The crossroad of science and law

[00:00:00] **Ray Williams:** This is Ray Williams and I was able to get two of my very good friends, colleagues, to join me on this podcast. For those that don't know, I am a senior counsel at DLA Piper and have been practicing pharmaceutical and medical device law in MDL class actions for close to 30 years now. What we want to talk about today is the interaction between the cases that we handle for pharmaceutical medical device companies and our backgrounds in terms of whether science is a necessity? How much does it help? And, just overall, what is the link between those that do well in the courtroom and the background that they come into these litigations with?

[00:00:56] So I want to introduce both Mike King and Lucas Przymusinski to you. Mike, why don't you take it from here and tell people who you are.

[00:01:07] **Michael King:** Sure. So Mike King. I've been practicing since, I guess, 2004, started out at Reed Smith in Philadelphia, trying pharmaceutical medical device, product liability cases, some catastrophic personal injury work, commercial litigation. Did that for about eight years, then went in-house to Novo Nordisk for about another eight years. And then summer of 2020, jumped over to Jazz Pharmaceuticals, that's where I am now, doing litigation, investigations, employment law, intellectual property, and privacy work.

[00:01:37] **Ray Williams:** Lucas, why don't you introduce yourself?

[00:01:47] **Lucas Przymusinski:** So Lucas Przymusinski. I'm I guess a physician first, I did medical school then internal medicine residency, before I went back to law school. I've been practicing since 2007, so just about 14 years. started off at Alston and Bird in Atlanta. When I got into practice, I thought what I was going to do is defend medical malpractice actions. And that rapidly evolved, probably in the three to four months from the time I got started, into working on first pharmaceutical litigation and then more broadly pharmaceutical medical device. About three years after I started, I moved over to DLA Piper in New York. And I've been there ever since. I'm a partner now, and I certainly do pharma medical device litigation as my primary. Layered on top of that's a lot of investigations, FDA, regulatory compliance type work, and general advice and counsel across the life sciences industry.

[00:02:43] **Ray Williams:** Yeah, that's interesting Lucas. One of the first discussion points was how did you get into the pharma world? Did the science make you do it so to speak? And for me, it really wasn't the science. It was just a partner in a firm when I was out in California, who asked me if I wanted to do pharmaceutical and medical device work. I literally had no idea what it was. I was two years out of law school. And my response to him was, is it litigation? And he said it was, and lo and behold, some 30 years later, I'm handling pharmaceutical work. I don't have a background in the science. And so, I know sometimes that can be frustrating for you, Lucas, when you're trying to explain things to me. But you know, Mike, I would love to know how did you get into the pharma world?

[00:03:37] **Michael King:** A bit of a convoluted path, right? So I started out undergrad in a civil engineering program. After that, I transferred into environmental science and that's the Bachelor of Science degree I got in undergrad. From there, my wife was behind me by about a year in college. And so I decided to go to graduate school at Penn State in Harrisburg, to undertake the master.

[00:04:04] **Michael King:** But yeah. So I went into graduate school in Harrisburg at Penn State. And it was a Master of Science in Environmental Pollution Control. Essentially, you know, industrial level design of air pollution control systems, wastewater management, drinking water management, solid waste management, that kind of stuff. And as part of that program, I spent about two years stuck in a laboratory doing bench research. And by the time I was done with that, I knew I wanted absolutely nothing to do with that. But a part of the curriculum was the regulatory legal piece of things, you know, why were there requirements for the systems we were designing? And I was kind of into that, so I decided on a whim to go to law school.

[00:04:41] And when I was making my way through law school, I quickly found out there wasn't too much in the way of opportunity for environmental lawyers at the time. And so, wound up fast forward to my third year, interviewing at Reed Smith in Philadelphia, who was in the throes of the diet drug litigation. And I guess the interviews went well. Wound up accepting a job there. And yeah, it was all pretty much pharma work right out of the gate. And that's how I got to where I am now.

