



KD Alert: Trends in Robotic Surgery Lawsuits

Robotically assisted surgical devices (RASD) are computer-assisted surgical systems growing in popularity among healthcare practitioners and are now commonly used to perform a variety of different surgical procedures. The precision and minimal invasiveness offered by these devices make them attractive to health practitioners and patients, but like all products, RASD's are not flawless and generally not regulated by any singular government agency.

RASD's have been the subject of increased litigation due to alleged defects in the manufacturing or design, as well as the failure to properly maintain and operate the devices by health care facilities and practitioners. A variety of causes of action are available to plaintiffs in these matters, including strict products liability, negligence, corporate negligence, medical malpractice, and breach of warranty. A common element of each cause of action applicable to RASD litigation is causation, and a trend in RASD litigation is the difficulty plaintiffs experience in establishing causation.

The element of causation, linking the wrongdoing of a defendant to the harm incurred by the plaintiff, is an essential element to every RASD cause of action. In fact, the causation element is the most frequently contested issue at the summary judgment stage in RASD caselaw. Causation, in broad terms, refers to two critical and related components: actual cause and proximate cause. Actual cause is the simpler concept that merely connects the injury to the cause-in-fact; e.g., a scalpel nicked tissue, causing injury. Proximate causation is the more difficult aspect to establish, as it is the primary cause of injury: e.g., what caused the scalpel to nick the tissue? To establish causation, a plaintiff generally must prove that the defect, design, warning, maintenance or use of the robotic device proximately caused the injury. The failure of a plaintiff to establish causation is fatal to their cause of action.

Plaintiffs filing claims based on injuries from RASDs face the burden of establishing causation and their failure to do so can be taken advantage of by defendants prior to trial or mediation, saving costs and ending litigation early. Retaining counsel knowledgeable of the common flaws in a plaintiff's RASD-based claim pertaining to the causation element, including the shortfalls of a plaintiff's expert, the failure to pinpoint the alleged harm to the RASD procedure, and the reliance on inferences to establish their claims, can mitigate the costs of litigation and potentially dispose of claims lacking merit prior to trial.

KD IS HERE TO HELP

If you have questions about these developments, please contact one of KD's experienced attorneys.

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