

The Real Experts

By Jeffrey M. Baill, Yost & Baill, LLP



The theme for this year's Litigation Skills conference was Product Liability. I had the pleasure of working with our opening speakers in preparation for the conference. Talking with Tom Crane and John Schleiter gave me a great opportunity to reminisce about this fascinating area of law and how it has changed over the last 35 years. In addition, it gave me a chance to explore a theory I have always had about these cases and the Subrogation Industry.

I have always said, based on my own experience rather than any objective data, that subrogation attorneys probably handle more product liability cases than traditional Plaintiffs' attorneys. My rationale was based on my belief that there are probably 10 property claims for every 1 personal injury claim arising from defective products. Once again, this is only based on my experience of handling or supervising over 40,000 subrogation cases over my career.

As part of the preparation for this year's conference, I decided to conduct an informal investigation on my theory. I called one of the largest personal injury firms I know. I asked if

they would tell me the number of product liability cases they had in relation to their other claims. To my surprise, they shared their numbers and told me that the firm currently had approximately 2400 open files. Of that amount, only 5 were product liability cases. That calculates to .002 percent. In our office, the amount is closer to 20%. I have no reason to believe that the numbers in my office are much different than other subrogation firms. Even if the numbers given to me by the Plaintiffs firm are somewhat off, or my numbers are off, the difference is startling.

Why does this revelation matter? I think the most important reason is this: If you are looking for the most experienced Product Liability Plaintiff's lawyers in the country, look to Subrogation Attorneys. We have so much more experience than any other group. Remember the analogy about doctors; if you need to have complex surgery, who do you want performing it, a doctor who dabbles in it, or one who does it all the time?

Here is where it becomes more practical. If you are a claims professional and are handling a product liability subrogation claim where the insured is represented by their own attorney, should you allow the insured's attorney to represent your interest? I can give you lots of reasons why this is a bad idea, but for this essay, let's just focus on one. The odds are, your subrogation counsel will have much more experience handling a product claim than the insured's attorney. That will not always be the case, but based on the theme of this article, it will most often be the case.

When I work with insured's attorneys on product liability cases, I remind them that we

can really help them build their case, rather than hurt them. We know the right experts to bring to the table. We probably have more experience dealing with the product liability defense counsel. We know the right mediators who understand these cases. We are more familiar with defense tactics on product cases. All in all, we are the doctor that handles this procedure all the time. We are an asset, not a detriment. We are the real experts.

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