[00:05:07] **Ray Williams:** So Lucas, being I joked about me being frustrating to you a little bit, I know that at times it can be frustrating to work with people who don't have a science background in this area.

[00:05:22] How important do you think it is to have a science background when handling these matters for the pharma companies and medical device companies? And we're talking about the mass tort, the MDLs cases, not necessarily the IP matters.

[00:05:37] **Lucas Przymusinski:** Yeah. Ray, it's a good question. I mean, look, I think I have two things to say broadly on that topic. Number one, you and I, and Mike all know a number of partners and lawyers in this field who have no science background at all,

who are absolutely exceptional litigators, exceptional pharma, med device, life sciences lawyers, at a level that I think all of us aspire to and really respect. So, I think answer to that part A is I think you can be an exceptional life sciences, pharma med device, lawyer without that background, that's A.

[00:06:12] But B, I think it's an invaluable asset, if you do have it. And I think it gives you a tremendous advantage in a lot of areas. One personally, an advantage, but an advantage certainly for your clients and your ability to serve them and to improve outcomes on the case. And now we can talk in more detail about aspects of that, but it extends from everything to understanding the scientific and medical issues that are at play, because these are fundamentally medical cases, right?

[00:06:39] To being able to talk to in-house colleagues, right? Who are frequently, sort of the owners of the record, are scientists and physicians to be able to talk to them and understand their language and communicate and understand their issues. It gives you credibility internally with those same people, because they feel like if they talk to you, you understand, and you've been where they are.

[00:07:01] And then I think it helps you, ideally helps you, translate the science and the medicine in which, if you understand well, perhaps can simplify in a way that it's then accessible to others. And by that, I mean the jury or the court or whoever you're talking to who may not have that same background, but need to understand complex issues in a way that's easily accessible. So I think tremendous value, but as I said, there's lots of lawyers in this field who are exceptional, who have no background, have taught themselves, and they have done tremendously with it.

[00:07:29] **Michael King:** And the expert piece is a big thing too, right? Lucas, I think, you know, a big part of all of these cases are expert witnesses and just being able to get in the room, like you said, credibility, having that background, just kind of opens up the rapport right out of the gate. And that is an essential piece, the expert piece is an essential piece of all of these cases. I think having the medical background, science background, and the ability to understand things really, really goes a long way when you're getting to that final point of translating things for expert witnesses and for the trial lawyers that are out there presenting to the juries.

[00:08:01] **Lucas Przymusinski:** Yeah, I certainly agree. And we can certainly talk about that if you guys want. I'm curious, Mike, sort of from your side, I mean, you're on the in-house side and you've been on the in-house side for quite a long time, right. So, to what extent as you're looking at potential counsel to handle your cases is the expertise, the science background, whether that's medicine, science, et cetera, something you look for and then how do you evaluate that piece?

[00:08:24] **Michael King:** Absolutely. I mean, in-house, science is everywhere, right. We have research and development, medical manufacturing, even our commercial colleagues get into quasi medical scientific issues when laying out commercial

strategies and that sort of thing. And so, you know, I have found it very useful over the years when engaging on those fronts to have folks like yourself, Lucas, who are practiced, well-practiced, in scientific and medical issues.

[00:08:49] **Ray Williams:** Yeah. You know, it's interesting because Lucas and I work on a number of matters together. And generally, when the client has a straight litigation question, I feel as though I get a call. But when that question veers into some scientific and medical issues, Lucas gets the call, which certainly, when you have a scientific question or issue, being able to call someone who has a JD, MD or MDJD seems important. And, you know, I do think that ultimately, one of the ways that we've been successful as a firm is having people with science backgrounds, whether it's an MD or a PhD, or just a biology or chemistry undergrad degree.

[00:09:41] So because of the scientific issues that we handle, it's important for me as a partner to make sure that at least the associates that I work with, I try to find folks that actually do have a science background. What are some of the interesting cases that you've handled? I know I have a couple that you'd think required someone to have a science background.

