the connection between their cancer and the NDMA in Zantac.

Marty Gould:

In many cases, you can. A family can file a wrongful death case on behalf of a loved one who was taking Zantac and, unfortunately, died of cancer. There's still the same process is involved, where we file a census plus form. We try and retrieve as many of the medical records as we can, although you can still pursue it.

Marty Gould:

Then there's also something to note is, sometimes, because we're dealing with cancer cases, we have clients that file lawsuits while they're still alive, and then tragically, they died during litigation. The family can then step in and pursue that litigation for the loss of that loved one, for the wrongful death and survival damages.

Marty Gould:

Courts recognize the sad reality that many claimants may not survive to see the under this case or really any of these cases, and because of that, in some of those circumstances, we can fight to have a deposition of the individual before they pass away. It varies from case to case, and it varies in terms of the health of the plaintiff.

Marty Gould:

But it's certainly something we've done in many cases where we've taken a deposition of our client before he passed away, and judges understand that, and the defense attorneys understand that. Then they're sensitive to the situation and the emotional difficulties surrounding giving testimony in that circumstance.

Jonathan Rosenfeld :

Now these, the pending Zantac cases, they're civil lawsuits, and I want to talk with you about damages in a case like this. Now you and I, we don't have a crystal ball. We have no way of anticipating how these cases may play out. There's still a lot of evidence that needs to be disclosed by all parties involved, but obviously, when you file a civil lawsuit, your sole recourse really is to get economic compensation.

Jonathan Rosenfeld :

Obviously, we have no way of predicting the value of these cases, but can you just talk through the available damages in a civil case, such as Zantac, where someone at home may be thinking, well, I don't know if it's worth bringing a case. It may not be that much, which I hear pretty consistently. Can you just sort of explain the potential damages available in these cases?

Marty Gould:

Yes. We're talking about cancer lawsuits here. The damages are catastrophic. It's the worst news for anybody to hear that they were diagnosed with cancer, and we're also talking about a case where the allegation is that these drug manufacturers were creating a drug that was dangerous, was cancer-causing.

Marty Gould:

People were consuming this, and it was essentially like putting gunpowder and a fuse in somebody's body. It was being lit once it's mixed with water and other substances within your body and causing a very toxic cancer-causing substance, NDMA. The types of recoveries in a situation like that, where somebody's wrongful conduct caused somebody else to get cancer, in some cases to die.

Marty Gould:

You can get what's called loss of consortium. The family can get a recovery and survival claim, family can get a recovery for the loss of love, the loss of having that person around, pain and suffering for when the person was alive, emotional trauma, emotional distress, economic damages, lost income that the person could have earned, past and future lost income. If they weren't able to work for a period of time, because of the cancer treatment.

Marty Gould:

You can also get punitive damages in these cases. At this stage, we don't know yet whether we will, but there's certainly going, in many of these cases, we do get punitive damages. Those are additional damages, which can be significant, as a way to punish the drug manufacturers if they in fact knew about the harms and didn't warn people, or didn't take the necessary actions to protect the consumers.

Jonathan Rosenfeld :

Well, it certainly seems like these are cases which really are going to be an emerging area of litigation. I really appreciate you sharing your insight with us.

Jonathan Rosenfeld :

If someone is sitting on the sideline, sitting at home, is there anything you would tell them to do at this point in terms of moving forward? If they're sitting on the sideline and they're a little hesitant at this point, do you have any suggestions for them?

Marty Gould:

They should immediately contact a lawyer to understand their rights, because they don't have to make a decision whether they want to file a claim or not just yet. But they should understand are there any deadlines that could apply to them, is there any statute limitations that may be expiring soon, and speak with a lawyer and find out what their rights are and also whether they have a potential claim.

Marty Gould:

Maybe they don't, but it would probably give them some peace of mind to know that they had asked the lawyer. They had spoken to a lawyer, and they did not meet the criteria, but you don't want to sit around and do nothing if there's a chance that your Zantac consumption did cause serious injuries up to and including cancer.

Marty Gould:

If you were taking Zantac for a long period of time and you don't have cancer, you should still be monitoring their health. I would speak to a doctor about it, just to get their opinions on whether you are at risk, and more importantly, to make sure that you don't take any other substances like Zantac that have this toxic substance, and that you switched to alternative drugs that are safer for heartburn or acid reflux.

Jonathan Rosenfeld :

This is great information, Marty. I really appreciate you sharing your expertise with us today. I look forward to talking with you about this again as these cases proceed towards trial. Thanks again, and I'm going to put your contact information in our show notes, but we appreciate your time. Thank you.