

PRODUCT LIABILITY LAW:

LITIGATION, SETTLEMENT, AND WELLNESS

Clay Hodges



**Poorly Tested Medical Devices and Drugs
Have Hurt Thousands of Patients
[Learn More](#)**

Table of Contents

Introduction	3
CHAPTER ONE	4
Five Ways You Will Help Win Your Product Liability Lawsuit	4
CHAPTER TWO	8
Key Questions Clients Should Ask When A Medical Device Fails	8
CHAPTER THREE	12
What Are The Important Medical Records in a Product Liability Case?	12
CHAPTER FOUR	15
Pain and Suffering Damages in a Personal Injury Case	15
CHAPTER FIVE	18
Your Product Liability Case and the (Dreaded) Statute of Limitations	18
CHAPTER SIX	22
The Expert Witness: The Linchpin of Your Product Liability Case	22
CHAPTER SEVEN	27
How Long Will It Take to Resolve My Product Liability Case?	27
CHAPTER EIGHT	32
Paying Your Bills While Your Product Liability Case Is Litigated	32
CHAPTER NINE	37
Paying Medical Bills As Part of Your Product Liability Case	37
CHAPTER TEN	41
What Costs Must Be Paid From My Product Liability Settlement?.....	41
CHAPTER ELEVEN	45
What's the Best Way to Handle Product Liability Settlement Funds?	45
CHAPTER TWELVE	50
Failed Medical Products Deprive People of Vitally Important Exercise.....	50
CHAPTER THIRTEEN	54
Medical Funding Is a Threat to Your Product Liability Funds	54
CHAPTER FOURTEEN	57
The Best Gift an Attorney Can Deliver to a Client.....	57
CHAPTER FIFTEEN	61
Finding the Right Attorney to Handle Your Product Liability Case	61
CHAPTER SIXTEEN	64
Don't Choose a Product Liability Lawyer Based on a "Free Consultation"	64
CHAPTER SEVENTEEN	69
My Challenge to Manufacturers: Put Me Out of Business!	69
About the Author.....	72
Important Legal Stuff at the End.....	73

INTRODUCTION

If you are reading this you may have experienced the misery of a product that has failed you. Maybe you had **artificial hip** surgery five years ago, and even though your surgeon told you that metal-on-metal artificial hips were meant to last twenty years or even a lifetime, the hip now hurts worse than ever and your surgeon is advising that you have something called revision surgery. Or perhaps your wife suffered from incontinence and other problems after the birth of your third child, and had **transvaginal mesh** implanted and then, months later, your wife began to suffer from scary new pains and discomforts. Or maybe your husband had an **IVC filter** implanted to treat a possible pulmonary embolism, and now the surgeon can't find the thing in his body, or can't find all the pieces of it. You may have reached the point where you have become convinced that your suffering or the suffering of your loved one was caused by the negligence of the manufacturer who made, marketed and sold the product.

I am a product liability lawyer. Within that massive subject area, I focus on failed medical devices and problem drugs.

There is much more information on my website: ***Failed Hips and Harmful Drugs***. Feel free to check it out:

www.northcarolinaproductliabilitylawyer.com

I encourage you to spend time on the site and read about the subjects you are most interested in. I've been representing clients who were the victims of failed medical devices and drugs for many years, and I've been writing on these subjects for two years now.

I hope you don't ever need my legal services, but if one day you find you need an experienced and knowledgeable product liability lawyer, give me a call.

CHAPTER ONE

FIVE WAYS YOU WILL HELP WIN YOUR PRODUCT LIABILITY LAWSUIT



I have never met a client who “likes” lawsuits. Frankly they stink. Lawsuits are difficult, invasive, frustrating, potentially embarrassing exercises. And litigation is slow—a lawsuit against a medical device maker can take a year or two or longer to resolve, and if the case goes to trial, it can take several years to reach the jury’s verdict. The most important thing you will do in any case is select an attorney. Let me remind you that you ***do not want to represent yourself*** in a product liability case. In some limited areas of law representing yourself may make sense, but you do not want to start a legal battle alone against a large corporation in a product liability case. So choose a good lawyer first.

Once a lawsuit is filed in your product liability case, you will have to participate actively. You will be involved in dozens of discussions, decisions, and tasks over the life of a lawsuit, and there are five big ways you will contribute to winning your case.

YOUR MEDICAL RECORDS



In any product liability case—artificial hip, knee, transvaginal mesh, or failed drug—the defendants will ask to see your complete medical file. Even if your original surgery occurred in 2014 and your revision surgery took place in 2015, the defendants will likely ask for your ***entire*** medical history, and will certainly demand records going back several years ***before*** the surgeries that are the

subject of the lawsuit. This can be intrusive and irritating. After all, how are the mental health records relating to your six psychiatry visits five years before your transvaginal mesh surgery relevant to your product failure case? The answer is, they may not be, but the defendant usually has broad power to ask for and review these documents. The defendant will be looking for something, anything, that may shed light on you on as a person, and negative light for the defense is the best kind. In any event, be ready to sign authorizations to turn over most of your medical records to the defendants in any product liability lawsuit. Your attorney will handle the gathering of these documents and will organize them to “produce” to the other side.

YOUR DEPOSITION

This may be the most important thing you will do in the litigation. A deposition is recorded testimony you will give during the discovery phase of litigation. Typically one of the defense lawyers will sit across from you in a law firm conference room and ask you questions under oath about your health, your surgeries, your recoveries, your injuries, your job, your family, even your life before you were hurt by the defective product. I could write many pages on the subject of depositions, but for now know that a deposition will usually go well if you think through each question, answer only the question asked, avoid exaggeration, and tell the truth. I mentioned “under oath.” This means deposition answers are “sworn” testimony, and lying in a deposition can subject you to charges of perjury. This rarely occurs, because most people are honest and tell the truth, but lying or even exaggerating can cripple your product liability case.

YOUR TRIAL

If your case reaches trial, you will have to attend each and every day. And a product liability trial can take weeks to try. In fact, other than your trial testimony (see below), a critically important thing you will do at trial is to sit patiently, listen carefully, dress nicely, and appear pleasant throughout the grueling days and weeks of trial. It is not easy.

YOUR TESTIMONY

You will be the star witness for your case. You will be asked questions by your own lawyer (direct examination) and then you will be asked questions by the product manufacturer’s lawyer (cross examination), and then you will likely face “redirects” and “recrosses.” You may well have to testify for an entire day, and

quite possibly several days. It will be exhausting, but so much is riding on your performance; namely, whether you win or lose your case.

YOUR MONEY

Many law firms advance the costs of product liability litigation, but some do not. You need to make sure you understand the terms of the legal representation before you allow a law firm to take your case. It can cost hundreds of dollars simply for copies of your medical records, and it will cost thousands to pay for deposition transcripts. One of the biggest expenses in these cases is retaining a medical expert (say, an experienced joint replacement surgeon in an artificial hip case) to review your case, prepare an expert report, and have his deposition taken. If your case goes to trial, the medical expert will charge for travel time, out of pocket expenses, and time preparing for and giving trial testimony. In fact, the hard costs for a multi-week trial in a contested product liability lawsuit can run to six figures, and often more. Read your attorney's "retainer agreement" carefully before signing.

Keep in mind: you may never reach the stage of litigation where your deposition is taken, or where your attorney will need to find a medical expert to testify on your behalf. With the right preparation, many times an attorney can position your case for settlement and avoid trial or even lengthy discovery. But it's important to know what you may be undertaking when you become a plaintiff in any medical device or failed drug case.

CHAPTER TWO

KEY QUESTIONS CLIENTS SHOULD ASK WHEN A MEDICAL DEVICE FAILS



I was chatting with a former client the other day and I asked her if she could tell me the *burning questions* she had when she discovered her hip replacement surgery had “failed” and that she needed revision surgery. It turned out to be a master stroke on my part, because a few days later she sent me a *three page list* of intriguing questions (let’s call it “The List”). Some questions startled me, as I had not considered every possible uncertainty a person may have when going through such an awful ordeal. I will answer a few questions here.

WHAT QUESTIONS SHOULD I ASK MY SURGEON?

Here is usually how it works: you will undergo the hip replacement surgery, and you will see your surgeon post-operation and then for follow-up visits in the next few months following surgery. But the surgeon will quickly disappear, as he or she has more patients to see and more surgeries to perform, week after week. So you will spend more time in the recovery and rehabilitation period with other medical professionals, such as your physical therapist and perhaps your primary physician. Your physical therapist may be the first to identify that there is a problem with your recovery and therefore that there may be a problem with your hip replacement. Or it could be your primary care physician. Or it could actually be the orthopedic surgeon who performed the procedure, who may explain that the hip has failed in one of these post-op follow-up visits. (Of course, keep in mind that the artificial hip could take months or even years to “fail.”)

No matter who first identifies a possible problem with your hip replacement, your orthopedic surgeon will likely be the first person **to confirm** that your hip replacement surgery has failed.

When something feels wrong with your hip, schedule an appointment with your surgeon. Immediately. It is critical in this meeting **to slow down**. Ask every question you need answered:

What happened?

Why did it happen?

Why do I feel this pain?

Why is my hip popping? Or making noise?

Why does my hip feel like it’s locking?

Why do you think the hip components failed?

How can hip components “fail”?

I thought metal-on-metal hip parts were supposed to last decades?

Did you know these components were failing? If so, when?

Have you had other patients with failed hip replacements?

What company made the hip components?
What do I do now?
Can I walk? Run? Swim? Play tennis? Garden?
What are my options?
Can I live with this?
Do I need another surgery? If so, why or why not?
What is involved in a revision surgery?
Can my body handle a second surgery?
If it's not the hip components, what is caused the hip to fail?

Don't worry that you're wasting his time. This is precisely what he is there to handle. Do not be troubled if he acts as if he wants to leave the room. I'm sure he does. Write down every question you can think to ask the doctor before the meeting and go through your list methodically. Ask other questions that pop into your head. We are talking about your health. But you are also laying the groundwork for a successful legal action if it turns out you were the victim of someone else's negligence.

Surgeons hate these meetings. I don't blame them. This is a bad result for a patient, and the doctor has to explain that the result is bad. And let's face it, total hip replacement surgery is not the same as getting your tonsils removed; it is a major, invasive, difficult surgery to go through. No one expects to go to all that trouble and then end up in worse shape. When it fails, well, it's terrible for everyone. Of course, mostly for you, the patient.

