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Q&A: Georgia University's Elizabeth Burch on new women's health MDL research project

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(Reuters) - Several trends are changing the landscape of multidistrict litigation, including the introduction of deep-pocketed third-party funders and lawmakers curtailing what they see as abuse by the plaintiffs' bar in mass torts and class actions. A subcommittee of the Advisory Committee on Civil Rules is currently mulling changes to MDL guidelines.

A new research project by University of Georgia's School of Law Professor Elizabeth Chamblee Burch is using the microcosm of women plaintiffs in health product MDLs to shed light on this changing landscape, analyzing the women's experiences within the legal system, their interaction with lawyers and their contact to third-party funders to recommend MDL reforms that benefit the plaintiffs themselves.

Burch's survey (<https://www.elizabethchambleeburch.com/womens-mdls>) focuses on mass torts including pelvic mesh implants, talcum powder, Mentor's ObTape, Yasmin/Yaz, Mirena and NuvaRing birth control methods, silicone gel breast implants, Fosamax and Zolof. Responses will be accepted until Jan. 8 and answers will be kept completely confidential, Burch said, adding that all of her funding comes from the University of Georgia.

Following are excerpts of the interview, edited for brevity.

REUTERS: What is the motivation behind this project?

BURCH: I've written about procedural justice and how traditional desires in the civil justice system translate to mass torts in the past, but it has all been speculation. The last really big study on civil litigants was done in 1989. But to my knowledge nothing has been done on mass torts and particularly on MDLs.

As we are now thinking about reforming the system and creating civil rules, there a lot of assumptions about what plaintiffs want, but it is difficult to hear directly from them. What plaintiff attorneys want may or may not be what the plaintiffs themselves want from the system. This is an opportunity to try and go straight to the source to hear whether they are happy with the system or not, such as with how the judge is treating them, the interactions with their lawyers or third-party funding.

REUTERS: What do you hope to achieve with this project?

BURCH: The goal is to look at all these different aspects of the system to figure out what is working and what is not to then tailor any kinds of reforms or proposals to the areas that people identify as needing improvement. The hope is to communicate my findings to people who have the ability to put some changes in place.

Part of this is also to try and look under the curtain and to figure out what clients understand about the process that decides their dispute. I also ask plaintiffs whether they are happy with the claims administration process and the types of big global settlements in MDLs that largely mirror arbitration proceedings. There is an open question about how people perceive that process.

REUTERS: Why did you decide to focus on women's health MDLs?

BURCH: The short answer is I had to start somewhere and try to come up with a mechanism to tear down the world of MDLs into something that I could bite off. The truth is I have limited resources and all of my funding comes from the university. So this is a place to start. I have also always found it odd that there are so many women's health MDLs. One of the survey's questions asks about participation in online discussion groups like Facebook and Twitter. I am interested to understand whether those groups might provide opportunities for plaintiffs to tell their story when they feel like they are not being heard in the court system.

REUTERS: What is your timeline for this project?

BURCH: Setting a deadline is helpful, I think, and plaintiffs have until January 8 to complete the survey. Given the large number of cases, the survey is never going to be perfectly representative, so I am just trying to get as many people as possible. The short-term goal is to write a law review article about the study findings. And as the majority of the results I am getting are on mesh plaintiffs, the long-term project is a book-length treatment of the mesh litigation.

---- **Index References** ----

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