[00:10:14] **Lucas Przymusinski:** Yeah. Look, I mean, it's been, gosh, you know, it's 14 years, you see, and mass torts, as we all know, there's lots of them. And I think we've all seen a lot. The first case I worked on meaningfully, had to do with antipsychotics and their potential relationship to diabetes. And you know, this is, what is this? 2010, maybe something like that. No, it's 2007, 2008.

[00:10:44] So right out of law school, about three years removed from my residency, so I was still fresh in medicine, I certainly treated patients for diabetes for many years through medical school and through residency. So, it was an area that was pretty near and dear to me, internal medicine. And, you know, it got to the question of, you know, how many milligrams of change in blood glucose levels has an impact on a patient's actual clinical condition? And sort of the distinction between the abstract question of, hey, can a medication make some incremental change in blood glucose? And what does it really mean from a clinical perspective?

[00:11:17] And that's where I started. And there's been in interim, there's been a lot of fascinating cases. And the next one I worked on had to deal with hormone therapy and breast cancer. That was a huge litigation, probably 13 years of litigation overall. I wasn't involved in all of it, but a large chunk of it that involved many of the largest manufacturers in this country and obviously a very significant healthcare issue for women and a very important clinical study that we spent a lot of time on. And since then, it's been a mix of, there's a lot of cancer issues, and those are issues that come up a lot in these in these cases, there's a lot of things. Currently I'm working on a case involving chronic kidney disease and proton pump inhibitors, but it's a broad range of diseases. What's really cool from my perspective is the science in each case is unique, and I think the last thing I will say before we see what Mike's take on it is, even as a

physician, coming into these cases, the depth that we get into the science on these specific injuries is so incredible that I frequently find that, at the end of a case, or well into the middle of the case, I know more about the disease state and the science as a lawyer than I did when I was a physician, which is a crazy concept, but it is absolutely true.

[00:12:41] **Lucas Przymusinski:** So maybe there's lots of other physicians who know a lot more than I do, but for me, it was eye-opening for sure.

[00:12:48] **Ray Williams:** You know, as a person with a non-scientific background, it was always interesting to me in every case I worked, like what the heck is a signal and what is a relative risk and what's epidemiology, and why is that important to the case? You know, I think it's just easier for people who have a science background to understand those issues.

[00:13:13] I don't know, Mike, what do you think?

[00:13:16] **Michael King:** I agree.

[00:13:24] **Michael King:** I mean, there's the basic science of it, right? The biology, the chemistry, everything that feeds into those studies, so sure. Sure.

[00:13:31] **Ray Williams:** And did you feel as though that was helpful as you ventured to Reed Smith as a first year and was looking at the science in those diet drug days.

[00:13:43] **Michael King:** Absolutely. Absolutely. I mean, you remember the days we would buy medical textbooks and, you know, Lucas talked about the conditions at issue in the litigation, but what always came with that was, you know, competing conditions or potential risk factors. And so you're really learning about an entire disease state when you dig into these cases and it’s all encompassing and extremely interesting. I think having the background plays a big role in being able to dig in and understand things.

what are some diseases that you guys have learned about, while working on matters, that are of interest?

[00:18:25] **Michael King:** Heart valve disease, the Fen-Phen litigation, primary pulmonary hypertension, secondary pulmonary hypertension. Breast cancer, blood clots in the hormone replacement therapy litigation, hormonal contraceptives, again, venous thrombosis, DVT, pulmonary emboli, that sort of thing. What else? Tardive dyskinesia. And then, yeah what else? What else? And then pancreatic cancer in a number of cases we were handling over at Novo for a while. So that's what's top of mind right now.