SHOULD I REQUEST MY MEDICAL RECORDS?

Yes. Here is how it works in litigation: once you choose an attorney, the attorney's staff will have you sign medical releases for all your medical care providers, and the law firm will build a complete medical record for your case, from the surgeon's "Operative Notes" to the physical therapist's file to the pharmacy records. Still, it is useful to gather any documentation *early*. Tell the surgeon or his nurse or his staff you want their complete file to review. Occasionally, things get "lost," and if you got the complete file early, it could save your case.

SHOULD I ASK THAT THE DOCTOR PRESERVE THE REMOVED HIP COMPONENTS AFTER REVISION SURGERY?

Absolutely. When preparing for litigation against huge corporations like Johnson & Johnson and Depuy Orthopaedics and Zimmer, Inc., you need as much

evidence to support your case as possible. Although the “product stickers” for the hip components *should* be in the original medical records, I have seen cases where the product stickers were not preserved (which is dumb, but it happens). Before you go into your revision surgery, make sure you ask your doctor and your nurses to preserve all removed components from your body. Sometimes these components are delivered to you in a sterile solution, sometimes in a Ziploc bag. Ask them to make sure they identify the components as belonging to you.

Remember: you doctor and your nurses and all those who work in hospitals are human beings. And human beings make mistakes. Do your homework, plan ahead, and be prepared, and you can minimize the damage if a mistake happens (such as a hospital discarding the product stickers or tossing out the actual components).

CHAPTER THREE

WHAT ARE THE IMPORTANT MEDICAL RECORDS IN A PRODUCT LIABILITY CASE?



At the outset I should remind you that ***your attorney will request your complete medical file*** from the hospital, your surgeon, your physical therapist, the radiologist, your primary physician, even the drug store. Still, it is helpful to know which documents are vital in building a strong case against a manufacturer when a hip or knee or other medical device fails.

WHAT ARE PRODUCT STICKERS?

These are the identifying “stickers” attached to medical devices like an artificial hip. Prior to surgery, a medical device (like the acetabular cup in a hip replacement) will be delivered to the hospital or surgical center in a package. The product sticker will be affixed to or included with this package, and the operating room nurse will be responsible for double-checking that the medical device is the properly prescribed one for your specific surgical procedure. Once the medical device is confirmed to be correct, the nurse will remove the product sticker and place it on a page usually titled something like Receiving Report or Perioperative Note or even Nurse’s Report. These stickers will have all the key identifying information relating to the medical device.

For example, the product sticker may state in large lettering: Depuy ASR Acetabular Cup. It will identify a reference number and a lot number; the sticker will also contain bar codes to further identify the particular medical device or component. The sticker will display the size of the acetabular cup, and other important information specific to that device.

Obviously, for the purposes of identifying whether you may qualify for a settlement with a manufacturer of a defective medical device, these product stickers are the place to start. If it turns out you had a Zimmer Cup in your original “implant” surgery, you would obviously not qualify for participation in the Depuy Settlement. (However, you may well qualify to be part of the multidistrict litigation for the Zimmer Cup failures.)

Not all hospitals maintain these product stickers as they should (which is ridiculous). I have had cases where the hospital could not produce the product stickers for the medical device, and we were forced to obtain an affidavit from the orthopedic surgeon confirming that the particular medical device was implanted in the patient. It all worked out, but again, the product stickers are perhaps the most important part of the entire medical file.

WHAT IS THE OPERATIVE NOTE?

The **Operative Note** (or the surgical note) is the written record of a surgery, almost always produced (usually dictated) by the operating surgeon. It is a key document in the journey from the defective product failing inside your body to the moment where you file a lawsuit against the negligent manufacturer. There is normally key information in the Operative Note, such as the technique used in implanting the medical device, the medical devices implanted, and any complications that may have needed attention from the surgeon. As for key information on the surgery, this is almost always the most important record.

ARE THERE OTHER KEY MEDICAL RECORDS TO WATCH FOR?

Absolutely. The **Discharge Summary** is an important document. The Discharge Summary gives an overview of the patient's experience through the entire surgical procedure, from being admitted, through the surgery, and an explanation of post-operative care. It should also provide instructions for handling recovery after being discharged. The Discharge Summary is usually drafted (dictated) by a physician who was not the surgeon in the case, so the record should be scrutinized for potential inaccuracies, which can occur.

The **physical therapist's records** can be vitally important. A physical therapist is a licensed health care professional who helps patients improve mobility and reduce pain and recover from difficult surgeries, such as a total hip replacement (THR) or knee replacement. Often, the written record from the physical therapist provides valuable information on the progress of the patient after surgery, and on the pain and suffering the patient is enduring through the rehabilitation process. In many cases the physical therapist can be the health care professional who first recognizes that the hip surgery and/or the hip components may have failed.

Finally, the medical records will identify all kinds of key information which may impact your lawsuit, your settlement, even settlement amounts. The records will reveal your age, height, weight, and whether you are a smoker. These may seem like irrelevant facts, but settlement agreements often reduce the total settlement recovery if the client is a smoker, or considered obese, or of advanced age. Of course, an individual may be entitled to *more* settlement money if he or she is unusually young, or the records reveal "extraordinary injuries" associated with the failed hip.

CHAPTER FOUR

PAIN AND SUFFERING DAMAGES IN A PERSONAL INJURY CASE



I appreciate this subject because in many ways it is mystifying. After all, how can an injured person or an attorney or a jury determine the monetary value of the pain and suffering from a broken leg or a failed artificial hip? If you break your collarbone in a car crash, a crash caused by the negligence of another driver, what is that broken collarbone worth? Is it \$75,000? \$150,000? More?

PAIN AND SUFFERING DAMAGES

This chapter focuses on one specific area of damages: “pain and suffering” (also known as non-economic damages), which is one classification of recovery intended to compensate an injured person for the actual physical, mental, and emotional suffering caused by the act of negligence. There are other types of money damages in a personal injury case, such as “compensatory damages” for money lost from time out of work, property damages for loss of or damage to an automobile, out of pocket expenses (like the purchase of a wheelchair), and other losses. But those are subjects for other articles. This chapter will look briefly at pain and suffering damages.

THE LEGAL SYSTEM CAN'T REPAIR A BROKEN BODY

In many ways the court system is a blunt, primitive, inadequate instrument. It can never take away the pain of physical injury from a person. It cannot repair a permanent limp caused by a failed artificial hip or other medical device. All the court system can do is determine who is at fault when an injury occurs, try to measure the total monetary value of the injury, and then award that amount to the injured victim.

So, mystifying or not, in a personal injury case we have to figure out a way to measure the pain and suffering associated with an injured client.

PAIN AND SUFFERING DAMAGES HAVE EVOLVED OVER TIME

Decades ago, it was common practice for the lawyers for both sides to place the total medical bills into a formula. The insurance company would then typically offer three times the total amount of the medical bills incurred in the injury suffered by the plaintiff. For example, if a person suffered a broken arm in a negligent slip and fall in a grocery store, and the injury resulted in \$10,000 in medical bills, the insurance company might offer the plaintiff \$30,000 to settle the case. And if the pain was more severe than in a typical broken arm, the insurance company may well offer more than three times medical bills.

These days, insurance companies scrutinize injury claims much more carefully than in the past. They are much less willing to hand out generous or even reasonable settlement offers in advance of litigation. The work of attorneys representing injured people has gotten more difficult and challenging.

GUIDING PRINCIPLE: DON'T OVERREACH

Nevertheless, calculating the monetary value for pain and suffering remains a critical part of the process. The first guiding principle is this: don't overreach. It is absolutely essential for an injured person and her attorney to be reasonable in thinking through a fair amount of monetary recovery for a personal injury claim. I once had a client tell me he believed a scar on his child's leg which resulted from an act of negligence was worth over a million dollars. I have had other clients who expected thirty, even fifty times the full amount of the medical bills. This is an overreach. And unhelpful in resolving any personal injury case.

EVERY INJURY IS DIFFERENT

That said, no two injuries are the same. In every personal injury action, I sit down and review the entire medical file; I speak with the client many times, and I always try to analyze the client's very specific "personal" injury. In some cases, three times medical bills is fair and reasonable. In other cases three times meds is not nearly enough. There is no right way to go about this analysis, but in the case of an injury that may last for a month, it may be appropriate to assign a dollar figure to each day of the recovery. In other cases it may work well to assign a dollar value for the injury itself and ignore the number of days it took to recover. If a client is a college student who lost a semester of school, for example, part of the damages may include the value of that lost semester.

WHAT IS FAIR AND REASONABLE?

In every case, the guiding light is: "what is fair and reasonable?" If a client overreaches, the insurance company will never make a reasonable counter offer, and at trial the jury may reject the request. On the other hand, an individual does not have to accept whatever "final" offer the insurance company makes. It is important for the plaintiff's attorney to carefully think through a strong, reasonable number for pain and suffering damages, and then have the strength to stand firm on this amount.

CHAPTER FIVE

YOUR PRODUCT LIABILITY CASE AND THE (DREADED) STATUTE OF LIMITATIONS



The statute of limitations can be the strongest defense a product manufacturer will bring to defend itself and avoid paying money in a product liability lawsuit. It can be deadly to your medical device or drug case. The problem is, determining the proper deadline to bring your lawsuit is rarely simple. It is critical that you find someone who can figure out when the clock started ticking on your product liability case.

DEFINITION

Let's start with a simple definition: a statute of limitations is a state law which limits the time period when you may bring a lawsuit for money damages for a personal injury. In each state you have a certain number of years from the injury, or the date of discovery of the injury, to file a lawsuit and recover money for your injuries.

If you miss this deadline, you lose your right to bring the lawsuit, forever. These statutes must be taken very seriously.

RATIONALE

The rationale makes sense: citizens and companies do not need to be vulnerable to being sued indefinitely for an act of negligence. If you were in my grocery store twelve years ago, slipped on a banana peel, broke your arm, got medical treatment, recovered, then waited over a decade and finally sued me and my grocery store for negligence, it could be a serious hardship on me and deeply unfair. I need reasonable assurance that I won't be exposed to lawsuits forever. So states across the country have written statutes that limit the amount of time an injured person can bring a lawsuit. Essentially, state legislatures are telling injured persons: we respect your right to sue for money damages when you are the victim of some kind of negligence, but don't sleep on your rights. If you are hurt because of someone else, get on with it and file a lawsuit. And if you wait too long, you lose your right to recover damages. (I don't really own a grocery store.)

