

A hand is holding a tablet computer. On the screen of the tablet, a chest X-ray is displayed. The X-ray shows the ribcage and the lungs. The background is dark and out of focus.

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ROBINS  KAPLAN^{LLP}

REWRITING THE ODDS

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MEDICAL ANALYSTS: THE KEY TO EFFICIENT MAXIMIZATION OF JUSTICE

BY ANNA SAWATZKE, ELIZABETH FORS, AND CHRIS MESSERLY



**ANNA
SAWATZKE**



**ELIZABETH
FORS**



**CHRIS
MESSERLY**

All injury cases, whether personal injury, medical malpractice, or product liability, raise complex medical issues. Over years of experience, attorneys develop an understanding of medicine. The medical issues, however, are never identical from one client to another, and the art and science of medicine advances daily. Understanding each client’s medical issues is an obligation and fundamental prerequisite to obtaining full and complete justice for our clients. But lawyering is a demanding, complex, and time-consuming profession. How, then, can we assure ourselves and our clients that we possess a deep understanding of their medical conditions that rivals that of their own doctors?

For more than 30 years, we have employed registered nurses (formerly known as nurse paralegals) to help accomplish this goal. Now, to further enhance our medical legal expertise, we have added to our team a medical doctor and a doctor of physical therapy, hence the new title: Medical Analysts (MAs). Our MAs have more than 80 combined years of experience in surgery, orthopedics, neurology, critical care, rehabilitation, cardiology, emergency medicine, cancer care, and pathology.

Our MAs are integral and important members of our team. They participate in every aspect of each case, from initial client contact through trial. At the outset, MAs speak with potential clients to screen cases. Our MAs initially went into health care because they care about people, and invariably, clients love speaking with MAs. Their transition to the legal service profession has been easy because they care about those who call us, and that compassion shines through to each client.

Our MAs’ depth of medical knowledge and experience allows them to obtain facts that may lead to theories of recovery that others (including lawyers) might miss. For example, a caller may raise concerns about the care they received from a particular health care provider. Our MAs, drawing from their years of experience, can often identify legitimate causes of action against an additional provider not even noticed by the caller. After the call, MAs research these medical issues by using one of our several subscriptions to medical websites that serve doctors and other health care professionals. Only then does the MA speak with one of our lawyers to make a decision on the case. This is a very efficient screening process that permits the lawyers to focus on advocacy.

But the intake evaluation process does not end there. If the attorney and MA believe there is merit to the case, the MA then presents it during a weekly meeting of all our lawyers and MAs. The robust discussion that follows is also a key component in the critically important process of deciding which cases to pursue and, often more importantly, which cases to decline.

For those cases we wish to pursue further, our MAs work with an assistant whose sole job is to obtain medical records. And today, a complete set of medical records necessary to evaluate a case can cost tens of thousands of dollars. At times, our MAs will go directly to the health care facility to personally review the records. But when the records arrive at our offices, our MAs begin the arduous and time-consuming task of organizing them and then reevaluating the case using the complete medical record. This reevaluation process involves additional medical research.

If the team decides to continue evaluating the case, our MAs assist in seeking out the nation's best medical experts for the cause of action. In order to bring a medical malpractice claim, we need support from a medical expert with experience in the appropriate field. Our MAs draft expert letters and organize the records to make it easier for the experts to efficiently evaluate cases in a timely manner. Our MAs then actively participate during our expert meetings and play an essential role in helping the attorneys know as much as the doctor does about the medical issues involved.

Our MAs continue an active role in discovery. They assist in preparing statutorily required affidavits and written discovery. In depositions, they call the attorneys' attention to medical issues and questions to be further pursued. Throughout trial, our MAs directly help prepare experts, suggesting questions for direct and cross-exam and providing other important professional support.

All cases, especially medical malpractice cases, are fraught with risk. When lawyers refer cases to us, we recognize that these clients believe they have been put through hell by the medical system. We have an obligation to help them (and the lawyers who referred them to us) avoid a similar legal-system hell where they cannot win. For that reason, we often must explain to clients why we do not believe they have a case. But for those clients we can help, our MAs play a vital role in maximizing justice on their behalf.

