



## David J. Walz

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## Overview

Dave Walz handles all aspects of product liability and general tort matters in state and federal court. He has extensive experience in pharmaceutical and medical device cases, including the defense of individual and mass tort actions involving prescription and over-the-counter products. In addition, he represents carriers and other parties in aviation-related cases, including arguments on preemption and claims made by airline passengers. Dave also practices in the defense of personal injury matters ranging from asbestos to premises liability.

Dave has handled the written and oral arguments for numerous summary judgments. The arguments cover subjects such as preemption, the learned intermediary doctrine, innovator and generic liability, warranty claims, consumer fraud, and pre-injury releases. He has also represented many clients throughout all phases of pretrial and post-trial litigation, including a wide range of product manufacturers and other clients. He is frequently quoted in legal publications on the issues of medical device preemption and drug and device law. Dave has also written and published repeatedly in the areas of removal to federal court, fraudulent joinder, *Riegel* preemption of PMA devices, vaccine litigation, fraud in mass torts, and the Third Restatement.

## Experience

- *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760 (3d Cir. 2018). In a case of first impression, the Third Circuit Court of Appeals held that the plaintiff's negligence, strict liability, and breach of implied warranty claims against our client, a medical device manufacturer, were expressly preempted under the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act. The plaintiff's claims involved a hip-replacement system that consisted of a number of component parts subject to different categories of federal regulation.
- *Grubbs v. DePuy Synthes*, No. 8:15-cv-00443, 2016 WL 360610 (M.D. Fla. Jan. 19, 2016) (granting summary judgment because the plaintiff failed to allege the violation of any federal requirement in the PMA device components that he received).
- *Marshick v. Johnson & Johnson*, No. 5:14-cv-00498, 2015 WL 9266955 (M.D. Fla. Dec. 11, 2015) (granting summary judgment when the plaintiff lacked expert proof of general and specific causation).
- *Teva Pharm. Indus. v. Ruiz*, 181 So. 3d 513 (Fla. 2d DCA 2015) (reversing denial of motion to dismiss for lack of personal jurisdiction when general jurisdiction was lacking and the plaintiff failed to establish specific jurisdiction and sufficient minimum contacts to satisfy due process).
- *Marmol v. St. Jude Med. Ctr.*, 132 F. Supp. 3d 1359 (M.D. Fla. 2015) (dismissing claims against PMA medical device under implied preemption and lack of a remedy to enforce FDA regulations or requirements).
- *Ocasio v. C.R. Bard, Inc.*, No. 8:13-cv-01962, 2015 WL 3496062 (M.D. Fla. June 3, 2015) (granting summary judgment on warnings claim for lack of an expert on inadequacy and rejecting any inference of a manufacturing defect).
- *Brown v. DePuy Orthopaedics, Inc.*, 978 F. Supp. 2d 1266 (M.D. Fla. 2013) (granting summary judgment under *Riegel* preemption and *Wolicki-Gables* for lack of a parallel claim and no nexus between FDA warning letter and alleged injury).
- *Kaiser v. DePuy Spine, Inc.*, 944 F. Supp. 2d 1187 (M.D. Fla. 2013) (dismissing claims with prejudice, before discovery, under *Riegel* preemption and *Wolicki-Gables* for failing to specify a parallel claim or allege noncompliance with a formal performance standard established by the FDA).
- *Layton v. SmithKline Beecham Corp.*, No. 05-CA-007440, 2012 WL 4983778 (Fla. Cir. Ct. Oct. 16, 2012) (an evidentiary hearing is not required to determine entitlement to attorneys' fees and costs based on a proposal for settlement).
- *Scipione v. Advance Stores Co.*, No. 8:12-cv-00687, 2012 WL 3105199 (M.D. Fla. July 31, 2012) (denying remand because attempted joinder of nondiverse defendant store manager was fraudulent when store manager was neither personally liable nor liable in his individual capacity).
- *Cramer v. Ford Motor Co.*, No. 2007-CA-2135-NC, 2011 WL 2477232 (Fla. Cir. Ct. June 9, 2011) (granting summary judgment against FDUTPA claim because plaintiff lacked expert proof of the alleged design defect), *aff'd per curiam*, 88 So. 3d 943 (Fla. 2d DCA 2012).
- *Wolicki-Gables v. Arrow Int'l, Inc.*, 634 F.3d 1296 (11th Cir. 2011) (affirming summary judgment under *Riegel* preemption and affirming that inference of defect did not apply).

