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My Medical Device Was Withdrawn From The Market, I Must Have A Good Case

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How do you know if a pharmaceutical or medical device you used may have been the cause of injuries you suffered? The recall of a drug or medical device, alone, is generally not enough to establish the necessary liability. In fact, there are several ways in which a pharmaceutical or medical device may be removed from the market. In order to avoid the stigma associated with product recalls, drug and device manufacturers will sometimes voluntarily withdraw a product from the market if it believes it is about to be ordered to do so by the Food and Drug Administration. However, even in the midst of reports that the product may be dangerous, removal of the product from the market does not mean it was the cause of your injuries.

In personal injury lawsuits involving pharmaceutical or medical device products plaintiffs have the burden of proving that the product caused the injuries being alleged. To do so a plaintiff must establish two different elements of causation: (1) that the product can cause the injury being alleged by plaintiff; and (2) that the product did cause plaintiff's injury in a particular instance. Often clinical studies, outcome registries and adverse event reporting can provide the evidentiary basis for concluding that a particular drug or medical device has an increased propensity to cause a particular injury, satisfying the first element. However, beyond establishing that a product may have an increased propensity to cause a particular injury, additional evidence is needed to establish that the product actually caused the injury in your specific case.

Everyone is different and the different health characteristics of each person is what complicates a lawyer's ability to establish individual causation. For example, when attempting to argue that an artificial hip or knee failed, factors such as surgical technique, body mass, level of physical activity, smoking history and age may come into play. Likewise, if attempting to argue that a pharmaceutical product was the cause of a heart condition, factors such as medical history, age, weight, family history, eating habits and exercise habits may be relevant. Each of these factors can undercut the causation argument, making success at trial more difficult.

As an advocate, a lawyer should be taking all steps necessary to put forth the strongest causation argument. However, as a plaintiff, the injured party must be aware that just because a product has a propensity to cause a particular injury doesn't mean it was the cause in every particular case.

Attorney

- Lynne M. Kizis