Gabriel A. Assaad

1770 Saint James Place
Suite 100
Houston, TX 77056
(713) 523-5500
gassaad@mcdonaldworley.com



For the past 17 years[1], my practice has primarily focused on medical malpractice, products liability, and FLSA cases. I have conducted hundreds of depositions of experts (doctors, engineers, economists, life care planners, etc.), treating physicians, nurses, government officials and employees, lawyers, and fact witnesses. Most of these complex cases involved many *Daubert* challenges, discovery motions, summary judgment motions, and motions in *limine*. In addition, I have also presented oral argument to the District of Columbia Court of Appeals and the Supreme Court of Virginia on multiple occasions.

I have ample experience with federal practice and procedure. Over the past nearly 10 years, I have handled numerous FLSA cases in federal courts across the country. Many of the FLSA cases dealt with FRCP Rule 23 class actions and collective actions. Given that experience, I am very familiar with federal practice and procedures and many of the local rules of may courts. My litigation experience in the Bair Hugger MDL, Smith & Nephew MDL, and 3M Combat Arms MDL has also provided me experience litigating and trying cases in an MDL.

Bair Hugger MDL

My specific litigation experience in mass tort litigation began with the Bair Hugger MDL that was formed in 2015. However, my firm commenced the Bair Hugger litigation in 2013, and I spent the two years between filing and the MDL consolidation litigating these complex products liability cases without the assistance of a team of plaintiffs' attorneys.

When the JPML consolidated the Bair Hugger cases and assigned the MDL to the District of Minnesota, I remained very involved in all aspects of this case, including discovery and experts. To date, I have taken ten expert depositions, five depositions of study authors, many fact depositions of 3M's current and former employees, two depositions of corporate representatives, and six treater depositions. In addition, I defended five expert depositions. I was also involved in the selection and vetting of our Plaintiff's experts.

The Bair Hugger MDL consisted of millions of pages of documents produced by the 3M. I was involved in reviewing and compiling subsets for many of the depositions given the complex issues in the case. In addition, I also was part of the team that was involved in the Bellwether selection process, reviewing Bellwether specific documents, and preparing the bellwether cases for trial.

Also, in the Bair Hugger MDL, I was responsible for briefing and arguing a several of the *Daubert* motions on issues related to general causation (and thus applicable to all the cases in the MDL), as well as discovery motions and motions in *limine* for the first bellwether trial. In particular, one of the issues we dealt with in a Bellwether case was the *Touhy* doctrine.

[1] Upon graduating law school, I practiced in patent litigation for a large Washington, DC firm for two years.

Finally, I am also part of the settlement team in categorizing the 5,000+ cases for future discussion regarding possible settlement and future Bellwether selection (if needed). This process involves issues critical analysis of key issues ranging from product identification to statute of limitations and statutes of repose.

Smith & Nephew MDL

In the Smith & Nephew MDL litigation, I conducted numerous depositions taken thus far including depositions of key internal witnesses overseas relating to adverse event reporting company-wide, requiring knowledge of both the technical systems used and the regulatory requirements in tracking such reports. Furthermore, because of my engineering background, I was nominated to be on the science committee to identify and vet potential experts, as well as conduct expert depositions. Furthermore, I am one of the four attorneys that will be on the trial team in the first Bellwether case this year.

Representative Trial Experience

1. Louis Gareis v. 3M Corporation, et. al., Case No. 0:16-cv-04187-JNE-FLN (D. Minn. 2018)
    a. Trial Dates: May 14-30, 2018
    b. 1st Bair Hugger MDL Bellwether trial
    c. The Bair Hugger litigation involved claims of liability that the Bair Hugger disrupts the airflow in an operating room causing an increase in particles and bacteria over the surgical site and, ultimately, infection. In orthopedic implant surgery, it is generally accepted that an increase in particles/bacteria of the surgical site significantly increases the risk of a periprosthetic joint infection.
    d. My role in the MDL and in the *Gareis* trial was focused on the engineering and science supporting plaintiffs' claims. My background in engineering was utilized with respect to particle flow, the effect of airflow in an operating room, and computational fluid dynamics (CFD). I was tasked with cross-examining Defendants' key engineering expert on the shortcomings and limitations of his CFD model.