SELECTED CASE RESULTS

\$975,000 SETTLEMENT FOR FAILURE TO DIAGNOSE CANCER



**PETER
SCHMIT**



**PATRICK
STONEKING**

Peter Schmit and Patrick Stoneking represented a 29-year-old woman who experienced malpractice twice in her young life. First, in 2007, a Wisconsin pathologist missed evidence of cancer when interpreting samples from a uterine polyp. Then, in 2012, our client underwent a hysterectomy because of ongoing medical problems, and a Minnesota pathologist interpreted the surgical specimens as benign. Thirteen months later, further evaluation was performed and Stage IV endometrial cancer was found. After the diagnosis, the Minnesota pathologist performed a second review on the 2012 specimens and found evidence of cancer. Our experts confirmed the presence of cancer in 2012, but also in the examination conducted in 2007 (though the statute of limitations on that malpractice had by that time expired). Causation was hotly contested, but the case was ultimately settled for \$975,000 pre-suit. The client is currently cancer-free.

\$1.5 MILLION SETTLEMENT FOLLOWING EYE INJURY



**KATHLEEN
FLYNN
PETERSON**



**BRANDON
THOMPSON**

Kathleen Flynn Peterson and Brandon Thompson obtained a \$1.5 million settlement for a 35-year old North Dakota woman who sustained an injury to her eye resulting in orbital pain, light sensitivity, and double vision.

STRYKER® ORTHOPEDICS LFIT™ COCR V40™ FEMORAL HEAD FAILURE CONCERNS

Robins Kaplan's Mass Tort Group is currently investigating cases involving another Stryker Orthopedics total hip replacement component, the LFIT CoCr V40 Femoral Head. Recently, a number of failed LFIT CoCr V40 Femoral Heads have been reported. The failure appears to occur at the taper lock, which is the part of the hip implant that connects the femoral head (ball) to the femoral neck.

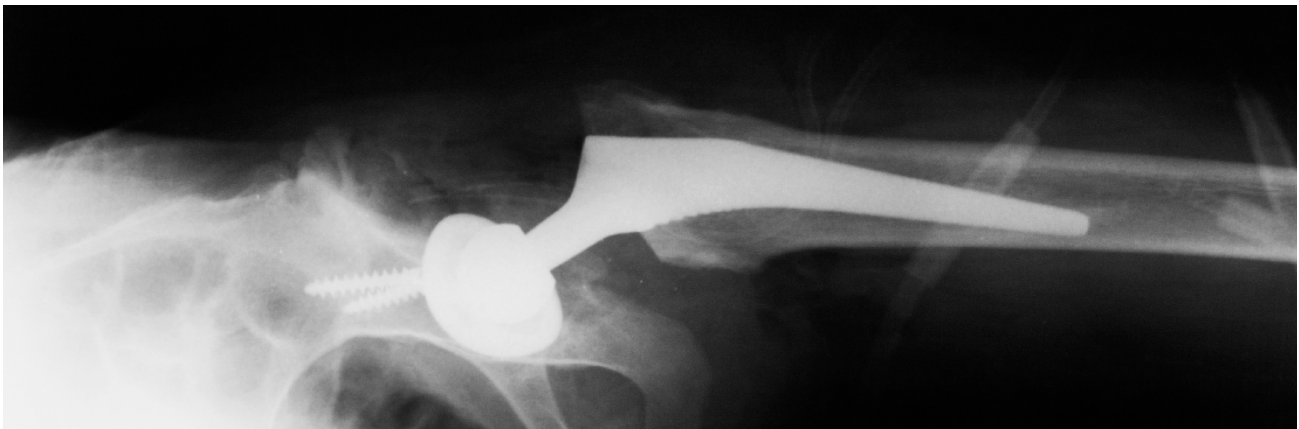
On August 24, 2016, Health Canada (Canada's FDA equivalent) recalled 36 mm, 40 mm, and 44 mm Stryker LFIT CoCr V40 femoral heads, which were manufactured prior to 2011.¹ On September 27, 2016, the Australian government's Department of Health, Therapeutic Goods Administration, issued a "Hazard Alert"² to consumers and health professionals regarding the same components as the Canadian recall.

Health Canada and the Australian government reported potential hazards associated with the device, including the following: disassociation of the femoral head from the hip stem, fractured hip stem trunnion, increased metallic debris, insufficient range of movement, insufficient soft tissue tension, noise, loss of implant, bone fixation strength, increased wear debris, and implant construct with a shortened neck length.^{1, 2}

The Medicines and Healthcare products Regulatory Agency (United Kingdom's medical device safety agency) noted a Stryker URGENT Field Safety Notice (RA 2016-028) regarding LFIT Anatomic CoCr V40 Femoral Heads in which all lots manufactured between January 1, 2002, and March 4, 2011, are affected.³ This notice indicates all affected products are either expired or already implanted but also asks providers to check their internal inventory so they can be quarantined and returned to Stryker.

