

Introduction

We hope this newsletter finds you and yours well. This is the fourth Branch Law Firm Infuse Inquirer. Please review it for a general update on the Medtronic Infuse litigation. As always, if you have any questions or concerns, please contact us.

Litigation Update

Over the past few months we have been filing Infuse cases across the nation. The majority of our cases, for strategic reasons, have been filed in Hennepin County District Court (Minneapolis, Minnesota). On May 9, 2013, we argued in front of Judge Laurie Miller regarding Defendant, Medtronic, Inc.'s Motion to Dismiss. The Defendant argued that all of our clients' claims are preempted by federal law (see Preemption section below). We zealously argued against such a proposition. We are cautiously optimistic that Judge Miller will deny the motion and allow our clients' claims to proceed.

In Hennepin County, a judge is allowed a limited amount of time to rule on a motion. We anticipate Judge Miller to rule on Medtronic's motion in the near future. Once she does, we will inform you of her decision and the next steps that will proceed.

The Filing of Your Case

We have received many phone calls inquiring when your case will be filed. Please note that we are filing cases on a rolling basis. We first must obtain all the necessary records for our experts to review your case. Once the experts give us a green light, we then file the case. Unfortunately, there are so many cases a week our experts can review and still be able to treat their own patients! You will know when your case was filed by a letter in the mail.

Your Current Treatment

We appreciate you informing us of the current treatments you are undergoing to combat the pain related to your

Infuse. Information on such treatments will be immensely important in determining the amount of damages we can request from Medtronic or from a jury. When you e-mail us, please include the following information: (1) the date of treatment, (2) a description of the treatment (i.e., injections, revision surgery, manipulation, etc.), (3) the name of the physician/surgeon, and if applicable, (4) the name and address of the hospital.

Once received, we will order the records from these facilities. Medical records and bills are the most important pieces of evidence, other than your own testimony, to support your case. Obtaining these records and providing them to the defense will allow them to understand the severity of your injuries as well.

Preemption

Preemption is when a state law is invalidated because it conflicts with a federal law. For example, if a state law required that only a driver and front seat passenger were required to wear a seat belt, but the U.S. Congress then passes a bill that requires all passengers to wear a seat belt – those two laws would be in conflict. Because of the nature of our nation's structure, federal law will always be the supreme law over the state law. Therefore, in this example, seats belts would be required for all passengers.

In the context of a medical device case, the state law would be a claim an injured person would bring against a device manufacturer in court. For example, that the manufacturer should have provided stronger warnings related to a device and is therefore liable. The federal law, also in the context of medical devices, is the federal Food, Drug, and Cosmetic Act which states that no state law shall increase requirements on a manufacturer other than what the U.S. Food & Drug Administration requires.

In the context of the Infuse litigation, no state law can require Medtronic to warn more than what the FDA approved in the Infuse label. If the state law requires Medtronic to have warned more than what the label says then a Court can hold that the claim is preempted by federal law. If a Court holds as such then the claim would be dismissed because a plaintiff can only bring a state law

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claim – not a federal law claim.

There are specific legal routes we can take as your lawyers to combat preemption. To date, many courts have heard arguments about preemption as it relates to Infuse and the holdings have been split. Some courts agree with Medtronic and hold that a Plaintiff's claims are preempted and therefore dismissed. Some courts agree with the Plaintiff and hold that the Plaintiff's claims can proceed.

We are working tirelessly and have retained experienced appellate lawyers to help us on drafting our pleadings that will address the preemption issue. We are confident that our efforts will help us prevail on this critical issue. To see what you can do to help combat preemption, please see the *Medical Device Safety Act of 2008* section below.

Medical Device Safety Act

The Medical Device Safety Act was a bill that was introduced in both the U.S. House of Representatives and Senate. The bill was drafted in response to the U.S. Supreme Court holding in 2008 that upheld the preemption argument as it relates to medical device companies. The purpose of the bill was to amend the Federal Food, Drug, and Cosmetic Act to allow a state law to require more of a medical device manufacturer than what the FDA required. In other words, to allow for lawsuits against manufacturers as it relates to the adequacy of the warning. The Act never made it out of committee and has stalled in both houses of Congress.

If we can get this bill passed, we would be able to recapture the full rights of those injured by a medical device. The only way to get this bill passed is to reinvigorate Congress and support this bill.

We urge you to contact your Representative and Senators and tell them their constituents want these bills passed. When contacting your Representative, you should cite House Bill 1346 (111th). When contacting your Senators, you should cite Senate Bill 540 (111th).

Medical Malpractice Lawsuits

It is of the utmost importance that you know that the Branch Law Firm and the other law firm(s) working on your Medtronic Infuse case **are not handling a medical malpractice case against your surgeon and/or hospital**. Should you desire to pursue such a claim, we suggest you find a local attorney in your area that handles medical malpractice claims. In addition, we also would like to speak to you about pursuing such a claim and how it will

affect your claims against Medtronic. Therefore, before you contact another attorney, please call us to discuss!

New Information

It is imperative to inform us if you have been treated by a new physician, clinic, or hospital related to the injuries you have suffered due to Infuse. This allows us to obtain records from these facilities and present your case in its complete form. Please contact us by telephone or e-mail and update us!

Death of Client

Should you receive this newsletter addressed to our client who has recently passed away, please call us immediately. The law has specific protocols we must follow in order to pursue a claim for wrongful death. We will discuss the next steps that will be taken to preserve the claims against Medtronic during that call.

Contact Information

If any of your phone numbers or addresses change, it is imperative that you contact us immediately. The best way to contact us is by e-mail at infuse@branchlawfirm.com.

If you have any questions or concerns, please do not hesitate to contact any one of our Infuse Team members at 800-828-4529 or at the email address above.

Sincerely,

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