2. Victoria Smith v. Peter A. Moskovitz, M.D., et al., Case No. 2011 CA 005467 (District of Columbia Superior Court 2015)
    a. Trial Dates: September 24 – October 2, 2015
    b. First Chair
    c. Smith was a medical malpractice case in which the orthopedic surgeon did not align her tibia while surgically placing a tibial nail.
    d. I presented both of Plaintiff's orthopedic expert witnesses as well as cross-examined Defendant's orthopedic expert witness.

3. McDonald v. District Lounge et al., 2011 CA 003216 B (District of Columbia Superior Court 2013)
    a. Trial Dates: October 15 – 22, 2013
    b. First Chair
    c. DRAM Shop/Wrongful Death case against a DC Nightclub
    d. I presented and cross-examined all the experts in this case, which included toxicology and security experts.

4. Houston v. Holt et. al., Case No. 2011-01306 (Harris County, TX 2013)
    a. Trial Dates: September 24 – October 2, 2013
    b. Second Chair
    c. Houston was a medical malpractice case in which the hospital failed to recognize that the Plaintiff had internal bleeding in his arm post shoulder surgery.
    d. I presented the orthopedic surgeon and the cardiovascular surgeon.

5. Jamal Javaid v. Grand Central, LLC, Case No. 2011 CA 000911(District of Columbia Superior Court 2013)
    a. Trial Dates: September 16-20, 2013
    b. First Chair
    c. Negligent Security involving a patron that was injured at a bar.
    d. I presented all the experts and treating physicians, including a premises security expert.

6. Hanan v. Washington Hospital Center, Case No. 2004 CA 003683 (District of Columbia Superior Court 2006)
    a. Trial Dates: September 20-28, 2006
    b. Second Chair
    c. Medical malpractice case involving prolonged intubation with a breathing tube that caused injury to Plaintiff's larynx and vocal cords.
    d. I presented the nursing experts regarding standards of care for patient monitoring.

7. Huffman v. Wynn et. al., 5:05-cv-00074-GEC-BWC (Western District of Virginia 2006)
    a. Trial Dates: August 21-23, 2006
    b. Second Chair
    c. Medical malpractice case in which Huffman claimed that Dr. Wynn negligently performed elbow surgery that caused nerve damage in his arm.
    d. I was responsible for the presentation of Plaintiff's orthopedic expert and the cross examination of the Defendants' orthopedic expert.

EMPLOYMENT HISTORY

McDonald Worley, Of Counsel: Houston, TX
November 2019 to present

I oversee the complex litigation cases which include product liability, multidistrict litigation, medical malpractice, class actions, and employment litigation. This includes the managing and training of a team of attorneys and staff to handle these cases.

In addition, I have been appointed to the Steering Committee for the TPC litigation and Co-Lead Counsel in the Boston Scientific Corporation Greenfield IVC Litigation.

Kennedy Hodges, LLP, Partner: Houston, TX
January 2012 to November 2019

During this period, I was responsible for the mass tort litigation practice as well significant involvement in multidistrict litigation cases throughout the country. This included the management of numerous attorneys and staff in the handling of thousands of cases in multiple litigations.

In addition, during this period, I was appointed to numerous Plaintiff Steering Committees including Science and Discovery Committee in Bair Hugger litigation, the Science Committee in the Xarelto litigation, the Discovery Committee in Taxotere PSC, and the Plaintiff Steering Committee Member in the Smith & Nephew Hip Litigation.

During my tenure, I was also involved in medical malpractice litigation and Fair Labor Standards Act collective and class action litigation.

