

No, Your Drug Or Medical Device Case Is Not Part Of A Class Action

05/11/16

Clients deciding whether to file a pharmaceutical or medical device case often ask a common question: Will my case become part of a class action? This question—or concern—arises from the perception that class action lawsuits usually result in a very limited recovery for each member of the class. Understandably, if you have been injured by a defective drug or medical device, and facing the prospect of a potentially long and emotional legal action, the last thing you want to think about is a limited recovery. Fortunately, there are significant differences between class actions and drug and device litigation, and drug and device litigations will usually provide sufficient recovery to the injured party.

Lawsuits related to defective drugs or medical devices will often involve claims brought by hundreds or thousands of individuals who used the drug or device and were ultimately injured in a similar way. A common practice in federal court is to consolidate all of the cases in a single court where they can be coordinated and handled by a single judge. This coordination is commonly referred to as a “mass tort.” In a mass tort action, plaintiffs’ attorneys will usually work collectively to build a case against the defendant with the expectation that the judge will eventually order all of the cases to be sent back to the court of original jurisdiction.

In drug and device cases that are coordinated as a mass tort, the individual plaintiff retains several important rights not available in a class action. To start, the plaintiff continues to maintain an individual lawsuit and has the right to make decisions related to the individual lawsuit. For example, the plaintiff can never be forced to have a trial in any court other than the court of original jurisdiction. Although a plaintiff can waive that right in favor of having the mass tort judge preside over the trial, it is a decision that only the individual can make. In addition, as compared to a class action that is adverse to considerations of individual issues, the individual facts surrounding the use of the pharmaceutical or medical device will remain an important factor in the progress of the lawsuit. Finally, and maybe most importantly, at the appropriate time the individual alone retains the right to decide whether to settle the individual lawsuit or to continue to move forward toward trial.

In contrast, a class action is filed by a single or small number of “named representatives” who seek to represent the interests of an entire class of individuals in a single lawsuit. Class actions are typically considered the best method of litigating cases where a large number of individuals have been damaged for a relatively small amount of money. Generally speaking, the key difference is that class actions do not involve personal injuries. As soon as practicable after the filing of the class action the named representatives will ask the court to certify the action as a class action. If the class action is certified and appropriate notice is provided to class members the class members may be bound by the results of the single class action lawsuit.

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