

Litigator of the Week: Letting the Experts Do the Work

By Max Mitchell

November 10, 2016

Duane Morris partner Matthew A. Taylor doesn't believe that lawyers win cases. For him, it all comes down to the experts.

That's why, when faced with defending a medical device maker in a notoriously plaintiff-friendly venue over claims that have yielded numerous multimillion-dollar awards, he wasn't worried. He knew he had the experts and the facts to overcome whatever the plaintiff's threw at him.

"I think that, if explained properly and if you educate the jury properly, as I think we did here as a team, the jury understands that these are good products," said Taylor, who is chairman of Duane Morris' trial practice group. "The key here is, of course there are risks when you put a foreign object in your body like a medical device. In my view, juries understand that. It's explainable, and we did that here."

Taylor successfully defended Wright Medical against claims that its ProFemur hip implant system was defectively designed, and the company didn't properly warn about the device's failure rate. The claims were brought in the Circuit Court of St. Louis County – an area that came in fourth place on the American Tort Reform Association's list of "judicial hellholes" for 2015-2016.



Matt Taylor of Duane Morris.

Courtesy photo

According to court documents, the plaintiff, Donald Deline, contended that the metal-on-metal hip implant caused him to develop a painful pseudotumor, which required him to undergo a revision surgery. The claims are similar to those that resulted in a \$500 million

verdict a Texas jury handed up in March against a Johnson & Johnson subsidiary, and an \$11 million verdict out of federal court in Atlanta against Wright Medical, which was reduced to \$2.1 million and is now on appeal.

Several days before Wright Medical's win, the company agreed to pay \$240 million to settle about 1,300 claims associated with hip implant failures.

Taylor said the plaintiff's attorney, J. Michael Ponder of Cook Barkett Ponder & Wolz in Cape Girardeau, Missouri, who Taylor described as an "excellent lawyer," came to trial armed with numerous soundbites suggesting that the defendant acted nefariously and hid information about the product. Taylor, however, said nothing could be further from the truth, and once he had the chance to thoroughly review the documents that the plaintiff had "cherry-picked" from, the jury finally saw the whole picture.

"We let the plaintiffs kind of get all their punches in, and then we countered very thoroughly with the science and engineering, and I think that won the day," Taylor said.

While the plaintiff had his own witnesses to challenge the defense's position, Taylor said Wright Medical's biomechanical engineer and orthopedic experts meticulously explained why the metal-on-metal device was a good fit for the plaintiff. The jury was convinced, ruling 9 to 3 for Wright Medical on Nov. 3.

One potentially complicating factor in the case, however, was the fact that the treating doctor who

implanted the device in Deline was also a defendant at trial. Having both the device maker and the treating physician as defendants at trial is a highly unusual move, but Taylor said both defendants worked together to fend off the claims, and in the end, both were vindicated by the jury.

"From our standpoint, counsel for [the treating doctor] and we got along beautifully," Taylor said. "There was never one moment where we had anything other than a unity of interest." J. Thaddeus Eckenrode, of Eckenrode-Maupin in St. Louis, represented the doctor, Paul Lux.

In terms of takeaways from the win, Taylor said the verdict reaffirmed his belief that strong witness preparation and taking the time to hash out all the details, data sets and scientific facts before the jury is a winning strategy.

"Really, witnesses win cases, and lawyers don't, in my view," Taylor said. "I just think the jury wants to hear from the witnesses, and in this case, we let our witnesses tell a thorough story."

Taylor's team consisted of Duane Morris partners Dana J. Ash and J. Scott Kramer, as well as associates Sean K. Burke and Ryan J. O'Neil.

Duane Morris LLP