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## There's No Place Like Home... Or So You Think

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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. The good news is that there is power in numbers. But, trying to manage that many cases can wreak havoc on our court system. To ease that burden, and while still giving the injured their day in court, a common practice in federal courts is to consolidate all of the cases in a single court where they can be coordinated and handled by a single judge.

Importantly, this coordination should only involve the pre-trial process. In theory, once that process is finished and a case is ready for trial, the case should be tried in the court where the plaintiff originally filed it because an injured party cannot be forced to have his case heard by the coordinating court. In fact, under court rules, unless the injured party specifically waives the right, the case should be sent back to the original court where the plaintiff chose to file it.

But is your original choice the best place for your case? Before giving in to the “knee-jerk” reaction that “there’s no place like home,” many factors should be considered to determine the most advantageous forum. In most situations the benefits of having your case tried before the coordinating judge outweigh the benefits of having the case returned back to the home court – the legal term for the return of the action is “remanded.”

Convenience to the injured party is the obvious benefit to have the case tried in the original court. Being close to home makes daily attendance and active participation at trial much easier. After all, who doesn’t like to sleep in their own bed! On the other hand, remanding the case back to the original court removes it from the oversight of a judge who has likely spent a number of years becoming well versed in the complicated medical, scientific and legal issues that pharmaceutical and medical device cases involve. The question becomes is the comfort of your own bed at night worth the risk that the local judge won’t truly understand the complex theories that have developed over several years of pre-trial work? The answer depends on you and your lawyer deciding together on how to obtain the best strategic advantage for your case.

Other factors to consider are personal to every individual plaintiff, for example, whether physical limitations, health concerns or family issues might prevent an injured party from traveling to a possibly distant federal court for trial. Depending upon the location, it may also be more difficult for your expert witnesses to appear in person. Although videotaped testimony can be used as an alternative, it may not be as effective with the jury. And, when considering which court may be best for trial, the potential makeup of the jury pool is a very significant factor.

The bottom line? Although an injured party in a coordinated or consolidated drug or medical device case always maintains the right to have the case remanded back to the court where the case was originally filed, that court isn’t always the “best” court. While it is usually true that “there’s no place like home,” sometimes it pays to keep your ruby slippers in the closet and stay where the winds of the court system have blown you.

### Attorney

- Lynne M. Kizis