Patients implanted with this hip component may experience loss of mobility, pain, inflammation, ALTR (adverse local tissue reaction), dislocation, joint instability, broken bones around the components, leg length discrepancy, and the need for revision surgery.²

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1. Government of Canada. Healthy Canadians. Recalls & alerts. Medical Device Recall. LFIT CoCr V40 Head. Howmedica Osteonics Corporation. Model/catalog numbers: 6260-9-240; 6260-9-244; 6260-9-340; 6260-9-344; 6260-9-440; 6260-9-444. LFIT COCR Femoral Head. Howmedica Osteonics Corporation. Model/catalog number: 6260-9-236 Retrieved from <http://www.healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2016/60268r-eng.php>
 2. Australian Government. Department of Health. Safety Information. Alerts. LFIT Anatomic CoCr V40 femoral heads (used in hip replacements). Model/catalog number: 6260-9-236, head diameter 36 mm, offset +5; 6260-9-240, 40 mm, +4; 6260-9-244, 44 mm, +4; 6260-9-340, 40 mm, +8; 6260-9-344, 44 mm, +8; 6260-9-440, 40 mm, +12; 6260-9-444, 44 mm, +12. Retrieved from <https://www.tga.gov.au/alert/lfit-anatomic-cocr-v40-femoral-heads-used-hip-replacements>
 3. The Medicines and Healthcare products Regulatory Agency (MHRA). Stryker URGENT Field Safety Notice: RA 2016-028 LFIT™ Anatomic CoCr V40™ Femoral Heads. Retrieved from <https://mhra.filecamp.com/public/file/2gkg-s98u2620>



CONTAMINATED DEVICES PUTTING OPEN-HEART SURGERY PATIENTS AT RISK

Robins Kaplan LLP is currently investigating claims regarding Sorin Stockert 3T Heater-Cooler Devices, which are designed to raise or lower the temperature of a patient during cardiopulmonary bypass procedures.¹ The Stockert 3T heater-cooler devices might have been contaminated during manufacturing, which could put patients at risk for life-threatening infections.² The U.S. Food and Drug Administration and the Center for Disease Control are warning that *Mycobacterium chimaera* (*M. chimaera*) infections are associated with the use of the 3T in U.S. patients who have undergone cardiothoracic surgeries.³

Potentially contaminated heater-cooler devices were used at the Mayo Clinic in Rochester, Minnesota.⁴ The Clinic notified 17,000 patients who had heart surgery since the Clinic started using the device that they may have been infected.⁵ The machines have been found to be a problem at 16 other hospitals across the country.⁶

1. <http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/UCM520191.htm>

2. <https://www.cdc.gov/hai/outbreaks/heater-cooler.html>

3. <http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/UCM520191.htm>; <https://www.cdc.gov/hai/outbreaks/heater-cooler.html>

4. <http://www.kttc.com/story/33684252/medical-machine-poses-risks-during-open-heart-surgery>

5. *Id.*

6. *Id.*

OTHER DRUG AND DEVICE INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **Abilify** – This atypical antipsychotic—used to treat a variety of disorders, including schizophrenia, bipolar, and depression—may cause impulse-control behaviors, including compulsive gambling.¹
- **Benicar** – Popular blood pressure medication can cause intestinal problems known as sprue-like enteropathy, with chronic diarrhea, weight loss, nausea, and vomiting.²
- **Premature Hip Implant Failures** – Litigating cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Stryker LFIT COCR V40, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.³
- **Invokana, Farxiga, and Jardiance** – These Type 2 Diabetes drugs can cause ketoacidosis—very elevated blood acid levels—which may require hospitalization.⁴
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).⁵
- **Viagra** – Use is associated with increased risk of melanoma.⁶
- **Xarelto** – Anticoagulant (blood thinner) linked to serious bleeding complications, intracranial hemorrhaging, gastrointestinal bleeding, wound infections from inhibited clotting, and lack of effectiveness in preventing dangerous clotting.⁷
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.⁸

ROBINS KAPLAN: PROTECTING YOUR INVESTMENTS

BY STACEY SLAUGHTER



**STACEY
SLAUGHTER**

With turbulent markets and increasingly complex investment vehicles and government regulations, individual investors and investment institutions have never been more at risk for loss. Unfortunately, sometimes those losses occur not due to market forces but because of market manipulation or other types of fraud. Robins Kaplan's financial litigators help even the playing field for clients who have lost money because of the wrongful conduct of banks, financial advisers, accountants, and trustees. Our in-house team of forensic, economic, and accounting consultants helps us unmask and pursue financial inequalities in the marketplace and analyze our clients' damages. Our trial lawyers wield a wide range of experience battling those who have wronged our clients in financial disputes across the country - both in court and in arbitration. In financial litigation, we represent individual and institutional investors as plaintiffs, and we also represent certain banks and financial institutions as defendants. Our experience on both sides of the courtroom helps us understand the perspective and strategy of our adversaries and offers our clients a unique insight about financial litigation. No matter our client, our goal remains the same: Protect the investment community's right to transparency and fairness.

