

# **LIFESAVERS**



## **CJ&D's Guide To Lawsuits That Protect Us All**

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# **LIFESAVERS 2016: CJ&D's Guide To Lawsuits That Protect Us All**

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## INTRODUCTION

When one thinks about personal injury or “tort” lawsuits, the Revolutionary War probably isn’t the first thing that comes to mind. Most people don’t know American colonists fought that war in significant part over England’s repeated attempts to restrict jury trials. Indeed, the U.S. Constitution was nearly defeated over its failure to guarantee the right to jury trial in civil cases.<sup>1</sup> In 1791, during its first session, Congress fixed this omission by enshrining the right to civil jury trial in the Bill of Rights, becoming the Seventh Amendment to the U.S. Constitution.

The Founders believed that the civil justice system was vital for the protection of individual liberties against tyranny and injustice. Two centuries later, U.S. Supreme Court Justice William Rehnquist wrote in *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979), “The right of trial by jury in civil cases at common law is fundamental to our history and jurisprudence.... [It] was important to the founders because juries represent the layman’s common sense, the ‘passionate elements in our nature,’ and thus keep the administration of law in accord with the wishes and feelings of the community.”

One of the hallmarks of the jury system is that jurors are randomly chosen and then fade anonymously back into the community. They are immune from the kind of influence-peddling that can infect the political system and the other branches of government. That is why, for two centuries, civil jurors have provided a check on official or arbitrary misuse of power, corporate abuses that threaten the public welfare, violations of civil liberties and civil rights and even the actions of violent criminals when, as often happens, the criminal justice system fails victims.

Yet despite its historic and current importance, personal injury “tort” cases and the civil juries who hear them are often attacked politically. For the last 40 years, state lawmakers, at the behest of corporate and professional lobby groups, have repeatedly enacted “tort reform” laws that take power and authority away from local juries. And federal lawmakers have regularly tried to “preempt” or prevent state tort lawsuits from being brought entirely. One problem may be that, for the general public, the civil justice system is among the least understood features of the U.S. judicial system. Most law-related education programs teach little, if anything, about the institution of the civil jury. Even groups dedicated to preserving the Bill of Rights inspire little public support for the right guaranteed by the Seventh Amendment.

In 2001, the Center for Justice & Democracy released *LIFESAVERS: CJ&D’s Guide to Lawsuits that Protect Us All*. That study, the first of its kind, was a compilation of over 80 injury lawsuits that have led to major safety improvements. CJ&D’s goal with the release of that report was to contribute to a better understanding of modern tort cases and their positive impact. After producing a 2002 *LIFESAVERS* update, CJ&D has not revisited this topic – until now.

*LIFESAVERS 2016* adds many new cases to the 2002 volume and is now the most comprehensive compilation ever assembled of tort lawsuits that have led to specific safety

improvements benefiting large segments of the population. The cases span 50 years and include both well- and little-known examples that have resulted in the redesign or recall of a product, a changed hospital procedure, a safer workplace, a more secure public area, the bankruptcy of a hate group or a cleaner environment. In other words, this study documents and explains how lawsuits and the “tort” system not only help victims of negligence and law breaking but also lead to important changes in policies and behavior that protect us all from dangerous or illegal practices.

*LIFESAVERS 2016* divides the case compilations into four large issue areas and lists them in chronological order by date of verdict or settlement. The four issue areas are: “Products, Drugs and Equipment”; “Health Care”; “Environment, Utilities, Roads and Public Space”; and “Crime, Violence and Official Misconduct.” *LIFESAVERS 2016* also address two related issues: 1) how local jurors use verdicts to warn that certain types of misconduct will not be tolerated in the community; and 2) how lawsuits inform the public and regulators about wrongdoing, often through the release of documents through the media. When disputes are resolved without trial and without a public record, wrongdoers can prolong misconduct and suppress for years information about dangerous products and practices.

That said, *LIFESAVERS* covers cases resolved either by jury verdict or settlement. It is important to include both because, as many have noted, the number of civil jury trials has dropped precipitously in recent years,<sup>2</sup> with judges and juries now disposing of only 15 percent of tort cases.<sup>3</sup> Indeed, the vast majority of tort cases settle.<sup>4</sup> However, it is also clear that “the threat of a jury trial is what forces parties to settle cases.”<sup>5</sup> And as we explain later, while there may be secrecy issues surrounding many of these settlements, they can lead to positive safety changes as well.

The methodology used to select cases for this study is conservative. It is by no means an exhaustive list. The study does not incorporate cases that have benefited only the plaintiff who brought the case, as significant as that verdict might be. *LIFESAVERS 2016* includes only tort cases that have had a broad societal impact. Unless a safety improvement could be linked to a specific lawsuit or series of suits – as opposed to publicity surrounding the injury itself – it was not included. Each case was carefully scrutinized. And the report clearly documents the source for information showing the specific safety change that resulted.