DETERMINING WHEN YOUR "LAWSUIT CLOCK" STARTS TICKING

In some cases determining the start of the running of the statute of limitations is quite easy. For example, in a car crash case where injuries are obvious (like a broken arm), the clock starts at the time of the crash. In North Carolina, the statute of limitations in negligence actions is three years from the date of injury. If your car crash occurred on April 27, 2016, you must file a lawsuit within three

years, no later than April 26, 2019. That one is easy. But as you will see below, often the determination of the “relevant period” for the statute of limitations can be difficult to sort out. And this much is clear: if there is any chance the statute of limitations has run or has passed, the defense lawyers will argue loudly that the case is void and should be dismissed.

THE DISCOVERY RULE



Many states, including North Carolina, use the *Discovery Rule* to start the clock running on the statute of limitations. In many injury cases, the injured person *does not know* she is injured. For example, a young woman may not realize for months or years that a physician negligently left a surgical needle inside her body during a surgical procedure. It may take some time for symptoms and pain to develop. The discovery rule states that the clock does not begin to run on your injury until the person’s injury becomes “apparent or ought reasonably to have become apparent” to the injured person.

The Discovery Rule is helpful to injured persons but can be difficult to sort out. As you can imagine, the date the clock starts ticking (or should have started)

can be a hotly debated issue, particularly if the defense wins the debate and thus avoids liability altogether. Example: Suppose a man undergoes total hip replacement, has pain for months afterward, but the surgeon keeps telling him, “the pain is normal; it is part of the recovery process.” Then the artificial hip manufacturer sends a letter to the man informing him that his artificial hip components have been recalled. Still, his doctor keeps telling him the artificial hip is fine and that he should not consider revision surgery. When does the man’s statute of limitations begin to run? The date of the hip recall letter? Or later, when the artificial hip moves out of place and causes him to have to undergo emergency revision surgery?

The answer is unsatisfying: it is what the judge presiding over your case says it is.

THE STATUTE OF LIMITATIONS IN EACH STATE

Figuring out the proper statute of limitations period for any particular case can be complicated. What follows is a basic guideline for bringing claims for product liability causing physical injury. Still, ***you always need a good lawyer*** to review your case history then double and triple check the timelines and the statutes in your state.

In North Carolina, a medical device or drug failure is essentially a personal injury/negligence action, and the statute of limitations in those cases is ***three years***. N.C. Gen. Stat. § 1-52.

Warning! If you are searching the Internet for the statute of limitations in product liability cases, make sure you distinguish between product liability cases causing physical injury (which in North Carolina is three years), and general product liability cases (such as when a washing machine malfunctions), which is six years.

In South Carolina, a product liability/personal injury claim must be brought within ***three years*** of the injury. South Carolina uses the discovery rule, so the injured person has three years from the date when he or she knew or should have known that injury had occurred.

In Virginia, a product liability/personal injury claim must be brought within ***two years*** of the injury or the reasonable discovery of the injury.

In Georgia, a product liability/personal injury claim must be brought within ***two years*** of the injury or the reasonable discovery of the injury.

CHAPTER SIX

THE EXPERT WITNESS: THE LINCHPIN OF YOUR PRODUCT LIABILITY CASE



Let's say you are a woman in your forties, and the mother of three children. After the birth of your third child you began to suffer from pelvic organ prolapse. This condition occurs when an organ like the bladder drops from its normal position and presses against the walls of the vagina. You go to your gynecologist, who recommends implantation of transvaginal mesh (TVM), the net-like plastic product that was marketed and sold as a solution to the problem of pelvic organ prolapse. You have the surgery. Soon you begin to suffer new and different pain and new health problems. You undergo three revision surgeries to remove all the pieces of the mesh. But after the revision surgeries you still suffer from pain and incontinence. You call an attorney, who files a lawsuit against the manufacturer of the TVM product. A few months into the litigation, your attorney explains that you now need an expert witness.

Your attorney is absolutely correct: you will need an expert witness in virtually all product liability cases. And a good one. And fast. If you do not have a qualified expert witness who can make the connection between your injuries and the failed product, then in the eyes of the court you do not have a case.

YOUR MOST IMPORTANT WITNESS

Expert witnesses are critical members of the team that is built to win your product liability case. In fact, other than your choice of attorney, the selection of the expert witness will be the most important decision you will make to help you win your case.



Expert witnesses are common in all kinds of litigation. In a simple car crash case, a treating doctor is almost always called to testify about the nature of the plaintiff's injuries after the crash. In some car crash cases, a second expert witness will be called to explain why a car's brakes failed, or why the car's airbag did not deploy. Usually this testimony ends by showing **causation**, "and if the brakes did not fail, the driver would not have crashed into that oak tree and broken his arm."

In a product liability case, the expert must be able to show causation, to make the connection between the failure of the product and the injuries the person suffered. If the injured person cannot show this causation through the testimony of a qualified expert witness, she cannot win her case. In the example at the top of this chapter, the expert will have to be able to testify that the new pains and the new health problems were medically caused by the failure of the mesh and the need for multiple revision surgeries.

But I'm getting ahead of myself.

FINDING A QUALIFIED EXPERT WITNESS

Before an expert witness can testify as an expert, he or she must be **qualified** by the trial judge. You may have heard the name of this case before, but in most states the admissibility of expert testimony is governed by a Supreme Court case from the 1990s, *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). The *Daubert* standard requires a trial judge to scrutinize all potential expert witnesses before the expert is permitted to testify as an expert. If the expert is qualified by "knowledge, skill, experience, training, and education," the expert will be allowed to testify **if**:

- (1) the information provided by the expert will help the trier of fact to understand the evidence or determine a fact in issue;**
- (2) the testimony is based on sufficient facts or data;**
- (3) the testimony is the product of reliable principles and methods; and**
- (4) the expert has reliably applied the principles and methods to the facts of the case.**

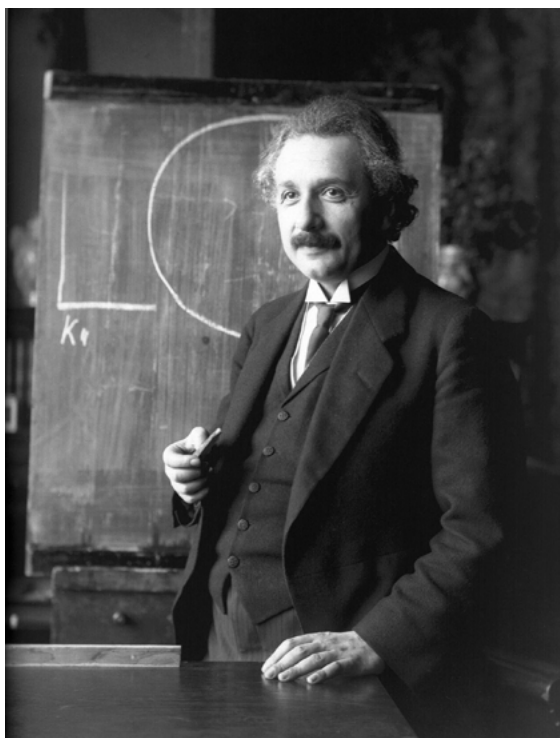
The qualification of an expert is one of the biggest battles that a plaintiff will face in litigation. The plaintiff's lawyer will argue aggressively for the qualifications

of the expert and the relevance of the expert's testimony. The defense will argue just as aggressively that the plaintiff's expert is unqualified, and that even if the expert is qualified, the testimony will not be helpful for the jury to understand the case. The trial judge will ultimately have to make the determination whether to permit the expert to testify. It is one of the key decisions the judge will make in a product liability case.

I can't stress this enough: your expert witness is a vital part of your case. If the expert does not have proper education or credentials, or if the expert fails to provide convincing analysis of the connection between the failed product and the injuries, then the judge will reject the expert and the plaintiff will lose her case.

This situation happened recently in the Zimmer NexGen knee case. On the eve of the second "bellwether" trial, Judge Pallmeyer rejected the plaintiff's expert and granted summary judgment for the defendants. Among other things, the judge concluded that plaintiff's proposed expert has not "given the court sufficient basis to conclude that his opinion is reliable." (Order, p. 17) After years of litigation, the plaintiff was out of court.

YOUR EXPERT MUST BE A GOOD COMMUNICATOR



Choosing the right expert is very difficult. First, you must find a person with the right kind of expertise for the particular case. This expertise must be of a kind that will survive a motion to exclude the testimony by the defendants (such as a *Daubert* challenge). If your expert survives that scrutiny, he or she will still need to be able **to communicate effectively** with a jury. And those jurors will likely have almost no understanding of transvaginal mesh or pelvic organ prolapse (although they will know a lot about it by the end of the trial). Your expert **must** be able to communicate complicated medical or scientific terms in a simple way so that jurors will understand the concepts. This is no easy task. Your lawyer must talk to several potential experts before hiring one to testify on your behalf. My favorite experts are natural teachers. They can take very complicated subjects and explain them so that my teenage son can easily understand them. When that happens, you often win over the jury.

Experts don't work for free. Every expert will charge the plaintiff for the time it takes to review the case file, analyze the information, write an expert report, and testify. Beyond that, the expert will have to be paid for travel expenses, hotels, and other costs. But if you find the right expert, the expense will easily pay off.

CHAPTER SEVEN

HOW LONG WILL IT TAKE TO RESOLVE MY PRODUCT LIABILITY CASE?



I got a desperate phone call the other day. The call came from a man several states away. Let's call him "Bill." Bill had hip replacement surgery in 2007. The Depuy ASR artificial hip was implanted. He began to suffer pain eighteen months later, in early 2009, and blood tests showed his cobalt and chromium metal levels were rising at an alarming rate. He was suffering from metallosis. In 2011 Bill underwent Revision Surgery to remove the Depuy ASR hip. A year later he hired an attorney and filed his product liability lawsuit against Depuy Orthopaedics and Johnson & Johnson (the parent company of Depuy) in federal court in Bill's home state. From there, the case was transferred to the Depuy ASR MDL in the Northern District of Ohio, before Judge David Katz. Judge Katz was the federal judge assigned to handle or manage the pretrial issues associated with the thousands of Depuy ASR cases that were transferred to his court after being filed across the country.