- *Chapman v. DePuy Orthopaedics, Inc.*, 760 F. Supp. 2d 1310 (M.D. Fla. 2011) (granting summary judgment for medical device manufacturer based on choice-of-law analysis and application of Virginia's statute of limitations).
- *Bechtelheimer v. Cont'l Airlines, Inc.*, 755 F. Supp. 2d 1211 (M.D. Fla. 2010) (defendant properly removed upon receiving plaintiff's interrogatory responses, did not waive removal in state court, and prospective joinder of non-diverse defendant did not defeat removal).
- *Gomez v. Pfizer, Inc.*, No. 09-22700-CIV, 2010 WL 4102922 (S.D. Fla. Oct. 18, 2010) (plaintiff alleging failure-to-warn claims regarding an over-the-counter product must respond to discovery and provide the specific warnings language that allegedly should have accompanied the product).
- *Cramer v. Ford Motor Co.*, No. 2007-CA-2135-NC, 2010 WL 3337647 (Fla. Cir. Ct. Aug. 25, 2010) (granting partial summary judgment against claims for express warranty and injunctive relief under the Magnuson-Moss Warranty Act), *aff'd per curiam*, 88 So. 3d 943 (Fla. 2d DCA 2012).
- *Howe v. Wyeth Inc.*, No. 8:09-cv-00610, 2010 WL 1708857 (M.D. Fla. Apr. 26, 2010) (granting summary judgment for name-brand manufacturers when plaintiff used only generic product).
- *Levine v. Wyeth Inc.*, 684 F. Supp. 2d 1338 (M.D. Fla. 2010) (granting summary judgment for name-brand manufacturers when plaintiff used only generic product).
- *Doriand v. Centocor Inc.*, No. 1:09-cv-00078, 2010 WL 325742 (N.D. Fla. Jan. 26, 2010) (rejecting plaintiff's attempt to add a "sharing" provision to a protective order).
- *Gomez v. Pfizer, Inc.*, 675 F. Supp. 2d 1159 (S.D. Fla. 2009) (granting motion to dismiss claims of negligence and strict liability under *Iqbal* and *Twombly*).
- *Dietrich v. Wyeth, Inc.*, No. 50-2009-CA-021586, 2009 WL 4924722 (Fla. Cir. Ct. Dec. 21, 2009) (granting summary judgment for name-brand manufacturers when plaintiff used only generic product).
- *Devore v. Howmedica Osteonics Corp.*, 658 F. Supp. 2d 1372 (M.D. Fla. 2009) (defendant properly removed based on plaintiff's discovery responses and fraudulent joinder of alleged product distributor).
- *Lake v. Tenneco, Inc.*, No. 8:06-cv-01462, 2009 WL 2870503 (M.D. Fla. Sept. 3, 2009) (evidence that no industry practice, standard, or government regulation required a warning is admissible).
- *Wolicki-Gables v. Arrow Int'l, Inc.*, 641 F. Supp. 2d 1270 (M.D. Fla. 2009) (granting summary judgment under *Riegel* preemption, learned intermediary doctrine, and failure to present expert proof).
- *Lake v. Tenneco, Inc.*, No. 8:06-cv-01462, 2009 WL 2914234 (M.D. Fla. June 26, 2009) (expert's cited sources must support his conclusions and opinions).
- *Brisson v. Ford Motor Co.*, 602 F. Supp. 2d 1227 (M.D. Fla. 2009) (dismissing claims for breach of express and implied warranties), *aff'd in part*, 349 F. App'x 433 (11th Cir. 2009) (affirming dismissal but reversing for leave to amend).

