

Do You Really Want Your Day In Court?

05/25/16

In addition to seeking fair compensation for injuries suffered, one of the primary reasons plaintiffs file personal injury lawsuits is because they want their day in court. Television dramas have led us to believe that, in addition to paying damages, making a defendant admit to—and be accountable for—their wrongdoing is the greatest reward a lawsuit can bring. Although plaintiff verdicts at trial can result in large awards, and be emotionally vindicating, there are many sound reasons why plaintiffs should consider the benefits of settling their lawsuit before trial, especially in pharmaceutical and medical device cases.

Settling a lawsuit for fair compensation without an admission of fault is often the most advantageous route a plaintiff can take. In fact, according to United States government statistics, only 4% to 5% of personal injury cases actually end up at trial. The remaining cases, if not dismissed for various reasons, settle before the case reaches the courthouse.

One of the biggest reasons to consider settling a drug or medical device case before trial is the length of time it takes to actually get to trial. Lawsuits related to defective drugs or medical devices often involve claims brought by hundreds or thousands of individuals who used the drug or device and were injured in a similar way. A common practice in federal courts is to consolidate all of the cases to a single court where they can be coordinated and handled by a single judge. Although this practice provides significant efficiencies, it can also slow the overall litigation process. It is not uncommon for several years to pass before the first of the thousands of coordinated cases goes to trial. Even after the first or several trials, the court system is not equipped to handle all of these cases through trial. I have personally seen medical device cases progress for 5 to 7 years before the first case is put before a jury. Fortunately, the opportunity for settlement often presents itself long before your individual drug or medical device case is considered for trial.

Settlement also enables a plaintiff to avoid the excessive costs associated with trial. As compared to a slip-and-fall or automobile accident case, where the decision at trial will normally have an impact on only a single party plaintiff and single party defendant, the outcome of drug and medical device cases can have an indirect impact on hundreds or thousands of injured plaintiffs. Beyond that, from a manufacturer's perspective, the financial implications can be in the hundreds of millions, if not billions of dollars. It is because of the high stakes that parties spare no expense in preparing and presenting their medical device and drug cases at trial. The cost of medical and scientific experts alone can be several million dollars. These expert costs, along with the cost of depositions, document management and trial presentation, can eat away at any potential recovery and make the prospect of settling before incurring these costs a more attractive and reasonable financial decision.

Most significantly, resolving your case with a fair settlement removes the significant risk of losing at trial. Government statistics indicate that only 10% of personal injury cases that go to trial result in verdicts in favor of the plaintiff. Having to satisfy the burden of proof at trial, plaintiffs who commonly have underlying medical conditions that required the use of the drug or medical device may face an uphill battle in the courtroom. Does the lack of a guaranteed victory mean that I shouldn't file my case? – No, not necessarily, but it does mean that you should give strong consideration to reasonable offers of settlement that may enable you to avoid the risks of trial.

Attorney

- Lynne M. Kizis