In November 2013, the first Settlement was reached between the Plaintiffs' Committee and the Defense Team for Depuy and J&J. So six years after the Original Surgery, and four years after the first onset of pain, and two years after Revision Surgery, Bill finally had the opportunity to accept the settlement offer or reject the offer and pursue a jury trial on his specific case. After much deliberation, Bill rejected the settlement offer.

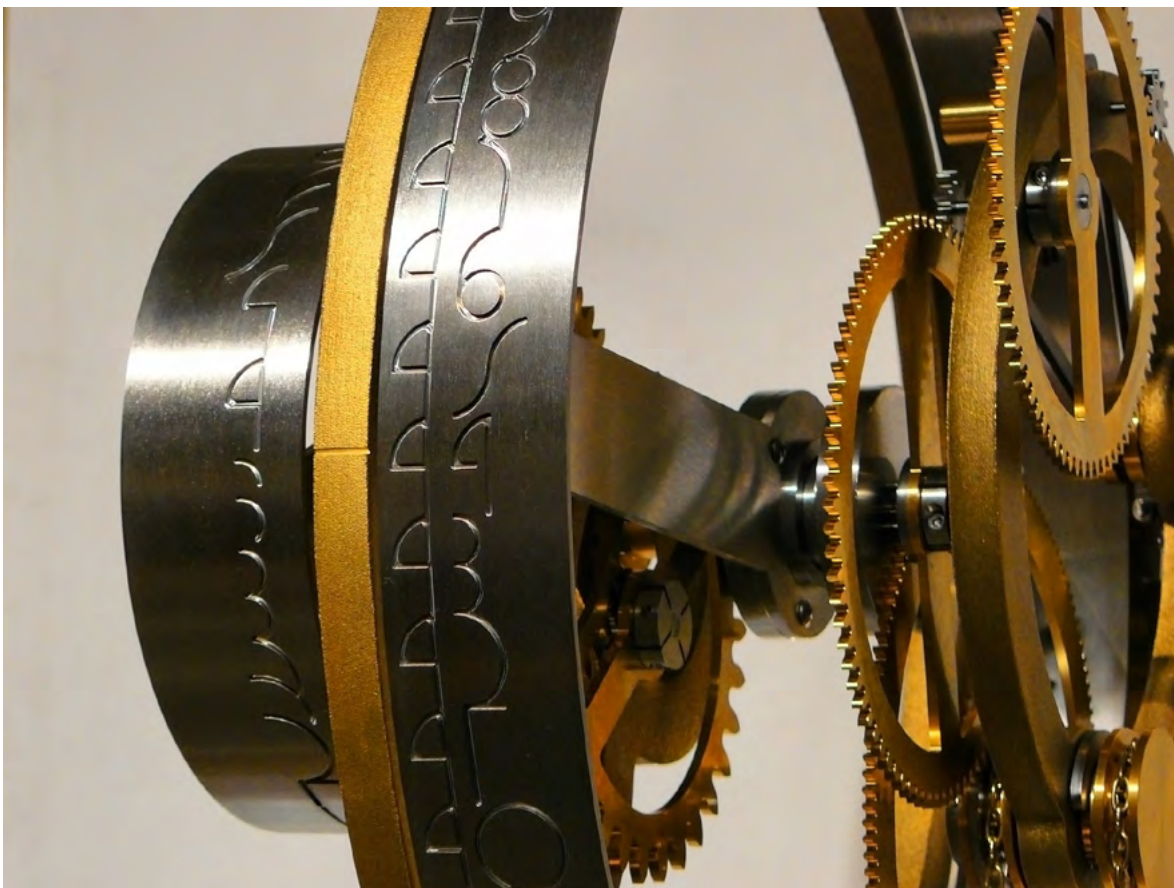
Three years have now passed. Bill's case is not on a trial calendar. In fact, as far as I am aware no case has yet been tried of any person who rejected the settlement offers. To make matters worse, this summer Judge Katz, in charge of the MDL, passed away. A new judge had to be appointed to take his place overseeing the MDL.

Bill is at his wit's end. He told me he merely wants his day in court. He is now nine years removed from the Original Surgery, seven years removed from the onset of symptoms, five years from Revision Surgery, and over four years from filing suit. And still no trial date in sight.

Bill is not alone. Hundreds of people in the MDL rejected the settlement. And those people are waiting too.

So how long ***does*** it take to resolve your artificial hip case?

ALL CIVIL LITIGATION TAKES TIME



I wish I had better news, but it takes a long time. Any civil litigation takes time. There are “rocket docket” scattered across the country that work really hard to dispose of cases in a matter of months or a year, but those courts are the exception. Even a basic breach of contract action in your state’s court can take two years or longer to resolve.

A product liability case is a particularly complex type of civil litigation. It is very difficult to prove that a product was defectively designed, or that a manufacturer failed to warn patients and their doctors of the risks involved in using a product. Often competing experts will spend many hours and many dollars fighting over these technical issues. This is one reason MDL courts were formed in the first place. Multidistrict litigation sites are designated precisely to resolve of hundreds or thousands of cases more efficiently, not less efficiently.

MULTIDISTRICT LITIGATION OFTEN TAKES YEARS TO RESOLVE



That said, there is just no other way to say it: a case that finds its way to a multidistrict litigation court will probably take several years to resolve. So settle in. The biggest reason is this: there is simply a lot to do. Both sides need to engage in general, “shared” *discovery*, where the plaintiffs will depose the defense experts and fact witnesses, and the defendants will depose the plaintiffs’ expert and fact witnesses. Aside from that, often hundreds of thousands of pages of medical records, expert reports, scientific studies, and business records must be reviewed and analyzed. Dozens of pretrial motions are filed, and all must be ruled on by the MDL judge. It simply takes months and years to get through this work. Meanwhile, Bill, and thousands of people just like him, wait.

The waiting game is not limited to artificial hips, but includes all kinds of medical devices and harmful drugs. The Mentor ObTape Transvaginal Mesh MDL was formed eight years ago and is still going strong in Georgia. The Depuy Pinnacle Hip MDL was formed almost six years ago, and bellwether cases have been

tried this year, with no settlement agreement in place. There are multiple IVC Filter MDLs, as well as MDLs for the drugs Risperdal, and testosterone, and Xarelto, and Viagra.

EVERY CASE A SNOWFLAKE

Still, every single case that has ever been filed in any court is unique. The facts in each case are different. The parties involved are different, and the lineup of lawyers and judges and juries are different. Occasionally a person may find her case transferred to an MDL the week before a global settlement is reached. If she accepts the terms of the settlement, she may actually resolve her case in a few months. Other individuals may not qualify for a settlement based on the timing of their Revision Surgery, and they will be forced to resolve their cases one at a time without the benefit of a settlement structure. And other people, like Bill, will choose trial, which can take more years of waiting to calendar, to try, and to overcome the inevitable appeals.

Is all this waiting and effort worth it? *I would say absolutely.* If you were injured by a company's negligence, you deserve to be compensated. Even if it takes years.

CHAPTER EIGHT

PAYING YOUR BILLS WHILE YOUR PRODUCT LIABILITY CASE IS LITIGATED



When you get injured, you almost immediately begin to worry about money. It is completely rational. If my client is a car salesperson and has severe pain after standing for more than an hour, he may worry that his failed artificial hip surgery could cause him to lose his job. If another client is a graphic designer, and a car crash results in a broken arm, the client may wonder how she will do her graphic design work at a computer or work space. Beyond concerns about handling job duties, there will be immediate financial pressures. But there are of course other bills to be paid: mortgage payments or rent, food, utilities, and other expenses of living. It can seem overwhelming.

TRY TO GET THROUGH THIS DIFFICULT PERIOD WITHOUT OBTAINING LOANS

I know, I know, easy for me to say. And frankly you are right. No one ever wakes up and says, “today is a great day for me to enter into a ruinous loan I will never be able to pay back.” I understand that most people attempt to exhaust every other funding source before looking for third-party funding during a desperate financial period. But I am going to say it anyway: exhaust every other funding source before looking for third-party funding. Call your parents, your kids, your friends, anyone who might help you get through the difficult financial period you face when waiting for a product liability or other personal injury case to resolve.

CAN I GET A LOAN OR ADVANCE BEFORE MY INJURY CASE IS SETTLED?

A product liability case almost never resolves quickly. It can take years to recover money from your lawsuit, either through settlement or a jury trial. In multi-district litigation, where hundreds of similar cases are transferred to one court for (slightly) more efficient resolution, it can take several years to complete discovery, to take depositions of both sides’ experts and fact witnesses, and to argue dozens of pre-trial motions brought by both the plaintiffs and the defendants.

If you are harmed by a defective product and file a lawsuit to seek compensation for your injuries, you may wonder if there is a way to receive advance payments while the litigation moves through the court system. This is America! ***Of course*** there is a way to receive money in advance using your lawsuit as collateral. But it is rarely a good idea, and usually decimates your ultimate net recovery. In some cases, the client will actually be expected to repay more than was recovered in the settlement or in trial.

LAWSUIT LOANS WORK LIKE THIS



There are many companies set up to offer you money related to your injury case. Essentially the company will provide money to you in exchange for repayment of that money, *with substantial interest*, at the conclusion of your case. The “substantial interest” is the key term. Depending on the likelihood of success in your case (the risk involved for the loan company), the interest on the advance payment can be very steep. Companies may charge 30% interest up to 100% interest, and sometimes even more.

EXAMPLE:

You have artificial hip surgery in 2012 and the hip fails. In 2014 you undergo revision surgery to take out the broken parts of the artificial hip. It takes two months to rehab, and after that you are still not 100%, but slowly on the mend. You hire a lawyer and file a lawsuit, which then gets moved to the multidistrict litigation court for that hip product. And then you wait. For two years. Meanwhile you lose your job as an electrician because you cannot do the physical work

you used to do because of the pain in your leg and hip and back. You quickly run out of money. You Google “lawsuit loans” and get 300,000 hits. You call a company called Kilimanjaro Litigation Funding (KLF) and tell them your story. After you give permission, KLF contacts your attorney, reviews the case file and makes a determination of the likelihood of success of the case and an assessment of the probable settlement amount.

Let’s say KLF decides you have a good chance for success and that you will likely receive \$300,000.00 in settlement. KLF will then subtract attorneys’ fees from that projected amount (typically around one third), and then subtract the cost of all existing medical liens (bills you still have to repay from your revision surgeries), and finally litigation costs. KLF determines you may ultimately receive \$150,000.00 after those costs are paid, so it offers you a \$50,000.00 loan and requires repayment of that amount plus 35% interest.

KLF guesses right, and you receive a settlement of \$300,000.00 a year later. You receive \$150,000.00 after fees and costs and bills are paid. You will then repay KLF \$50,000.00 for the loan plus \$17,500.00 in interest (at 35%).

You end up with a check for \$82,500.00. KLF made \$17,500.00 profit for a one-year loan.

And this is example represents a reasonably benign result. Depending on the risk involved in the case, that interest amount from the litigation loan company may be 50%, 80%, even 120%. In some cases, the risk of losing your case is so high the funding companies will not loan you money (for example a medical device case that the defendant manufacturer is actively defending because the company has won some key court victories regarding the negligence of the product).

Let me add that these loans are not easy to obtain. Litigation loan companies scrutinize your case carefully to make a risk assessment. Many companies will not loan money to a client if the case might take more than two years to settle. Others companies run at the first sign that the case may not be successful. After all, if the lawsuit is unsuccessful, you usually do not have to repay the loan and the loan company must “eat” the loss.

MY VIEW

I am uncomfortable with these companies and these arrangements. I discourage my clients from entering into these litigation loan contracts if at all possible. However, in some narrow circumstances, it may be necessary. I counsel my cli-

ents about the risks, but I can't stand in the way of a person making such a decision, especially in times of financial desperation. If you go this route,

1. *slow down*;
2. compare interest rates;
3. ask about possible hidden fees;
4. read the proposed contract carefully;
5. ask questions; and
6. get your attorney involved.

MEDICAL FUNDING IS DIFFERENT

In Chapter Thirteen I write about companies who provide advance funding for your medical care. While that kind of funding is similar in form to the lawsuit loans described above, it is different in key ways. Medical funders typically finance your revision surgeries and related medical care up front, well before you file a lawsuit or even have a claim. The lawsuit loan companies described in this article provide you, the injured person, with funds to pay your rent and car payments and other expenses while your lawsuit works its way (slowly) through the court system. In both cases you are selling off a large portion of your ultimate recovery to a third-party company, but generally the money goes to address different issues in the lifecycle of a product liability lawsuit.

CHAPTER NINE

PAYING MEDICAL BILLS AS PART OF YOUR PRODUCT LIABILITY CASE



“How am I supposed to pay all these medical bills?”

This is usually one of the first questions I get from people injured by a failed medical device. Typically a failed device like a hip or knee causes all kinds of health problems for a person. Often a revision surgery is necessary, and sometimes several surgeries. All this extra medical care is **expensive**. It also requires large amounts of time to rehabilitate and recover, which causes substantial time away from work. Some of my clients lose their jobs, or are forced to quit because they can no longer do the work. Meanwhile, the bills from surgeons and hospitals continue to pile up.

MEDICAL PROVIDERS EXPECT PAYMENT

First, no matter who is at fault for your failed medical device or harmful drug, the doctors and hospitals who provide you treatment will expect prompt payment of their bills. After surgeries, these bills often come fast and furiously. If you have health insurance you will need to arrange with the physician and/or the hospital ahead of time to file a claim for payment. But even if you have health insurance you will most likely be responsible for payment of a significant portion of the costs of your medical care (through co-pays, deductibles, and/or percentages of the medical bill not covered by health insurance). The surgeon or hospital will expect you to pay these amounts promptly.

So what can you do?

POSTPONING COLLECTIONS

Usually a medical provider will freeze or postpone collections on an unpaid bill when it is made aware of the existence of a third-party lawsuit. That is to say, if the hospital is informed that the patient has filed suit against a medical device manufacturer, it will usually agree to forego collections until the lawsuit is resolved. Your attorney needs to get involved quickly in this process and inform all providers in writing of the legal representation, the lawsuit, and the expectation that collections should stop until the litigation is resolved. Get confirmation in writing. Most likely the provider will issue a “lien” against any money you obtain in your lawsuit, which means the doctor or hospital will expect to be paid when the settlement is reached. Once a lien is issued, your attorney will be required to resolve that debt when a settlement is reached.

PAYMENT PLAN MAY BE NECESSARY

If for some reason the medical provider refuses to stop collections, you will need to work out a repayment plan. I get it: easier said than done when you are recovering from multiple hip surgeries and can't return to work. But often a hospital will usually accept modest monthly payments so long as you make them each month. The provider wants to see that you will abide by the arrangement, even if the monthly payment is small.

PAYING MEDICAL BILLS AFTER YOU SETTLE YOUR CASE

Typically in a product liability case you will resolve your lawsuit through a settlement, which is of course a negotiated “deal” that is struck between you and the manufacturer (and any other defendants). Very few medical device cases find their way to a jury. Once you reach settlement, the medical bills that you have not paid up to now will have to be paid. Doctors and hospitals do not forget. These medical providers have dedicated offices and staff to chase these payments to the ends of the Earth. So once you sign the Settlement Agreement, your attorney will have to arrange payment of these medical bills or medical “liens” promptly.

SOME SETTLEMENTS INCLUDE PAYMENT OF MEDICAL LIENS

In certain settlements, the defendant manufacturer will agree to pay outstanding medical liens for you. It goes something like this: after years of litigation, and after many months of negotiation, the plaintiffs and defendants in a large multidistrict litigation will come to an agreement to resolve hundreds or even thousands of cases. This will usually involve a settlement framework where the defendant company will pay certain amounts of money directly to each plaintiff who qualifies, and further, will pay the liens outstanding for these qualifying individuals. This is roughly how the Depuy ASR Settlement was constructed.

It is a great thing when the defendants agree to pay off medical liens separate from the amount you as the injured person receive in the settlement; unpaid medical bills can be substantial, and paying them off with your own settlement money can take a huge chunk out of the amount you ultimately get to take home. After all, ***you*** are the one who has suffered—physically, emotionally, financially. Each dollar that you do not have to pay out of the settlement proceeds for medical bills is a dollar that you can use to pay off credit card balances, to pay down a mortgage, to cover other bills, or simply to save.

If the agreement does not include the defendant paying off the medical liens, you will have to pay these bills yourself. Your attorney should assist you in negotiating with the hospitals and doctors' offices, and usually these medical providers will agree to accept a smaller amount in payment of their liens, but not always. It is always best practice to have these discussions before you agree to a settlement.

THE TAKEAWAY

It is important to think about these medical bills, and who will ultimately pay these bills, when deciding whether to accept a proposed settlement agreement. Make sure you find an attorney who is aware of these issues and will walk you through *the complex math* before you make a final decision.

CHAPTER TEN

WHAT COSTS MUST BE PAID FROM MY PRODUCT LIABILITY SETTLEMENT?

ACCIDENT WORK
DOCUMENT
PAYING RESOURCES POLICY
COMPENSATION
CLAIM
SETTLEMENTS
INSURANCE
LITIGATION
LEGAL

I spent a few days in Charleston, South Carolina last year. As always, I was mystified at all the different ways the hotel charged me for one room. There was of course the room charge (I was expecting that) but there were also daily parking fees, and taxes, taxes, taxes: state and city taxes, a charge generically labeled “tax,” even a separate line-item for something called “tourism tax.” Beyond that, I tipped the bellman each time he touched my luggage, the barista for pouring my morning coffee, and the accommodating concierge who gave my family helpful maps of the city.

So let’s get it out of the way: ***everything in life costs money***. A personal injury lawsuit is no different. It is expensive to bring a lawsuit, and it is extremely expensive to litigate a case through trial. Most times, an injury suit settles before trial, but even then there are costs that will have to be paid out of your negotiated settlement amount. Best to be educated about these costs up front and be prepared for them when your settlement approaches.

LITIGATION EXPENSES

Think “hard costs” or “out of pocket” costs. These are the costs incurred in bringing the lawsuit in the first place. First, there are “filing fees” in every state and federal court in the country. In North Carolina, the cost of filing a lawsuit in federal court is \$400.00. After that, there will be additional fees to have the lawsuit “served” on the adverse parties (the people and companies you sued). There will be expenses for postage (FedEx overnight deliveries, certified mail deliveries, even simple stamps), and photocopies. Beyond that, your attorney will have ordered and prepaid for copies of all medical records in your case, which will include X-ray films or CT scans or MRI results. No doctor’s office I have ever encountered hands over these medical records and films for free. So the attorney will usually advance the funds to pay for these records (unless your retainer agreement requires that you pay out-of-pocket costs as you go). But once there is a settlement, these hard costs must be repaid. It is a good idea for you to know the amount of the hard costs—even month to month—as you go along, so you can make an educate decision when an offer of settlement is made.

MEDICAL BILLS AND LIENS



Most personal injury cases have lingering unpaid medical bills and medical liens. A typical revision surgery in an artificial hip case can cost \$50,000.00 (sometimes more) when the surgeon's fee and the hospital fee and the physical therapy costs and other expenses are calculated. Your attorney must pay these medical bills from the settlement funds before he or she can disburse the net settlement proceeds to you. Usually a hospital and other medical providers will submit a medical "lien" directly to your attorney putting him or her on notice of the unpaid bill. At the point, the attorney has an affirmative duty to pay this lien. Often the attorney can negotiate a reduced amount of the medical bills as settlement negotiations occur.

HEALTH INSURANCE SUBROGATION

This one stings. Your medical care was likely covered in part by your health insurance. If you receive payment for injuries from the manufacturer of a defective medical device or drug, your health insurance provider will likely seek "subrogation" for the medical care it paid on your behalf. So if, say, Blue Cross paid a total

of \$20,000.00 for your revision surgery, and you are then paid a settlement for a defective medical device, Blue Cross will want reimbursement (subrogation) for its payments made on your behalf.

This line-item stings because you have paid health insurance premiums for years to provide medical care when you are injured, and then the moment you receive compensation for an injury caused by someone else, the health insurance company wants to be repaid for the medical care it paid on your behalf. It doesn't sit well with me, but health insurance companies have good lobbyists working for them.

LITIGATION LOANS

If you received a litigation loan, you must repay that to the loan provider, with the interest specified in the litigation loan contract.

