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WITNESS FOR THE ANGELS

Momentum is everything when it comes to winning a case. Attorney Nick Deketomis knew this from years of experience handling mass tort lawsuits. “Deke” also knew you didn’t just need to be ready for trial. You had to count on your fair share of big breaks to even get a shot at telling your story in front of a jury. Deke needed one of those big breaks today in a critically important pretrial hearing before a powerful and likely adversarial judge.

Lawyers all over the country advertised for the big cases, but then the vast majority of them tried to settle without ever going to trial. It was much less problematic to settle out of court. You avoided the expenses incumbent with a big trial and didn’t need to worry about the many potential disasters that could develop in a trial courtroom. But Deke wasn’t afraid of the fray. He liked to say, “It’s not how many times you get knocked down that count; it’s how many times you get back up.” There was a certain irony in that quote, Deke knew, as supposedly General George Custer said it not too long before Little Bighorn.

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Deke liked to think he'd prepared better for this battle than Custer had for Sitting Bull. You'd better be prepared when your opponent is a giant pharmaceutical company valued at more than fifty billion dollars. The multinational corporation Bekmeyer Pharmaceuticals had seemingly limitless resources, including an army of lawyers. Deke was okay with that, as long as both sides played on a level playing field, but Judge Ronald Beedles wasn't even giving him that. Time and again the trial court judge had made extraordinarily bad rulings to make sure Bekmeyer kept landing on its feet.

Judge Beedles was a conservative appointee of a former Florida Republican governor. What had apparently qualified Beedles for the bench was being born into a wealthy family that bestowed timely political contributions. Before his appointment, Beedles was known to spend a lot more time at the nineteenth hole than in the courtroom.

The court was now waiting for the judge to emerge from his chambers.

"He loves making a grand entrance," whispered Deke's co-counsel Angus Moore. He was seated to Deke's left at the plaintiffs' table. Angus was about as big as Paul Bunyan. He'd used that size to his advantage as the starting center at the University of Florida. Deke loved having Angus in the trenches with him. Many years ago the two of them had started the mass torts division of the Law Firm of Bergman Deketomis.

"Let's hope he's actually spending his time reading Jane's report instead of posing in front of a mirror," said Deke.

Dr. Jane Arash was one of the most respected toxicologists in America. She'd written a forty-page toxicology report stating that Bekmeyer's birth control pill Ranidol had caused the partial paralysis of nineteen-year-old Annica Phillips. Judge Beedles would be

making a ruling as to whether or not Dr. Arash's opinion rose to a generally accepted standard of scientific methods for medical findings. If he ruled in her favor, that would allow her to testify as an expert witness in Deke's upcoming trial against Bekmeyer. If the judge ruled against them, it was unlikely his ruling would be overturned by an appeals court. In fact, it was likely the judge would do everything in his power to make the case disappear forever.

To Deke's right sat Annica Phillips. Next to Annica was his daughter, Cara, a recent graduate of the Fredric G. Levin College of Law at the University of Florida. Cara was serving as an intern at the firm while studying for the bar exam. The two young women had grown close during the preparations for trial. They had a lot in common—both were honor students and athletes, or at least Annica had been before Ranidol left her paralyzed.

"How are you doing?" Deke asked Annica.

"I'm okay," Annica whispered.

She didn't look okay, but Deke knew Annica was a fighter. He had cautioned her about attending the pretrial hearing, just as he had warned Annica's parents. Deke had wanted to spare them the ugly underbelly of the law as practiced by judges like Beedles, where ideological rulings typically trumped a reasoned judicial opinion.

Deke put a reassuring hand on Annica's shoulder. It was probably good Annica was here. He wouldn't be able to shield her from the enemy much longer—and make no mistake about it, Bekmeyer was the enemy. Deke looked over at the defendants' table. Bekmeyer's lead lawyer, Wharton Garrison, was surrounded by half a dozen lawyers from the Benton, Craighill & Wasserman law offices in New York. If Deke was lucky enough to get Annica in front of a jury, these thousand-dollar-an-hour billing lawyers would make her life a living hell. Deke had warned Annica that Bekmeyer's sharks excelled at character assassination and would do

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everything in their power to paint her as a party girl who had slept around and done drugs.

