

## 3 Myths About Choosing Winning Products Liability Cases

### - Myth #1

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### At Last! How to Choose Winning Contingency Fee Products Liability Cases

Choosing winning contingency fee products liability cases ensures a positive return on your investments of time, effort and money. Winning also enhances your reputation, enabling you to get and win more cases for more money in less time. Choosing the wrong cases drains your resources with no return and worse.

This is the first in a series of articles examining three of the top myths that often lead to mistakenly taking on a seemingly good case that turns out to be a loser in multiple ways.

### Myth #1: An injured party with a good story makes for a good products liability lawsuit.



This statement can seem so correct. Isn't that who you're hoping comes through your door?

However, believing that an injured party with a good story always makes for a good products liability lawsuit can hurt you. There are several pitfalls that can result in your investing substantial sums of time and money on a losing or under-performing case.

**The Reality: Every potential claim must be examined with multiple considerations, any one of which could make the case a loser for you and your client.**

Your injured (or surviving) party comes to you with obvious injuries and a compelling story about how the injuries (or death) were the result of a dangerously faulty product. Your key criteria for accepting a case appear to be met:

- The prospective client is obviously injured
- The cause of the injury appears obvious
- The responsible party has deep pockets
- You may even have experience with the same or similar situations
- There may be a product recall out for what appears to be the same problem
- Your estimated investments in the case appear to be reasonable
- Your Return On Investment (ROI) is desirable



**STOP!** I repeatedly encounter 3 common reasons for trial attorneys choosing to accept losing products liability cases. During my 15+ years of serving as a consulting and testifying engineering expert, when attorneys

come to me too late, I'm forced to turn away many products liability personal injury cases for one or more of the following reasons:

- **You haven't correctly identified the actual or proximate cause of the injury.**
- **Your inability to substantiate negligence on the part of the defendant(s)  
(This is the subject of Myth #2 in this trilogy)**
- **The same deep-pocket defendant(s) with funds that make this appear to be a desirable case have the resources to bury you in costly delays and obfuscations**

Let's look a little closer into these 3 reasons for losing cases.

### **What was the Actual Cause of the injury?**

Were the prospective client's injuries incurred due to a **defective and unreasonably dangerous** product that the **manufacturer was negligent** in producing?

**-OR-**

Was it really the injured party's own fault and they're just not taking responsibility for their mistake? A good story probably won't prevail if it violates the laws of physics.

### **What is the Proximate Cause of the injury?**

Have you correctly identified an action or inaction on the part of the defendant that produced the **foreseeable consequences** suffered by your client? The same apparent damage and injury that occurs as a result of a known existing problem doesn't mean that this particular incident was a result of the same problem or failure.

**Example:** An attorney contacted me regarding a client who was injured when a firearm barrel ruptured in a non-typical manner near the rear of the barrel. The attorney was preparing to pursue claims against both the firearm manufacturer and the ammunition manufacturer.

By examining photographs of the firearm and the fired ammunition case, I determined that the damage and subsequent injury was caused by an action of the firearm owner. The attorney saved substantial time and money by not pursuing claims against the firearm and ammunition manufacturers that would not have been substantiated.

**As you can see from the example, early identification of the causes of the injury impacts your success and ROI.**

**We'll delve deeper into the myth that you can always substantiate "obvious" negligence in the next article in this trilogy.**

### **Can your firm afford to accept this case?**

Who would be the named defendant(s)? What is their reputation for how they conduct themselves when they're named in a complaint? The more they have to lose, the more vigorous you can expect their defense to be.

**How big of an investment is your firm capable of or willing to make?**



Does your firm have the resources (Time, Money and Personnel) to successfully litigate this case to a successful conclusion? Large, multinational corporations may use their size as a major deterrent to settling cases. They may deny culpability and employ tactics that can result in years of obfuscation, delays and mounting costs.

**In order to avoid these 3 common mistakes when choosing cases, you need to:**

- **Accurately identify the Actual and Proximate Causes of the injury**
- **Ensure that you can substantiate the defendant's negligence**
- **Ensure that you understand the investments that may be required to litigate this case to a successful conclusion**

**Coming Next:** The next article in this trilogy will examine **Myth #2: I can always substantiate “obvious” negligence.**

**HELP IS AVAILABLE NOW:**

**If you need immediate help** with a pending or ongoing case, call me directly at **602.670.9651** or email me at [Art@LawsuitsConsultant.com](mailto:Art@LawsuitsConsultant.com).

**CASE MERIT EVALUATION with Dr. Eckstat:**

I perform a Case Merit Evaluation with you. We review the merits and/or Red Flags involved in choosing whether or not to accept or continue to pursue a products liability personal injury case.

**This Case Merit Evaluation can either make you or save you a lot of time and money!**

**Your Case Merit Evaluation does not require a retainer fee or further obligation and can be performed at a fraction of the cost of a typical retainer fee.**

**Call, email or go to my website to initiate your Case Merit Evaluation:**

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## **YOUR SECRET WEAPON for Winning Cases and Getting Justice for Your Clients**

### **STATE BAR OF ARIZONA CLE Snippet by Dr. Eckstat:**

The **State Bar of Arizona** partnered with me to produce a **CLE Snippet** where I presented **“How to Avoid Losing Cases and Get Winners.”**

### **AZ PARALEGAL ASSOCIATION CLE Webinar**

I presented a **CLE Webinar** to **AZ Paralegal Association** members entitled, **“Will That Product Liability Personal Injury Claim Prevail?”**

**How and Why Were They Injured?**

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