ATTORNEY'S FEES

Virtually all injury cases operate under a **contingency fee arrangement**. This means that the attorney will be paid a percentage of any financial recovery (either from settlement or verdict) at the conclusion of the case. It is called "contingency" because the legal fee is contingent on a successful outcome. If the case is lost, the attorney receives no legal fees. Typically the legal fee in an injury case is one-third of the gross amount of the settlement, but it can be as high as 40%, particularly if multiple law firms are involved (which is not uncommon in complex injury cases), or even higher if liability in the case is uncertain and other "problems" in the case exist. So if you have hired an attorney under a typical contingency fee contract with a one-third contingency payment, and you then settle the case for \$150,000.00, the legal fee will be \$50,000.00.

Quick note on legal fees. If *at the beginning of the representation* a client requests to pay legal fees under an hourly-fee arrangement, I will **always** agree. This would mean that the client will pay me by the hour for my legal work, and therefore at the end of the case the client will be able to keep the entire settlement amount (after hard costs and medical bills and other expenses are paid). The hourly fee is the legal fee arrangement most often used in civil litigation cases (e.g. breach of contract cases).

I realize these costs and fees may seem overwhelming, not unlike the myriad charges for a single hotel room in Charleston. But it is critical for you to be aware of these costs in advance when negotiating your settlement so you can make an informed decision.

CHAPTER ELEVEN

WHAT'S THE BEST WAY TO HANDLE PRODUCT LIABILITY SETTLEMENT FUNDS?



My clients who have been injured by a failed medical device like an artificial hip or knee or a problem drug like Xarelto suffer in many ways. There is the physical, emotional and psychological suffering. But there is another form of suffering that is often as traumatic: *financial suffering*. A failed medical device may cause a client to lose his or her job, and the lost income and extra medical expenses can be devastating. The good news is, often these clients receive a large sum of money from a settlement or jury verdict when a medical device or drug injures them.

Clients occasionally ask my advice on how best to handle the new money that has come into their lives. Frankly, this is a happy conversation. But it's also extremely important to get the answer right. The worst thing clients can do is spend down the money quickly and have nothing left a few years down the road when they still need money.

FIND GOOD ADVISORS

The first thing you should do is select a competent tax accountant to help you maneuver through the tax consequences of newly acquired settlement funds. While funds paid as damages for personal injury are not taxable, money damages for lost wages and punitive damages are taxable. You need a smart tax accountant to help you create the best plan to protect your assets. One suggestion your accountant may give you is to make sure you contribute the full amount to your employer's 401(k) retirement plan in the years following your receipt of personal injury funds.

Contributions to an IRA may also be wise. This will allow you to protect more of your income from taxation. You may also need an estate planning lawyer to assist with distributing your assets at the time of your death. You will likely need a will (or to update an existing will), and you may also need to set up a basic trust for protection of the assets for your heirs.

PLAN PLAN PLAN

You will also need to create a financial plan. You should ask yourself all the tough questions: Can I continue working? How long will my spouse continue working? What other sources of income do I have? Other than the injuries from the failed medical device or drug, what other health issues do I have? Does my spouse have health issues? My children? (Every single health "issue" costs money.) What is the state of my health insurance? Is my house paid for? Our cars? Am I on-track to retire at a reasonable age?

Financial advisors urge their clients to create a plan, especially when a substantial amount of "sudden" money arrives. Once you create your financial plan, revisit it after one year. And then every year after that.

MAKE ONLY REQUIRED PAYMENTS AT FIRST

Do not rush out and purchase a \$60,000 Mercedes. That is really the worst thing you can do. I know that's not a sexy answer, but it's the truth. Instead, you should make all required or overdue payments first. If you have medical bills outstanding, you need to pay them. Your attorney must assist you in getting all medical "liens" paid, but you may have other incidental medical bills to pay. If he hasn't done it for you already, ask your lawyer to help you negotiate lower payments to satisfy existing medical bills.

Further, pay off high interest credit card or other consumer debt. ***Debt is awful.*** And high interest debt is the absolute worst. High interest consumer debt can easily deplete settlement or trial funds in a matter of a few years. If you have debt at the time of recovering money in a personal injury case, pay it off in full. You can try to negotiate with your credit card company for a payoff that is less than the full amount, but regardless you have to rid yourself of ruinous consumer debt.

SET UP AN EMERGENCY FUND



To start with, everyone should have an emergency fund (if possible). An emergency fund is a savings account set aside for emergencies like home or car repairs, or living expenses if you lose your job. You should strive to build up savings to

cover necessary living expenses like your rent or mortgage, car payment, utility bills, and groceries for *six months*. In fact, an ideal emergency fund will cover your living expenses for a year. You should keep this money somewhere accessible like a savings account or money market account, and you should not invest the emergency funds in pork bellies or oil wells or your nephew's dog grooming business. Once you have the fund established, leave it alone. You should work hard to ignore it. After all, it's there for emergencies only.

INVEST WISELY

If you invest your personal injury settlement funds, invest wisely. Above all, *diversify*. This means don't put all your money in one investment. I would recommend paying a financial advisor (as opposed to having the advisor actively "manage" your money) to give you sensible advice on investing. A combination of mutual funds, stocks, bonds, and cash on hand is often wisest. If you have the extra money, you may consider using a small portion of your settlement funds to purchase an *annuity*, which is an insurance product which entitles you to annual payments at a later time, and these payments can reoccur for ten or twenty years or the rest of your life. Annuities work well only in limited situations, and they can certainly be a mistake, so be careful with this option. Annuities are useful only when made part of a larger, comprehensive investment plan.

HAVE A LITTLE FUN



Again, don't buy that Mercedes. But once you have a plan for utilizing the money in the best way and for the longest time, then try to set aside a small amount to do something fun. You have been paid because a large corporation was negligent in a way that physically hurt you or a family member. You clearly have suffered needlessly. It's vital that you put the money to its best and most long-term use, but you also need to pump the brakes and do something that brings you joy. A vacation is a great choice, because after years of surgeries and rehabilitation and litigation, you and your spouse may simply need to sit under a palm tree for a few days.

THE TAKEAWAY: A GOOD PROBLEM TO HAVE

Figuring out what to do with money you receive from a settlement or trial verdict is a good problem to have. But you should nevertheless treat it as a problem to be solved. Wasting assets like this can become an injury similar to the original injury. Don't let this happen. Be smart and careful with settlement funds, so the money can work for you for many years.

CHAPTER TWELVE

FAILED MEDICAL PRODUCTS DEPRIVE PEOPLE OF VITALLY IMPORTANT EXERCISE



I was reading an article about the latest study touting the benefits of exercise. It was stunning. The study involved analyzing the brains of two groups of mice: one group in a cage with an exercise wheel; the other in a cage without the wheel. Researchers watched the mice for four weeks. Predictably, the mice with the exercise wheel exercised; the mice without the wheel did not. After a month the scientists measured brain activity in both groups.

Turns out, running and other forms of exercise produce a protein in the brain called “*brain-derived neurotropic factor*” or BDNF (I feel smarter just writing that phrase). This stuff is very good for your brain. BDNF promotes the growth and vigor of neurons. BDNF has also been shown to strengthen the synapses that connect neurons, which allows the brain to function better. Low levels of BDNF has caused cognitive decline in people and animals. Exercise increases levels of BDNF in the brain.

EXERCISE PROMOTES BDNF AND KETONES

In the study scientists discovered that in the brains of mice who exercised regularly, a molecule which blocked the growth of BDNF was less effective. As a result, much more BDNF was produced in the mice who exercised. Sadly but predictably, less BDNF was produced in the sedentary mice. Researchers also found that the exercising mice produced ketones which make their way to the brain and fight off the bad molecules and further promote the growth of BDNF. The guy who directed the study, NYU professor Moses Chao, said: “It’s incredible just how pervasive and complex the effects of exercise are on the brain.” It’s the latest in a long line of studies which prove time and again that exercise is vital to your health. Seriously, people have to exercise. Not exercising causes all kinds of physical and mental problems.

EXERCISE CHANGED MY LIFE

I started running ten years ago. I was several years into my law practice and had two young children. I was out of shape and stressed out. I began running. The first day I could run for only three or four minutes. But I kept at it. In three months I had lost twenty pounds. Six months later I ran a half marathon. I don’t need a study to know how exercise improved my life: my stress level dropped (I run often during trials); I slept better; I ate better; I felt better.

MEDICAL DEVICE VICTIMS DEPRIVED OF EXERCISE

One often ***unacknowledged injury*** that is inflicted on victims of medical device failures is that it prevents people from maintaining a regular exercise regimen. Many of my clients who suffered an artificial hip device failure could barely walk, much less run three miles. Or swim, or bike, or play golf. One of my clients was a highly skilled tennis player. Her Depuy ASR artificial hip failed, and then the revision surgery failed. She can no longer play tennis, which deprives her of one of the great joys of her life, but also deprives her of vital exercise. This to me is significant injury.

NOT JUST FAILED ARTIFICIAL HIP AND KNEES



All kinds of medical device failures can make regular exercise difficult if not impossible. Women with failed transvaginal mesh often report severe pelvic or groin pain; in those cases exercise may not be possible, and certainly not a pri-

ority for the injured woman. Some of the symptoms of a failed IVC filter include chest pain, neck pain, lightheadedness, and shortness of breath. It is hard to run a 5K when you suffer from these physical ailments. In fact, your doctor may even forbid rigorous exercise if you have a broken or migrated IVC filter in your body.

MY SIMPLE ADVICE (THAT YOU DIDN'T ASK FOR)

Exercise is essential to a healthy life. Study after study shows it helps the mind and body. I know it's not easy, but if at all possible you have to find a way to exercise with a failed medical device implanted in your body. Although running may be out of the question, you can try to get in a pool and move around, even if you just tread water or merely move your arms. If walking does not hurt, walk. Ask your doctor or your physical therapist what exercises you can do if you have a failed artificial hip or other failed medical device.

And as for compensatory damages in a product liability case, the inability to exercise regularly should be a part of a settlement discussion. The courts should approach lost exercise the way they acknowledge loss of consortium. I see daily exercise the way financial planners speak of retirement savings: we all know that delaying regular savings can harm your ability to retire. With lost compounded interest and capital gains, every year you do not save will sharply reduce your ultimate retirement funds. Exercise should be viewed the same way: Each year you are prevented from exercising will do damage to your long-term health and well-being. Think of all the BDNF you failed to generate with one, two, or three years of a sedentary lifestyle.

So if at all possible, exercise.

CHAPTER THIRTEEN

MEDICAL FUNDING IS A THREAT TO YOUR PRODUCT LIABILITY FUNDS

I received a court filing from the Depuy ASR multidistrict litigation recently, and it reminded me to caution you about the ***serious financial threat*** you can face when dealing with artificial hip failures and hip litigation (and of course, other medical device failures like artificial knees and transvaginal mesh). Sadly, this threat comes from third-party companies that appear legitimate, even helpful, but mainly have a naked profit motive for getting involved in your case. These companies often cash in unfairly from all the suffering you endured from you failed artificial hip or failed medical device.

WHAT IS MEDICAL FUNDING?

Think of it as a lawsuit loan, or a loan against your future settlement recovery. Medical Funding is a medical care financial assistance “service,” and occurs when a third-party company offers to pay the medical bills of a person who is injured by the negligence of others. This could be a car crash case, a failed medical device like a hip, or any other situation where the negligence of someone else caused the injury. If you accept the offer, the company will pay the medical care provider—the surgeon, the hospital, etc.—a percentage of the provider’s billed charges, but usually more than the provider would have been paid by private health insurance, Medicare, or Medicaid. The company then receives an “assignment” from the medical provider that allows the company (potentially) to receive the full amount of the billed charges, which are often much higher than what the company paid for the medical care and higher than what private insurance would have paid. The third-party company will then file a medical expense “lien” on the proceeds of the person’s settlement or jury award.

THIS IS HOW IT WORKS

Let's say "Andrea" had hip replacement surgery in 2010, and fourteen months later the artificial hip components failed. Her doctors advised her to undergo revision surgery, but in the past year Andrea lost her job and her health insurance. She simply could not afford the new—and necessary—revision surgery. Enter "Trust-Us Medical Funder, Inc.," a third-party medical funding company. Andrea meets with "Brad," a vice-president at Trust Us, and he explains that his company is there to help. Brad says that Trust Us will pay for Andrea's revision surgery, and will even pay for Andrea to spend three nights in a hotel near the hospital where the revision surgery is to be performed.

Andrea accepts. The revision surgery is a success. Trust Us advances costs for the medical care to the surgeon and to the hospital. A year later, Andrea's attorney files suit against the manufacturer of the artificial hip. Her claim qualifies under the settlement agreement, and she accepts the terms of the settlement offer. However, she then learns that Trust Us has filed a medical lien for \$68,000.00. This figure is larger than the amount Trust Us actually paid for Andrea's medical care. (In fact, the difference between what Trust Us paid the actual medical providers and the amount of the medical lien is the profit Trust Us stands to make by advancing the medical costs—it is the only reason Brad showed up at Andrea's house in the first place.)

MEDICAL FUNDING CAN SEVERELY REDUCE THE MONEY AN INJURED PERSON RECEIVES

In many cases, the large medical lien will be paid from the proceeds of the settlement or jury award. For example, if Andrea settles her case for \$200,000.00, she may have to pay the \$68,000.00 out of her share of the settlement funds. After legal fees and hard-cost expenses are paid, Andrea will be left with a net amount much less than \$100,000.00, which is less than half the gross settlement amount. Let's say that Trust Us paid half of the \$68,000.00 lien to actual medical providers for Andrea's care; this means that Trust Us will walk away with a cool \$34,000.00 profit for advancing costs of the revision surgery. (It should come as no surprise that a backlash on medical funders has occurred, and several lawsuits have been filed against medical funding companies.)

In some master settlement agreements, the defendant-manufacturer agrees to resolve the medical liens for the injured plaintiffs, meaning that the settlement amounts to the injured person ***will not*** be reduced by the medical lien payments.

In these cases, medical funding companies like Trust Us can threaten the settlement for the person or jeopardize the entire global settlement agreement. At the very least it could delay the injured person's recovery of needed funds (a speedy recovery is important for most people, but especially "Andrea," who as you'll recall lost her job through this period).

That's where last week's court document came in. In that case Depuy filed a "motion to compel" against one medical funding company, asking the court to compel the company "to produce information necessary for Depuy to review the company's lien demands." Depuy alleges that the medical funding company failed to provide key information in the litigation for Depuy to determine if the medical liens are reasonable. It is just one of many battles that take place in any failed medical product litigation, but the skirmish highlights the financial pitfalls that individuals can fall victim to when moving through a products liability case.

THE TAKEAWAY FOR YOU

The takeaway is simple: if at all possible ***do not*** engage the services of a medical funding company in your products liability case (or any personal injury case). Exhaust every other funding source possible first: private health insurance, Medicare, Medicaid, a kind and generous uncle, even a small loan. If you do not have insurance, or access to Medicare or Medicaid, and no other ability to pay for the necessary corrective surgery, and you are forced to engage the services of a medical funding company, please review the contract carefully (even two or three times), understand the terms of repayment, ask questions, and shop around.

CHAPTER FOURTEEN

THE BEST GIFT AN ATTORNEY CAN DELIVER TO A CLIENT



I have had bad eyesight since I was a teenager. Now in my mid-forties, I have endured retinal tears, cataracts, elevated eye pressure, even something called vitreous detachment. I will spare you the details, but this year the cataracts became bad enough that my ophthalmologist suggested I consider surgery to remove the cloudiness on the lenses of both eyes.

I needed to find the right surgeon to perform this delicate procedure. I mean, we're talking about my eyes. Few things in our lives are as important to our quality of life as our vision. Needless to say, I was not going into this search lightly.

SEARCHING FOR ASSURANCE

I asked *everyone* I knew to recommend the most competent physician performing cataract surgeries. Fortunately I know many people who work in the medical field, and I set out to get *everyone's* views on the subject. First I asked my ophthalmologist, who gave me a few names. I asked my retinal surgeon, who gave me four names. I asked an ophthalmology nurse, who gave me her views on the best cataract surgeons. I asked people who had undergone the procedure in the past. I asked people who may not have had a clue as to which surgeon might be good for these surgeries. I was going to do my homework before allowing some stranger to make incisions on my eyes.

One or two names came up again and again. Eventually I settled on one surgeon, and I met with him. I was not impressed with his people skills or his "bedside manner"—he seemed a bit distant and aloof and cold—but he answered my questions and he came so highly recommended from so many people that I signed on for the surgeries. I had become convinced of his competence and skill. I wanted to know that when the anesthesia took over and I drifted off, that the surgeon I chose would be comfortable, confident, and in control over the surgical procedure.

WHAT A CLIENT NEEDS ABOVE ALL

A few weeks ago I asked a former client to tell me the big questions she had when she first discovered that her hip replacement surgery had failed and that the artificial components inside her body may be defective. She sent me a long list, and it was a fascinating thing to read through the list of burning questions she had when she first learned that she may be the victim of a company's negligence.

But all her questions could be reduced to one single driving motivation, and it was the same motivation that I had in choosing an eye surgeon: ***Do I have con-***

confidence this person can handle the task I have hired him to perform? Will I be in good hands through this process?

So what do we call this? Confidence. Comfort. Assurance. Reassurance. Peace. Maybe all these things. ***But it boils down to this: the client wants to feel confidence in the attorney's skill such that the client can leave the case in the attorney's hands.*** Permitting a client to set aside the stress and distraction of litigation is a great gift.

It sounds simple, but it is actually quite complex. And, unfortunately, uncommon. Every client wants to know that his or her attorney is competent and smart and educated on the particular subject matter of the case. When a client has reached a genuine comfort zone with the attorney, the client can move on to other areas of his or her life, confident that the attorney is working on the case diligently and carefully. The client understands that the case will likely work out as it should.

This is the single biggest gift an attorney can give a client.



CONFIDENCE TO LET THE ATTORNEY HANDLE THE CASE

I have found clients, for the most part, do not need to know every chess move I make in handling a case. But almost every client I have represented must achieve a comfort level with me; they must see evidence that I know what I'm doing, that I understand the work involved in the type of case we are litigating, that I have good judgment when strategic decisions are required, and that if a good result is possible that I will find a way to achieve the good result.

When my client first learned she had defective hip components in her body, she had a thousand questions: Will I need another surgery? If so, will the new surgery be a success? Will I be able to walk, run, exercise again? Will I be able to drive a car? Take care of my children? Will I be able to afford the surgery and the physical therapy and the time out of work? Are the defective hip components inside me the products which are subject of all these lawsuits? Will my lawyer know what to do? Will I be compensated for all this misery?

We see this need for reassurance in virtually every interaction in our lives. If your waiter makes you wait a bit too long before saying hello, then gets the drink order wrong, your confidence in the course of the rest of the evening is destroyed. You are constantly on edge that he will disappear or mishandle a key part of the meal. On the other hand, if your waiter has convinced you in the first interactions that he is on his game and that he will take care of you, you are not alarmed and troubled if eight minutes pass without your seeing him again—you know he is doing what he should be doing, and that he will return shortly with the next thing you need. He has delivered the most important component to a successful night out: reassurance that it will all work out well.

ALWAYS WORKING TO DELIVER REASSURANCE

Have I delivered this level of confidence and reassurance to my clients? Yes. But not always. Early in my career I occasionally did not, as the practice of law is complex and new attorneys are often bewildered, and bewilderment is rarely helpful in building confidence in a client. You can't fake competence. It takes years to understand the practice of law and years to understand a specific practice area (like product liability). It helps that I have been representing clients in medical device and failed drug litigation for over a decade now. I have not always delivered this sense of well-being and comfort to every client, but I always work toward that specific result, and I understand above all else that a client needs the reassurance that he or she is in good hands. It is a massive gift to take on the worry of a case so the client does not have to, and to instill the confidence that I have the skill set to get it done.

CHAPTER FIFTEEN

FINDING THE RIGHT ATTORNEY TO HANDLE YOUR PRODUCT LIABILITY CASE



Let's face it, most attorneys (in fact, most everyone in any profession) sound impressive on their websites. In much the same way as people craft positive, happy versions of themselves on Facebook and Instagram, attorneys usually present a shiny version of themselves on their law firm websites. Often these websites list notable accomplishments. I don't mean to suggest that these accomplishments are unimpressive or even fabricated. What I am saying is that you must go beyond the scrubbed surface of many websites and investigate further when choosing the right attorney to represent you with your case.

1. Determine what kind of lawyer you need. Just as you wouldn't consult a cardiologist for a broken leg, you also shouldn't hire a worker's compensation lawyer to handle the failure of your artificial hip components. Look for an attorney who actively represents plaintiffs in personal injury cases, and specifically defective hip and other medical device cases. Try to avoid the generalists who appear to handle every possible case under the sun, from drafting your will to litigating your car accident case.

2. Look for an attorney with demonstrated knowledge in your specific case area. Take a good look at the information provided on the attorney's website. Does the attorney have knowledge about your medical device failures and the related litigation? Has he or she litigated cases involving defective hips or knees or other defective medical devices? Does the attorney provide recent, timely, up-to-date information on the medical device that has caused problems for you? Was the information helpful to you?

3. Review the attorney's bio. Make sure the attorney has litigation experience in this area of law. Has the lawyer handled cases such as the one you have? Is that apparent from the materials on his website? Spend some time getting to know the attorney as much as you can from the website, the attorney's blog, and any other information provided. And it never hurts to make sure the attorney attended a strong, competitive law school. Beyond that, check to see if the attorney has other noteworthy accomplishments, such as serving a judicial clerkship, which is a prestigious job offered to a small number of law school graduates. Finally, it is often (though not always) helpful for the attorney to practice in the state you live in, or at least within a day's drive; the most important advantage of this proximity is that you can meet face-to-face with your attorney when it becomes necessary.

4. Meet with the attorney you wish to hire. This is a critical step. After doing your research, call and explain your case to the firm's paralegal and, if possible, arrange a time to meet in person with the attorney. If after the meeting you

aren't convinced that you have found the right lawyer, or the fit simply doesn't "feel" right, go back and start the process over. Some cases resolve rather quickly, but others can take years to resolve; it is therefore important that you choose an attorney you can work with throughout the process.

At the end of the day, I'd rather see you take your time and find a good lawyer—even if that lawyer is not me—than for you to stumble upon an incompetent lawyer who bungles your case. I am a good lawyer, but I'm not the only one.

CHAPTER SIXTEEN

DON'T CHOOSE A PRODUCT LIABILITY LAWYER BASED ON A "FREE CONSULTATION"



I see this on many lawyers' websites or print advertisements: **Free Consultation!** It sounds great. Something is free! It's a free con-sul-TAY-tion, from an actual lawyer (although this last part is often not true; instead you likely get an "intake specialist," a person gently trained to take down your story and type it up, usually for a paralegal to read). The "free consultation" is not all it's cracked up to be.

THE FREE CONSULTATION HAS VERY LIMITED VALUE

Let's start with the hourly-rate case. If the legal representation will ultimately be subject to an hourly fee payment arrangement, this "free consultation" will not likely save you much or any money. First, some lawyers allow thirty minutes "free" and then announce, "if we go further I'll need to charge you my hourly rate." But even if the attorney sits patiently and listens carefully to you explain your case for forty-five minutes or an hour, it is unlikely the attorney will be able to give you sound legal advice at that point. Quite simply, a legal dispute is complex (otherwise you could have handled it yourself). Even a basic breach of contract action will usually have two conflicting stories, and behind those stories will sit documents: agreements, letters, invoices, emails, texts, witness statements, all of which must be reviewed carefully and analyzed. So a one-hour consultation usually gives the attorney a surface understanding of your issues. Imagine if a doctor offered a "free consultation," and after a twenty-minute visit announced, "I understand completely. We must perform surgery and remove one part of your lung." It doesn't work that way. Instead, the doctor listens to your story (and charges an office visit fee), then orders the appropriate tests (more fees), and finally makes a decision on proper treatment (again, more fees).

THE CONTINGENCY FEE AGREEMENT

In a personal injury case, the attorney will most likely charge legal fees pursuant to a contingency arrangement, which means he or she will collect a percentage of the fee after the case is settled or tried to a jury (and won). So this first visit or consultation would not be charged pursuant to an hourly fee anyway, nor would the second or third or thirtieth. It's all part of the labor involved in representing a client and earning a 33.33% or 40% contingency fee.

So when a contingency-fee attorney promises the first consultation free, recognize that it is not actually free, nor would he charge you per hour anyway. The "Free Consultation" in personal injury matters is simply a marketing tactic. I have listened to hundreds of prospective personal injury clients explain their issues to me over the years, and in those cases I do not "charge" for this first visit.

Given that it is an injury case, I will charge a “contingency fee” rather than an hourly rate, so I recognize that it is all part of the work I will do on behalf of my new client. In that way, I am not providing a free consultation. If the injury case is successful, the client will get paid and I will get paid at the end of the case. If not, unfortunately, no one gets paid.

YOU GET WHAT YOU PAY FOR

Here’s the thing: ***you don’t want a free consultation.*** You should recognize the value you receive and the power you have when you pay for services. It will be the best way to ensure that you receive careful, quality representation from an attentive and responsive lawyer. (And this applies to all professions: doctors, accountants, money managers, barbers, painters—everyone.)



There is much truth in the adage that you get what you pay for. When I was in my twenties, and broke, I went to a hotel ballroom that promised a trip to the Bahamas if only I would listen to a simple, four-hour presentation on time-

share purchases. I went. It was horrible. Highly trained and highly caffeinated salespeople talked and talked and talked at me about purchasing a time share. I endured this torture for hours, and then received a small document explaining how I was now entitled to receive a four-day stay in the Bahamas. Reading the details, it became clear that I could only use the offer during certain very limited periods in the year, and that I couldn't arrive (or depart) on certain days of the week. Beyond that, I wasn't even sure the hotel they promised me had vacancies on the days of the week I was allowed to show up. It quickly became clear my free Bahamas trip was useless. I never made it to the Bahamas (at least with my free voucher). And I will never get back that afternoon listening to "Keith" tell me about the unbelievable time-share deal (available for a short time only!).

DON'T SELECT AN ATTORNEY BASED ON WEBSITE PROMISES



As always, the best course of action for selecting the right attorney for your case is to ***do your research***. Look for an attorney with demonstrated knowledge in your specific case area. Take a long look at the information provided on the

attorney's website. Does the attorney have knowledge about your specific legal issue? Does the attorney provide recent, timely, up-to-date information on the legal issues you are facing? Make sure the attorney has litigation experience in the relevant area of law. Has the lawyer handled cases such as the one you have? Finally, if possible meet with the attorney you wish to hire. After doing your research, call and explain your case to the firm's paralegal and arrange a time to meet in person with the attorney. If after the meeting you aren't convinced that you have found the right lawyer, or the fit simply doesn't "feel" right, go back and start the process over.

CHAPTER SEVENTEEN

**MY CHALLENGE TO MANUFACTURERS:
PUT ME OUT OF BUSINESS!**



I don't drink the Kool-Aid. I distrust simple answers, group-think, zealotry. I can't stand when people make sweeping generalizations about the absolute evil of one side and the unconditional good of the other side. I don't usually spend much time with plaintiffs' attorneys who think every corporate decision is an act of violence and malfeasance. I am convinced there are two sides to every story (even if, often, one side of the story is weaker).

MEDICAL DEVICES AND DRUGS HAVE SAVED MANY LIVES

So it is with my law practice. I do not believe major companies are evil, that they are out to hurt people, that all the conspiracy theories are true. I am convinced the life-cycle of a medical device or drug begins with a beautiful idea: to develop a product that will save lives, that will make people more active, that will help people and not hurt them. In fact, virtually all medical devices or drugs are first developed by one or a few smart people attempting a solution to a pressing health problem.

And these medical devices and drugs *have saved lives*. And as a society we have to create an environment where doctors and scientists and corporations have the freedom and the opportunity to build new medical devices and new drugs to solve vexing health problems.

BUT CORPORATE GREED IS REAL, AND DANGEROUS



But something sinister occasionally happens on the road from inspired surgeon with a new idea to the release of 100,000 medical devices into the marketplace.

Greed happens. Corporations rush products onto the market without proper. Sales departments see huge profits on the horizon if only the product can get to the market *right now*. Marketing departments spend massive amounts on television commercials, Internet advertising, print ads, and access to doctors. Corporate leaders occasionally ignore clinical trials which show alarming evidence of harmful side effects and instead push the product to market *with the knowledge* that the product may hurt innocent people.

MY FIGHT

This is what I fight against. I fight for the people injured by the negligent or intentionally harmful acts of big corporations. I hate reading yet another white paper about a product that was released to the public even though the company had compelling evidence that the product had design flaws that could injure or kill patients. I hate this. And I will keep fighting corporations who do this to people.

MY CHALLENGE

So when corporations across the board do the right thing, when they properly test their devices and drugs, when they make decisions on new products based primarily on public health and not on immediate corporate profits, then there will be no work left for me to do. I will be out of business. I can then go back to teaching or maybe start a new career renting windsurfers at the beach. It would be an easy trade-off.

When corporations consistently put public safety and the public good over naked profiteering, I will stop representing individuals injured by flawed medical devices and drugs. I will stop practicing product liability law. I truly hope they put me out of business for good.

JOB SECURITY

Sadly though, I believe I have chosen a career path with job security. Each year, products flood the market that are inadequately tested and seriously flawed, and as the months pass hundreds of people come forward with horrific stories of permanent injuries, debilitating pain, lost jobs, and diminished lives. I hate these stories. When these people are no longer unfairly injured by failed products I will gladly “find myself a rock and roll band / That needs a helping hand.”

Until then, I fight.

ABOUT THE AUTHOR

Clay Hodges is a product liability lawyer based in Raleigh, North Carolina. He graduated from UNC-Chapel Hill in 1990, then spent a year teaching English, tending bar, and waiting tables in Europe. He returned to the United States, lived on a houseboat, wrote a (bad) novel, earned a master's degree in literature, and taught English for three years. He graduated from UNC-Chapel Hill School of Law in 2000. After a two-year judicial clerkship, he has been practicing law. He represents clients injured by failed medical devices and problem prescription medications in the Carolinas and throughout the country.

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FOR FURTHER INFORMATION
PLEASE CONTACT:

Clay Hodges

Harris Sarratt & Hodges, LLP
1620 Hillsborough Street, Suite 200
Raleigh, North Carolina 27605
(919) 546-8788

Website: www.northcarolinaproductliabilitylawyer.com

Email: clayhodges@hshllp.com