Before taking her on as a client, Deke had asked her to tell him about any and all skeletons in her closet.

“I once smoked pot at a frat party,” Annica had admitted. “But I’ve only had two boyfriends my entire life.”

She had said the words wistfully. Annica’s medical prognosis wasn’t encouraging. Even if her health improved, it was unlikely she could ever have children. And it was entirely possible that she might not live long enough to have a third boyfriend.

The week before the hearing Deke had taken Annica out sailing with his family. It had been a warm day, but Annica had bundled up in the way that the elderly usually did. Although her partial paralysis from the drug-induced stroke limited her movements, the sea air had worked its magic and invigorated the young woman. Cara and Annica had found things to laugh about. For an afternoon Annica escaped the confines of her condition.

It was only after they docked that their thoughts had returned to the case. “You remind me of my daddy, Deke,” she had said. “I wish he wouldn’t worry so much about me.”

“That’s what parents do,” Deke had replied.

“Look after him, will you?”

“Now you’re sounding like a parent.”

“He’s worried about what the trial might do to me. I told him the possibility of a trial is what’s keeping me going. I want to be the poster child for what can happen to women taking Ranidol. I don’t want anyone else to go through what I have.”

Deke looked at the wounded warrior sitting next to him. Cara was still holding her hand. He hoped his key witness would get her day in court and that the judge would allow her to testify.

At long last Judge Beedles made his entrance into the crowded courtroom. Deke helped Annica get to her feet while Cara helped to steady her. Deke had seen pictures of Annica before her stroke and had always been struck by how much she had looked like Cara. Both of them were tall, athletic young women with dark, glossy hair and large hazel eyes. Both of the young women were now united in the same cause: They wanted to prevent other women from being deliberately poisoned for profit. They wanted Ranidol pulled from the market forever.

After Judge Beedles took his seat, Deke and Cara helped Annica sit down. Deke could feel the trembling in Annica's body but wasn't sure if it was from exertion or nerves. From his position at the bench, the judge straightened a few papers, and then smoothed a crease on his black robe. Darth Vader also wore a black robe, thought Deke. The judge looked toward the plaintiffs' table and Deke didn't like what he saw. He and Angus called it "the Solomon pose." It always preceded bad news.

With feigned sincerity on his face, the judge began. "Mr. Deketomis, I have reviewed both the report prepared by your injury causation witness Dr. Arash as well as her deposition testimony. I have spent hours reviewing the case law on this issue. This is a difficult decision, but I'm sorry to say her opinions simply do not rise to acceptable scientific standards in the view of this court." Judge Beedles continued as if he had genuinely struggled to make an honest and correct decision. "I have no other option except to disallow the testimony of Dr. Jane Arash."

Even Annica immediately understood the impact of where the Bekmeyer judge had left her. Without a witness to establish how and why Ranidol had caused her ischemic stroke and permanent partial paralysis, her case was going nowhere.

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While Beedles blathered about case citations and precedents, Deke turned to Annica to assure her that he was not out of moves, only to see his client had gone sheet-white.

“We lost?” whispered Annica. Then, in an even smaller and more frightened voice, she asked, “Where’s my mommy?”

Deke knew Annica’s mother wasn’t in the courtroom. It was something Annica knew as well, or should have. Annica’s breathing was raspy, and she had slumped down in her chair. She was trying to turn her head, trying to look for a mother who wasn’t there, but didn’t even have the strength to do that.

As Deke signaled to the bailiff for help, Annica slipped further down into her chair. Both Deke and Cara tried to keep Annica from falling to the ground.

“Hang on, Annica,” Deke said, “hang on!”

But Deke knew she wouldn’t be able to hang on. Dr. Arash’s report had documented how Ranidol caused strokes and embolisms. That was the same report that Judge Beedles had said didn’t rise to acceptable scientific standards. Dr. Arash had warned Annica and her parents about the possibility of a reoccurrence of an embolism. Deke knew at that very moment a large blood clot was moving through Annica’s body and targeting her lungs. Annica was being struck down in open court.

“Dad!” cried Cara.

His daughter was used to him making everything right; Deke felt more helpless than he ever had before.

He started administering CPR, but knew it was a futile gesture. Annica was dying and there wasn’t a thing he could do about it.