

February 2020
MPT-1 File

Downey v. Achilles Medical Device Company

BETTS & FLORES
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MEMORANDUM

To: Examinee
From: Hiram Betts
Date: February 25, 2020
Re: *Downey v. Achilles Medical Device Company*

Our client, Achilles Medical Device Company (AMDC), is the defendant in a case in which the plaintiffs allege that AMDC manufactured and sold defective walkers during the years 2010–2015. The plaintiffs are attempting to bring the case as a class action; we intend to oppose the motion for class certification.

This case presents a professional responsibility issue regarding contacts with represented persons. Despite the fact that we represent AMDC, the plaintiffs’ lawyers are seeking to speak with one former AMDC employee and four current AMDC employees regarding their knowledge of the manufacture and sale of the allegedly defective walkers. An investigator for the plaintiffs’ lawyers has contacted these individuals, without first obtaining our consent to speak with them.

Likewise, despite the fact that opposing counsel represents the named plaintiffs, we want to talk to people, including the named plaintiffs, who purchased and used the walkers in question. Doing so would help us prepare our defense.

We need to know whether the Franklin Rules of Professional Conduct (FRPC) permit these communications. (The FRPC are identical to the ABA Model Rules of Professional Conduct.) Please draft a memorandum to me analyzing two issues:

(1) Whether the plaintiffs’ lawyers or their representatives may communicate, without our consent, with the current and former AMDC employees regarding their knowledge about the manufacture and/or sale of the walkers. Discuss each individual separately and explain your conclusions.

(2) Whether we, as AMDC’s attorneys, or our representatives may communicate with any named plaintiffs or potential members of the class without the consent of opposing counsel.

Do not include a separate statement of facts, but be sure to incorporate the relevant facts into your analysis, discuss the applicable legal authorities, and explain how the facts and law support your conclusions.

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FILE MEMORANDUM

From: Hiram Betts
Date: January 23, 2020
Re: *Downey v. Achilles Medical Device Company*

I just received a call from Ron Gilson, president of Achilles Medical Device Company (AMDC). We represent AMDC in a class-action lawsuit and are in the early stages of litigation. The plaintiffs allege that AMDC negligently manufactured and then sold defective walkers. The plaintiffs claim that, due to manufacturing defects, the walkers collapsed when the plaintiffs tried to use them and that the plaintiffs were injured as a result. Five named plaintiffs, led by Marie Downey, are attempting to bring a class action “on behalf of themselves and all other persons who bought and used AMDC walkers (model 2852) manufactured in 2010 and marketed and sold between 2010 and 2015 and who were injured when attempting to use the walkers.” We intend to oppose the plaintiffs’ motion for class certification. We would like to contact as many potential members of the class as possible before class certification.

Gilson told me that one former employee and four current employees have been approached by an investigator employed by the plaintiffs’ law firm. The investigator has attempted to speak directly with the former employee and current employees without our consent. Gilson is very concerned about these contacts and wants to know if the plaintiffs’ lawyers are doing anything wrong.

Gilson provided a list of the former and current AMDC employees. Marilyn DePew, an associate with our firm, has spoken with each of these individuals about their interactions with the plaintiffs’ investigator.

Note that Gilson does not believe that there was a problem in the design or manufacture of the walkers. He would like us to contact as many purchasers as possible to find out about their experiences with the AMDC walkers.

BETTS & FLORES
Attorneys at Law

FILE MEMORANDUM

From: Marilyn DePew
Date: January 25, 2020
Re: *Downey v. Achilles Medical Device Company*: Interviews

Ashley Parks, an investigator employed by the law firm that represents the plaintiffs in *Downey v. Achilles Medical Device Company*, contacted one former employee and four current employees of AMDC. I have interviewed those former and current employees and, with their permission, recorded the conversations. What follows are the transcripts of the relevant portions of those interviews.

INTERVIEW WITH RON ADAMS

- Q:** Mr. Adams, are you a current employee or agent of Achilles Medical Device Company, commonly known as AMDC?
- A:** No.
- Q:** Have you ever been an employee of AMDC?
- A:** Yes, I worked for AMDC from 2003 to 2017. I was director of quality control during that time. Now I am happily retired.
- Q:** When you were at AMDC, what were your responsibilities as director of quality control?
- A:** I was in charge of the quality control department. Employees in my department, whom I supervised, inspected every product that left the manufacturing plant and was made available for sale. I am very proud of the work we did.
- Q:** So the department for which you were responsible would have inspected the walkers that were manufactured in 2010 and sold between 2010 and 2015?
- A:** Yes.
- Q:** Do you have any specific knowledge about the walkers that are alleged to have been defective?
- A:** No, not specifically. I do know that every piece of equipment that left the factory was inspected. If it did not meet company standards, it was rejected. I would like to know what the purchasers are complaining about.

Q: What do you mean by “rejected”?

A: The item was not released for sale and either was put in the trash or was refurbished and then inspected again to make sure it met company standards.

Q: Do you have any knowledge of what is happening in the quality control department at AMDC now?

A: No, not really.

Q: It is my understanding that you were contacted about the class-action litigation regarding the walkers. By whom were you contacted?

A: I received a phone message from Ashley Parks, who said she was an investigator employed by the law firm that represents the plaintiffs in the case of *Downey v. AMDC*. She said she wanted to talk to me about the quality inspection of the walkers.

Q: How did you respond to this request?

A: I haven’t called her back yet. Quite honestly, I am happy to talk with her. I didn’t do anything wrong.