- *Dame v. Prudential Ins. Cos.*, No. 6:08-cv-01896, 2009 WL 248228 (M.D. Fla. Jan. 30, 2009) (defendant properly removed upon receipt of discovery responses confirming plaintiff's citizenship).
- *Colville v. Pharmacia & Upjohn Co.*, 565 F. Supp. 2d 1314 (N.D. Fla. 2008) (granting summary judgment under learned intermediary doctrine, adequacy of warning, and failure to show actionable injury).
- *Wolicki-Gables v. Arrow Int'l, Inc.*, No. 8:08-cv-00151, 2008 WL 2773721 (M.D. Fla. June 17, 2008) (granting motion to dismiss claims of strict liability and negligence under *Twombly*).
- *Millstein v. WCI Cmtys., Inc.*, No. 05-6124, 2006 WL 4667652 (Fla. Cir. Ct. Nov. 20, 2006) (granting summary judgment against premises liability claims based on pre-suit general release and waiver of liability).
- *Chase v. Novartis Pharm. Corp.*, 740 F. Supp. 2d 1295 (M.D. Fla. 2006) (granting summary judgment under learned intermediary doctrine).
- *Sharp v. Leichus*, No. 2004-CA-0643, 2006 WL 515532 (Fla. Cir. Ct. Feb. 17, 2006) (granting summary judgment for name-brand manufacturers when plaintiff used only generic product), *aff'd per curiam*, 952 So. 2d 555 (Fla. 1st DCA 2007).

## Areas of Focus

### Practices

- [Mass Tort and Product Liability](#)
- [Aviation](#)
- [Health Care](#)
- [Litigation and Trials](#)
- [Pharmaceuticals and Medical Devices](#)
- [Class Actions](#)

### Industries

- [Health Care](#)

## Insights

09.01.2016

Preemption and Other Defenses to Claims by Study Subjects

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08.29.2013

OMG! I Have to Produce What? 4 Steps to Tipping the Field With Social Media

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10.01.2012

Mensing: Effects and Opportunities

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01.06.2012

Changes to Removal and Remand Procedures for Civil Actions

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10.04.2010

Sales Reps in the OR: The Hunt for Non-Preempted Claims

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02.03.2010

2009 Top 10 Pharma Decisions from Florida and the Eleventh Circuit

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09.30.2009

A Shot in the Arm: “Procedural Preemption” of Vaccine Claims

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01.01.2009

Plaintiff’s Medical Care and Treatment—Discovery and Evidentiary Issues

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10.31.2008

Finding, Building, and Marketing a Niche: It’s Never Too Early to Start

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10.07.2007

Removal after Lowery v. Alabama Power Co. A Whole New Bag of Tricks?

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02.05.2007

Mass Tort or Mass Fraud?

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04.22.2006

Design Defects in Prescription Medical Products: Section 6(c) of the Third Restatement

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04.01.2006

Removal

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## News

01.01.2024

David Walz Quoted in Law360: “Product Liability Regulation and Legislation to Watch in 2024”

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## Recognition

- *The Best Lawyers in America*, Product Liability Litigation – Defendants (2024)
- Florida Rising Stars, *Super Lawyers Magazine* (2013)

## Professional & Community Involvement

- Defense Research Institute
  - Drug and Medical Device Steering Committee
  - Product Liability Committee
  - Litigation Skills Committee
- American Bar Association
  - Section of Litigation
    - Mass Torts Litigation Committee
    - Pretrial Practice and Discovery Committee
    - Products Liability Committee
  - Tort Trial and Insurance Practice Section
  - Eleventh Circuit Representative to the *Iqbal* Task Group
- Federal Bar Association
- The Florida Bar
- Florida Defense Lawyers Association
- Hillsborough County Bar Association
  - Trial and Litigation Section

# Credentials

## Education

- Stetson University College of Law (J.D., magna cum laude, 2003)
- University of Florida (B.A., with honors, 2000)

## Bar Admissions

- Florida

## Court Admissions

- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida