INFUSE INQUIRER

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Introduction

We hope this newsletter finds you and yours well. This is the third 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 last year our firm has researched, evaluated, and debated about which jurisdiction would be best to hear our clients' cases. We strongly believe that the state court in Minnesota, specifically Hennepin County (Minneapolis) would be the best fit for our clients' cases for several reasons. First, filing in Minnesota would allow us to stay in state court as opposed to federal court. Federal courts have stricter rules and requirements than state courts thus making it tougher to prove our case. State court gives us a better opportunity to prove our case on our terms. Second, state court will allow us to bring our clients' cases quicker to trial than any other jurisdiction. Third and finally, Minnesota state courts have fair judges and great rules that will allow us to litigate our cases expeditiously.

Once we file your case you will receive a letter from us that details the next steps in your case.

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 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.

BRANCH LAW FIRM

In Albuquerque 800-828-4529 **In Houston 800-243-3545**

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!

CT Scans and MRIs

The majority of orthopedic surgeons who are treating patients do not necessarily understand or know the full extent of the damage Medtronic Infuse can cause your body. One of the few ways to prove that Medtronic Infuse has caused your injuries is to obtain a CT Scan and/or MRI after your fusion surgery. If you have not yet had either of these tests performed on you since you underwent fusion surgery with Medtronic Infuse, it is imperative that you do so as soon as possible. Once performed, please contact us by telephone or email and inform us where and when the test was conducted, so that we may order the relevant records. If you have records or CDs of these tests in your possession, please make sure you send us a copy!

Additionally, any prior infuse surgery imaging reports and scans/films must be obtained. For example, any CT scans, MRIs or X-rays that were performed on your back or neck prior to your infuse surgery need to be obtained. If you have not already provided the name of the facility that performed the imaging prior to your surgery, please let us know the name of that facility immediately via email or telephone. If contact us and reach a voice mail, PLEASE LEAVE A DETAILED MESSAGE WITH THE NAME AND ADDRESS OF THE FACILITY. If you have these pre-infuse reports/scans in your possession, and you have not already sent them to us, please do so immediately. Thank you!

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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and the Infuse Team

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