Assaad Law, PLLC, Owner: Washington, D.C.
October 2008 to December 2014

Paulson & Nace, Associate: Washington, D.C.
June 2004 to July 2008

- Litigated numerous cases involving products liability, medical malpractice, personal injury, and legal malpractice cases
- Responsible for every aspect of litigation from client screening, discovery, depositions, motions practice, mediation and arbitration, and trial, and appellate practice including the drafting of numerous appellate briefs
- Conducted over one-hundred depositions, which included medical doctors and experts
- Argued in front of the Court of Appeals for the District of Columbia and the Supreme Court of Virginia

Dickstein, Shapiro, Morin & Oshinsky LLP, Associate: Washington, D.C.
August 2001 to October 2003; Summer of 2000

- Litigated various matters for clients including intellectual property matters
- Litigation includes all aspects of discovery, including the drafting and responding to interrogatories; organizing and analyzing discovery documents; and summarizing and analyzing deposition transcripts
- Draft and respond to various motions and briefs
- Participated in a multimillion-dollar patent and trademark infringement suit involving high tech surveillance equipment
- Patent prosecution of mechanical as well as semi-conductor patents

EDUCATION

Vanderbilt University Law School, Nashville, TN
JD Received May 2001
Vanderbilt Trial Lawyers Association; Intellectual Property Society; Phi Delta Phi; Legal Aid Society; Moot Court Participant

University of Florida, Gainesville, FL
B.S. in Mechanical Engineering, May 1996
Dean's List; American Society of Mechanical Engineers; Society of Automotive Engineers

MDL EXPERIENCE

- **MDL 2666: In re: Bair Hugger Forced Air Warming Products Liability Litigation**
  - The Bair Hugger litigation involves a forced air warming device used to warm patients during surgery. The Bair Hugger is manufactured by 3M Corporation. Plaintiffs in the Bair Hugger MDL assert numerous claims against 3M including design defect claims and failure to warn claims. To date, there has been only one Bellwether trial in this case which is presently being appealed to the Eighth Circuit Court of Appeals. General discovery has been completed and the parties are currently creating a matrix for future discussions.
  - Member of the Plaintiff's Executive Committee, Trial Team, Appeal Team, and Settlement Committee
  - Co-chair of the Discovery Committee and the Science Committee
  - Member of the Trial Team

- **MDL 2765: In Re Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation**
  - Smith & Nephew BHR litigation involves metal-on-metal hip implants. This MDL contains issues of preemption of some of the claims. The case is currently in general causation discovery.
  - Member of Plaintiff's Steering Committee and Science Committee

- **MDL 2885: In Re 3M Combat Arms Earplug Products Liability Litigation**
  - The 3M Combat Arms MDL involves a flanged hearing device with two sides that has both a linear and non-linear attenuation. This case involved significant defenses such as the government contract defense. This case is currently in the Bellwether trial phase.
  - Member of the Science Committee and Law & Briefing Committee

- **MDL 2592: Xarelto Products Liability Litigation**
  - Pharmaceutical Drug Case
  - Member of the Discovery Committee

- **MDL 2740: Taxotere (Docetaxel) Products Liability Litigation**
  - Pharmaceutical Drug Case
  - Member of the Discovery Committee

- **Boston Scientific Corporation, Greenfield IVC Filter Litigation: Case No. 1881CV02059**
  - This case pertains to a permanent intravenous filter ("IVC") that was marketed as a permanent filter, however, hundreds of patients IVC filters either migrated, perforated the vein, or fractured.
  - Lead Counsel

In re: TPC Group Litigation: Cause No. A2020-0236-MDL
- The TPC Group Litigation involved damages regarding the November 2019 plant explosion in Port Neches, TX
- Member of the Executive Committee**,** Discovery Committee**,** and Science Committee

BAR ADMISSIONS

State Bars Admissions: Texas; District of Columbia; Commonwealth of Virginia

Federal Court of Appeals: United States Court of Appeals for the Third Circuit; United States Court of Appeals for the Fourth Circuit; United States Court of Appeals for the Fifth Circuit; United States Court of Appeals for the Sixth Circuit; United States Court of Appeals for the Seventh Circuit; United States Court of Appeals for the Eighth Circuit; United States Court of Appeals for the Ninth Circuit; United States Court of Appeals for the Tenth Circuit; United States Court of Appeals for the Eleventh Circuit

Federal District Court: United States District Court for the District of Columbia; United States District Court for the Eastern District of Virginia; United States District Court for the Western District of Virginia; Southern District of Texas, Western District of Texas; Northern District of Texas; District of Colorado

PROFESSIONSAL ASSOCIATIONS

American Association of Justice (member and litigation chair of the Bair Hugger Litigation group); Texas Trial Lawyers Association; DC Trial Lawyers Association; Houston Trial Lawyers Association