INTERVIEW WITH GUS BARTHOLOMEW

Q: Mr. Bartholomew, how long have you been employed by AMDC?

A: I have worked there continuously since 2003.

Q: Have you had the same job during all that time?

A: Yes, for all that time, I have been employed as the executive assistant to the president of the company. We have had several presidents during my tenure, but I’ve stayed in my position.

Q: What are your responsibilities as executive assistant to the president of AMDC?

A: I am basically the president’s administrative assistant. I do word processing, answer the phone, organize the president’s schedule, get the president organized, and anything else the president wants.

Q: Do you attend meetings of the board of directors of AMDC?

A: Yes, I sit in on the meetings and take the meeting notes. I don’t say anything—I just record exactly what is said during the meeting and then provide my notes to the board secretary and president for approval.

Q: Have you taken notes on discussions between the lawyers for AMDC and the board?

A: Yes.

Q: Have any of those discussions involved AMDC's response to the *Downey* litigation?

A: Yes.

Q: Do you have a vote on the matters before the board of directors?

A: No, I do not.

Q: Do you see or hear communications between the president of AMDC and counsel for AMDC?

A: Sometimes. I type and proofread all written letters sent by the president to the company's lawyers. I also open and review any incoming mail from the lawyers. I have access to the president's emails and frequently review them. I do not listen in on my boss's—the president's—phone conversations.

Q: Did anyone contact you about the litigation involving the walkers that AMDC manufactured in 2010 and sold between 2010 and 2015? These are the walkers at issue in the class-action lawsuit *Downey v. AMDC*.

A: I received a phone message from an Ashley Parks. She said she was an investigator who is employed by the plaintiffs' lawyers in the *Downey* case. She said she wanted to talk to me about the case. I haven't returned the call yet.

INTERVIEW WITH AGNES CORLEW

Q: Ms. Corlew, how long have you been employed by AMDC and what is your position with the company?

A: I have been employed since January of 2017, and I am head of the public relations department.

Q: What are your responsibilities as AMDC's head of public relations?

A: I am responsible for the team that responds to all media requests, writes and publishes all written materials about the company, and answers public inquiries about the company. I am, in essence, the voice of the company. I don't make the company's policies, but I frequently communicate the official position of the company to the public.

Q: Is it your job to answer questions about pending litigation?

A: Yes, I answer questions from the press and the public about pending litigation.

Q: Do you play any role in decisions about the litigation?

A: No. I present only the information that has been provided to me and has been approved by the president's office.

Q: Have you ever met with counsel for AMDC regarding the *Downey* case?

A: Absolutely not.

Q: Has anyone associated with the plaintiffs' lawyers in the *Downey* case tried to contact you?

A: My assistant told me that I had a call from Ashley Parks, an investigator who works for the plaintiffs' law firm. I haven't returned the call.

INTERVIEW WITH ELISE DUNHAM

Q: Ms. Dunham, what is your job with AMDC and how long have you worked there?

A: I am the plant manager at AMDC. I have been employed in that position continuously since March of 2009.

Q: What are your responsibilities in that position?

A: I oversee all the manufacturing at the plant. I also make sure that every product meets our quality control standards.

Q: So the director of quality control reports to you?

A: Yes, as does the director of manufacturing.

Q: So you were manager of the plant at the time AMDC manufactured the walkers, model 2852, that are alleged to have been defective in the *Downey* case.

A: Yes, although I honestly don't remember anything about those particular walkers.

Q: Have you been contacted by any of the plaintiffs' counsel or their representatives?

A: I received a note from Ashley Parks, an investigator with the plaintiffs' law firm, saying that she wanted to speak with me. Since then, I've hired a lawyer, and I called Ms. Parks to give her my lawyer's name and contact information.

INTERVIEW WITH PENNY ELLIS

Q: Ms. Ellis, I understand that you are employed by AMDC and have been employed by the company since 2008. But I also understand that your responsibilities have changed over that time period. Could you explain the different responsibilities you have had since you began working at AMDC?

A: Sure. From 2008 to 2016, I was director of marketing for AMDC. Essentially, I was responsible for all sales of all products. Of course, I had a staff that worked for me. In 2016, I changed positions and am now chief financial officer of the company.

Q: So, from 2010 to 2015, did your responsibilities include sales of the walkers that are at issue in the *Downey* case?

A: Yes, definitely.

Q: Do you remember anything specifically about the walkers?

A: No, we had a lot of products that were sold while I was head of marketing.

Q: Currently, do you have any responsibility for sales, marketing, or anything else regarding walkers or any other equipment?

A: No, I manage the company's financial actions, including cash flow and budgeting, and help shape the company policy.

Q: As chief financial officer, are you a member of the board of directors of AMDC?

A: Yes, I serve as treasurer.

Q: Does the board have any involvement in the lawsuit?

A: The lawyers from your firm, Betts & Flores, consult with the board about the litigation and seek input from the board. I really don't know anything about law, so I mainly listen when they discuss the litigation. I would be involved in the financial aspect only if there were a settlement or if there were a judgment against the company.

Q: Are you a voting member of the board of directors of AMDC?

A: Yes. I have a vote on every issue that comes before the board.

Q: Does that include voting on issues related to the *Downey* litigation?

A: Yes.

Q: Have you been contacted by anyone associated with the plaintiffs' law firm in the *Downey* matter?

A: Yes, I was called by a woman named Ashley Parks. She told me that she was an investigator working for the plaintiffs' law firm and that she wanted to speak with me about the walkers. I told her I would call her back. What should I do?