[00:19:06] **Lucas Przymusinski:** Certainly some overlap there too. I mean, the pancreatic cancer, I always pick up on that one, because I was just thinking about that. And I was talking about that case just the other day with you, Ray. You know, that's the case where we get it down to the level. And of course, you know, everyone who's listening to this, we talk about things like PDG, which are pancreatic duct glands, which I will now tell you, nobody, other than supremely, deeply people in the pancreatic cancer research community, have any idea what that is. But there's actually an aspect of this litigation, which involves discussion of that in front of the court. And that gives you a sense of how deeply some of these issues get kind of, how deeply you get into these disease states in a way that, you know, in the real world, people just don't do, unless they're serious bench and scientific researchers in those areas.

[00:19:49] But pancreatic cancer, certainly there, I think one of my most, somewhat amusing ones was a blood thinner where the accusation was that it caused bleeding, which, you know, you would think that if you have a blood thinner and then that the risk of bleeding would be pretty obvious. And another one, sort of on the device side, which recently has taken up a lot of my time. But it's fascinating. I mean, I wasn't a surgeon, I was an internal medicine physician. But we are defending claims related to hernia mesh, which is used to repair, obviously hernias. And I now know more about the different approaches to treating abdominal and inguinal hernias than I ever thought I would.

[00:20:23] And it's fascinating, because you're learning the surgery, you're learning the techniques, you're learning, well, how it's done laparoscopically, how it's done open, whether you use the mesh, whether you don't, where do you put the mesh and why do you put the mesh there? I know what the outcomes are and how you choose it based on the patient. And we spent so much of our time, and this is the beautiful thing for me, one of the things I really enjoy about it. And it goes back to what Michael said about experts. Experts are at the heart and soul of this, right? So if you're having a case about hernia repair surgery, the surgeons who do hernia repair surgery are the experts, and they are ultimately the core knowledge on this topic.

[00:20:54] And we get to work with some of the most exceptional surgeons in the world at the top medical centers. And what we get to do is we get to spend our time talking to the surgeons and have them explain to us how they do the surgical procedures, so we can then help defend these cases. And an example of that is we all wanted to make sure we were up to speed on the techniques, the approaches, we actually had one of our experts spend two hours to do a presentation to teach us how to do hernia repair surgery and the various approaches. Now, obviously not teach us in the sense that we could go to the OR and do it, but teach us, you know, with videos, with all that sort of stuff, to understand exactly how it's done. That's incredible, but it's also critical to us being able to then analyze, evaluate cases and defend them. So it's cool. It's a huge range and it's fascinating.

[00:21:43] **Ray Williams:** Yeah. I would certainly say this, Lucas, that, you know, I want to toot your horn a little bit, that your ability to take the scientific issues in a case and make it understandable for people like myself, who are lay, as it comes, in terms of the scientific issues. I mean, clearly, you know, I've been doing this long enough that I do understand the basic scientific issues in a case, but your ability, I think, to make sure that the regular lay person understands it is so important to what we do. And I think, in part, it's your personality, obviously, but I also think that you have this bedside manner that is part of who you are with your background and your MD degree. So, I do think that from that perspective, it's really helpful for the lawyers that you work with, that you do have this big science background.

[00:22:53] **Lucas Przymusinski:** Well, I appreciate that, Ray. You know, it's interesting. I'm really curious on Mike's view on this to be honest. But what I think makes legal teams effective – and of course, you're talking about mass torts now right – so you're talking about huge volumes of cases and very complex workout, a lot of work up a lot of work and a big team that's needed to really evaluate the case. I think the success of legal teams and I mean that both in-house and outside counsel, not that I've been in-house, but the ability to work together requires diversity of experience, backgrounds, approaches, and ways of handling things. And the more diversity you have in that context, the better off you are. So, you know, I appreciate what you're saying, and I think I bring certainly that background to it, but that background needs to get reflected off people with other experiences, other backgrounds, in order to create the best set of arguments, the best way of presenting the case.

[00:23:44] And it's only when all that gets put together do you really get the best outcome. So, I think it's critical to have that diversity of views, experiences, and backgrounds. Mike, I don't know if you have thoughts.

