Medical Devices and Products Liability Cases

The rapid of healthcare costs and recent news surrounding medical device failures might give you pause after your doctor recommends the use of a particular instrument for surgery or care. This article will help you understand the particular dimension of medical issues in the overall products liability scheme. Before anything else, it is important to understand who your potential defendant could be. When trying to figure this out just remember who treated your or who gave you services, treatments, devices, prescriptions, or even recommendations? Here is a simple to keep track of:

Doctors: Of course, medical treatment normally begins with them and it is likely that they will prescribe a course of medications or use of a device. On these facts alone, they could be liable to you if the product or medication harms you. In fact, this may be your only route to recovery if the manufacturer has fulfilled its duty under the “learned intermediary” rule. Under this doctrine, the maker of a product has exhausted its legal duty when it has given a “learned intermediary,” such as a doctor, all of the information regarding a product such as its proper usage, risks, or hidden dangers. In that case, you will be blocked from going after the maker and must use similar products liability arguments against the doctor.

Manufacturers: Of course, if the manufacturers did not satisfy their duty under the “learned intermediary” rule or if you purchased the product directly from the manufacturer, then you can still bring a product liability action against it. These cases are becoming more and more prevalent as common devices (such as power morcellators for hysterectomies) and medications (such as Xarelto for blood clots) have been failing the public and harming those who use them. These defendants will normally be large corporations and retain high-status lawyers that befits their size. This David-versus-Goliath challenge, however, is accompanied by the fact that they typically harm a lot of people so hopefully you can pool all of these efforts together or at least learn from their cases.

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Hospital and other Retail Sellers: It is crucial to remember that in products liability cases, plaintiffs can bring actions against any person entity in the chain of sale. From original maker to end retail seller, all these parties are on the hook for your injuries if they had any part its creation or sale. These possible defendants include the following:

- Original manufacturers
- Original designers
- Distributors
- Marketers
- Hospitals
- Pharmacies
- Laboratories

This realization is vital because it can affect recovery. You should pick the party on the chain with the deepest pockets to maximize recovery and reduce case time and costs.

After identifying the proper medical party responsible for your case, it is important to see how it fits within the general products liability scheme. Your medical device or medication may have been faultily manufactured. If this is true, you should bring a manufacturing defect case. If the item was defectively designed, you must gather evidence for this species of products liability case. Finally, if the notice or instructions for your medical product were substandard, you might have a case as well. However, it is important to note that here what counts is not just the information on the item’s box or label but also the advice given in conjunction with it by a doctor, nurse, or other healthcare provider. Also, in most of these cases, you will need to bring expert testimony to support your arguments because you are dealing with highly technical aspects. To understand the core elements of these different kinds of cases, see our article here entitled “Understanding Different Kinds Of Product Liability Cases.”