Some of our representative cases include:

- Representing organization against broker and broker-dealer that advised organization to invest hundreds of millions of dollars in non-traded REITS (real estate investment trusts)
- Representing shareholders who sold their company shares and later incurred tax liability for the company's unpaid taxes based on a tax structure that an accounting firm and law firms advised
- Representing organization in securities investment that was marketed and sold as a AAA-rated investment, but in fact was risky and toxic
- Representing beneficiaries whose funds were stolen and gambled away by the fund trustee

If the advice or actions of those entrusted with investing or handling money become contrary to what they do or lead people to believe, we can help evaluate whether litigation is the best course to getting a financial house back in order. If you would like further information about how we can assist you, please contact partner Stacey Slaughter at 612-349-8289 or SSlaughter@RobinsKaplan.com.





ATTORNEY OF THE YEAR: PHILIP SIEFF

Minnesota Lawyer recently announced that attorney Philip Sieff has been named a “2016 Attorney of the Year.” This annual award recognizes the recipient’s leadership abilities, involvement in noteworthy cases, and commitment to public service.

Phil Sieff is one of only 13 attorneys chosen to receive an individual award. Phil is a well-known trial lawyer whose practice focuses on plaintiffs’ injury and wrongful death. He has significant experience representing families coping with the wrongful death of a loved one, particularly a child. He has particular experience in complex and high-profile cases, including serving as lead co-counsel of the I-35W Consortium, a group of 17 law firms that provided legal services to over 100 bridge-collapse victims. This is the second time Phil has been named a *Minnesota Lawyer* Attorney of the Year. He was previously recognized in 2008 and, with this year’s award, joins *Minnesota Lawyer’s* Circle of Excellence.

KATHLEEN FLYNN PETERSON NAMED “WOMAN WORTH WATCHING”



Profiles in Diversity Journal has named Kathleen Flynn Peterson, partner at Robins Kaplan, to its 2016 “Women Worth Watching” list. This award recognizes women pioneers who are forging ahead with global acclaim in strategies that are making a difference in their workplaces and communities.

For more than 30 years, Ms. Flynn Peterson has built a reputation as one of the nation’s preeminent medical malpractice trial attorneys. She has obtained millions of dollars in verdicts and settlements, many of them record-setting, to secure justice for individuals and families who have experienced injury or death as a result of medical negligence. In addition to conducting her case work, Ms. Flynn Peterson has served as head of the Minnesota chapter of the American Board of Trial Advocates and was the national president of the American Association for Justice, where she was honored with the prestigious Lifetime Achievement Award.

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1. <http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2015/55668a-eng.php>
2. <http://www.fda.gov/Drugs/DrugSafety/ucm359477.htm>; <http://www.ncbi.nlm.nih.gov/pubmed/22728033>
3. *Concerns about Metal-on-Metal Implants*, available at www.fda.gov
4. <http://www.fda.gov/drugs/drugsafety/ucm446845.htm>
5. See, e.g., Kluger, *Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients*, *Annals of Oncology* at 1 (May 9, 2012); Prevezas et al., *Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer*, 160 Br. J. Dermatology 883-885 (2009); Tallon et al., *Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature*, 63 J. Am. Academy of Derm. 333-336 (2010).
6. Wen-Qing Li, et al. *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*. *JAMA Intern. Med.* (June 2014)
7. Lissan, M.R., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Total Knee Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2776-86; Kakkar, A.K., et al. *Extended duration rivaroxaban versus short-term enoxaparin for the prevention of venous thromboembolism after total hip arthroplasty*. *Lancet* 2008; 372:31-39; Ericksson, B.I., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Hip Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2765-75; Jameson SS, et al. *Wound complications following rivaroxaban administration*. *J. Bone Joint Surg. Am.* 2012; 1554-8
8. M. Anderka et al. *Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects*. *Birth Defects Res A Clin Mol Teratol.* (Jan. 2012); JT Anderson et al. *Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study*. *Pharmacoepidemiology and Drug Safety.* (Oct. 2013)

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