[00:23:54] **Michael King:** I agree. I agree. And that's one of the fun things from an in-house perspective, building out that defense team, right. And it's not uncommon if I'm in a product liability situation where I'm bringing together, you know, multiple attorneys from different firms. And, you know, if I have a firm that I like, that's you know, national council on a case and doing a great job, but they don't have that medical or scientific bench, I'll bring somebody like Lucas in or onto the case. And that often helps, and that's a model I've used in the past that I think can work extremely well.

[00:24:25] **Ray Williams:** Yeah. I'm curious if there's a favorite story, either one of you want to tell about handling a case.

[00:24:47] **Michael King:** I'm not sure where to start. You know, I think my favorite trial story is when I wound up down in the Virgin Islands for a week and a half deposing like ex commissioner of health and another health official down there, mid trial in the middle of the winter, which was glorious, but that wasn't so much science or expert related. Well, actually it was expert related, but anyway, that's an aside. But I think, you

know, when I think back as a young associate at Reed working on the diet drug litigation, there was a guy out in Pittsburgh, an expert cardiologist we used to do a ton of work with, and if you're familiar with these cases and kind of how you build them,

[00:25:20] these searches often start out, just kind of scouring the internet, looking for people who you think might have that right experience, right, from an expert perspective. And we did that, and you find the expert, you never know how it's going to work out. How are they going to be in court? And you kind of do that dance where you're feeling them out,

[00:25:35] they're feeling you out, making sure there's a good relationship, and they've got the background expertise and personality you're looking for. And yeah, this particular case, we built it from the ground up. You know, plaintiff's depositions, spouses, treating physicians, experts came in, IMEs, mock trial, trial, and to take things through from beginning to end and, you know, working with the experts is a huge part of that, along the way, building the case from a scientific perspective and figuring out how you're going to take the complex science and translate it for the jury. And you get in front of the jury, you go through six weeks of trial and then, you know, 18, 20 hours of work every day, seven days a week. And then you're sitting there in the conference, in the courtroom waiting, right. And the jury comes back in and gets in the box and they've got the verdict slip in their hand.

[00:26:21] And you have the adrenaline, the anticipation, that comes with that. And it's just, it's unrivaled in my opinion, at least professionally. And I just think back to that one trial where, you know, we built the whole thing from the ground up with this expert out in Pittsburgh, all went really well. And we had the opportunity to interview the jurors at the end of the day. Those that were willing to speak to us, and one of the themes that emerged across the board was that the expert witness was clear, presentable, well prepared, you know, unflappable on cross. And it really won the case. And that's a big one that sticks out in my mind, in the early days of the diet drug cases in Philadelphia.

[00:26:58] **Ray Williams:** Well, how about you Lucas?

[00:27:00] **Lucas Przymusinski:** Think I have to go back also to almost the very beginning of my practice. This is back, like I said, when I was with Alston in Atlanta and we were dealing with these anti-psychotic diabetes cases, and there was an expert on the plaintiff's side who I will never forget. I won't mention his name just for purposes of not exposing the guy, but he was a case specific expert, and he was retained by plaintiff's counsel to testify that this individual plaintiff developed diabetes solely because he took this anti-psychotic medication, not these 30 risk other factors, of which there were lots. Right.

[00:27:33] And so we get in deposition and it's at the office of the, you know, the plaintiff's counsel and, you know, over the course of the deposition, it turns out that

this guy is like best buddies with the plaintiff's counsel, and they go fishing together, hunting together, and they hang out all the time. And it turns out that, although, yes, he certainly reviewed some of the medical records, he basically reviewed only a tiny subset of the actual records and spent like 10 hours total on the entire case before he offered this opinion. So, he didn't know any of the facts, like he didn't know about the risk factors, he didn't know anything else. But what he kept saying, I kept asking him, the question was, so how do you know this anti-psychotic medication actually caused him to develop diabetes as opposed to all the other stuff, as you keep saying? I kid you not, over the course of the deposition, 25 to 30 times, it was the straw that broke the camel's back.

[00:28:20] I just know it was the straw that broke the camel's back. It was the straw that broke the camel's back. And if you read the transcript, it's there like 20, 30 times. And a couple funny things out of that was, I mean, I remember this guy today, and all my friends who were involved in litigation, remember him as the straw that broke the camel's back guy. In fact, when we won the case, we ended up getting these like glass plaques with a cartoon of a straw, lying in the sand being broken. It's like, finally, we found the straw that broke the camel's back. We had that as kind of a celebration of the thing, but the funniest thing about it was, so after this guy goes to his deposition, where it's clear he didn't do any work, he didn't know what the case was about, couldn't explain his opinion, he walks up to me afterwards and says, great job on the deposition. Here's my card if you ever need an expert.

[00:29:05] **Michael King:** But that does bring up a good point, Lucas. And something we've been talking a lot about. Affirmative, you know, building the case affirmatively, right, and working with experts. But, you know, on the other side, we need to cross examine experts. And if you can't get into the science and you're not able to dig in really at that granular level, I think you're handicapped a little bit. And it's not to say you need a scientific degree to do it, but absolutely, if you're in these cases, working on, you know, causation of cancer, for example, you know, you need to be able to be adept and agile with the science when you're going into these expert depositions or even trial on cross. Since that's another big point that I don't think we got into too much yet.

[00:29:46] **Ray Williams:** Yeah, no, I completely agree with that, Mike. Being self-aware is so important. You know, I consistently defer to my partners who have scientific backgrounds on expert workup and expert depositions. You know, I can take the plaintiff's deposition. I can take the treating doctor's depositions or defend, but taking an expert deposition, why would I put myself in front of a Lucas or others that you have on your team that have those degrees and can actually go toe to toe with these experts? Not that, as you said, and as Lucas said, not that someone without a scientific background can't do it, but you know, if you have someone there who has that background, why would you not use them for that?

[00:30:37] I know that we're at the end of this. It was fun talking to you guys. I mean, listen, I got into the pharma work, I said earlier, because it was a partner who asked me to do it, and as long as it was litigation. But over the 30 years, I've actually become really passionate about defending pharma companies. I mean, when you think about the industry, there's really no other industry like it. I mean, you know, folks in the pharma industry, medical device industry save lives, prolong lives, and actually make lives better. So it’s a privilege to work on matters with you, Lucas, and you, Mike, and to defend matters for pharmaceutical and medical device companies.

[00:31:24] **Lucas Przymusinski:** Thanks Ray, and I just, I'll echo one thing, which is, I think that you know, in our society, lawyers get a bad name, and you know, some of that's well-deserved, some of that is obviously not. But I do think one thing you touched on, I think is really important, particularly in the life sciences field, not to eliminate others, but you're helping both in-house and outside counsel, helping these companies that are really revolutionizing healthcare.

[00:31:49] I mean, the advances that we've seen in medicine and healthcare over the last 10 years, I don't even need to go further, the last five years, are so dramatic, so revolutionary. I mean, we've seen that with the COVID vaccine and how fast they came out, but we see it in medical devices. We see it and genetic therapies that are being implemented.

[00:32:07] We are close to revolutionizing some things that we thought for decades in medicine are not doable. We are looking at ways to treat Alzheimer's. Incredible stuff that's happening, and it's driven by companies like Jazz, but across this industry that are really exploring the edges of science in a way that's revolutionizing and helping patients. Being able to support that and help that in our roles, I think, is incredible, and it's a good reason to be happy when you go to bed.

[00:32:33] **Ray Williams:** Yeah. Okay. Mike, any parting words?

[00:32:55] So anyway, Thanks for jumping on with me. I really appreciate it.

[00:33:01] **Lucas Przymusinski:** Thanks, Ray.

[00:33:01] **Michael King:** All right. Thanks.