Notably, *LIFESAVERS* does not focus on large class actions lawsuits. Much has been written in recent years about the beneficial impact of class actions, including CJ&D’s own 2014 study *First Class Relief: How Class Actions Benefit Those Who Are Injured, Defrauded And Violated*.<sup>6</sup> That study was a compilation of more than 150 recent class actions that have both helped victims of corporate law-breaking and led to changes in corporate behavior that protect us all from many types of illegal conduct. *LIFESAVERS* cases are indifferent, focusing instead on individual tort cases. These cases often begin as small claims brought by trial lawyers on behalf of sick and injured victims, but end up having broad societal impact. They are the kinds of cases that U.C. Berkeley Professor George Lakoff described as “heroic” in the documentary film *Hot Coffee*, when he said:<sup>7</sup>

When somebody goes to court, they're doing something extraordinary that is hidden. To go to court and to sue is not a simple procedure. You have to go through a lot of trouble. It affects your life. You're going to be attacked in all sorts of ways. Going to court to gain justice is heroic. That idea has to be out there. When you 'win a case,' you win it for other people as well as gaining justice for yourself.

## **Jurors and Verdicts**

It should first be noted that counter to common belief, most jury verdicts are extremely modest in size. According to the most recent data from the National Center for State Courts, "50 percent of jury awards in tort cases were \$30,000 or less, and 75 percent of jury awards in tort cases were less than \$152,000."<sup>8</sup> However, the influence of large or significant jury verdicts in civil cases, of which there are relatively few, is vastly disproportionate to their number. Jury verdicts provide "signals" or warnings that certain types of conduct will not be tolerated. And as law professors and jury experts Valerie P. Hans and Neil Vidmar found, members of the public, and jurors in turn, believe that it is appropriate for juries to hold corporations to high standards. Verdicts are "a reflection of the jury's translation of community values about the role of business in society."<sup>9</sup>

Occasionally, jurors will express this sentiment publicly after their verdict. One recent example concerned the 2014 case of Bryan Stowe, who in 2011 was badly beaten in an unsecured, dimly-lit parking lot following a Dodgers vs. Giants game:

For one juror, the award to the 45-year-old paramedic and San Francisco Giants fan who is now brain damaged sent a clear message about the need for better security at sporting events.

The Dodgers "did have a (security) plan but somewhere along the line that plan broke. And it needed to be fixed," juror Carlos Munoz said after Wednesday's verdict. "Hopefully we helped to fix it. ... If you're going to own a stadium, do it right."<sup>10</sup>

In a 2016 letter to CJ&D, Mr. Stow's attorney wrote, "I have been informed that the case made an important impact on security in major league baseball."<sup>11</sup>

Indeed, it is not uncommon for jurors to speak out about messages they intended to send. In 1990, an African-American woman who was attacked by "skinheads" was awarded \$1.75 million by a jury. According to the principle attorney in the case, "[T]he forewoman told him after the verdict that jurors doubled the punitive damages sought by [the woman], to \$1.5 million, in order to send a message that such conduct won't be tolerated."<sup>12</sup> In California in 1984, a 19-year-old died after his motorcycle was hit by a police officer's truck. The officer, whose drinking problem was common knowledge, had been drinking for seven hours before the accident, and policemen on the scene made a concerted effort to protect him. In reaching a \$5.5 million verdict against the city and a \$380,000 against the officer, the jury foreman said, "Misconduct was overlooked, or when it was found there was just a slap on the wrist." Jurors

said their verdict was intended to send a message, with one juror saying, “If they don’t make some changes from the top, it would bother me.”<sup>13</sup>

## Lawsuits and Public Information

Tort lawsuits can impact people’s lives not only because wrongdoers are held accountable and future violations are prevented, but also because lawsuits can force the disclosure of internal information vital to protecting the public’s health and safety. This disclosure comes from public trials as well as from evidence collected during pre-trial discovery that’s eventually released and made public. History is replete with examples of cases where the public only learned about dangerous products, drugs, environmental hazards and other unsafe practices from media stories based on documents and information uncovered through litigation.

Take *Huffington Post/Highline*’s recent “DocuSerial” on Johnson and Johnson’s illegal promotion of its schizophrenia drug, Risperdal, which was based on litigation documents.<sup>14</sup> As reported by *Huffington Post/Highline*, these documents showed how J&J pushed its salespeople to promote Risperdal illegally to children and the elderly. The drug has horrible hormonal side effects for children and can be lethal for the elderly. J&J’s misconduct would have remained largely hidden had it not been for lawsuits against the company by those injured or made sick, and the release of litigation documents to the media.

Marketing of the drug Zyprexa is another example. In 1996, the U.S. Food and Drug Administration (FDA) approved Zyprexa as an antipsychotic and it quickly became the top seller for manufacturer Eli Lilly until it was discovered that some patients taking the drug also developed diabetes. Over 30,000 people sued Eli Lilly, and during the course of litigation, patients uncovered disturbing information that Lilly had evidence, even amid clinical trials, that some patients taking Zyprexa had experienced significant weight gain and high blood sugar – symptoms that frequently lead to diabetes.<sup>15</sup> According to internal documents released during litigation and given to the media, Eli Lilly officials had instructed its sales representatives to downplay these possible side effects “to keep concerns about diabetes and obesity from hurting sales.”<sup>16</sup> Had it been up to FDA oversight alone, this misconduct would never have been uncovered.

Similarly, in 1998, the *Houston Chronicle* revealed the existence of thousands of previously-secret industry documents uncovered through litigation which showed that Monsanto, B.F. Goodrich, Union Carbide and other major chemical companies had hidden information about vinyl chloride’s toxic health effects since the 1950s in order to “[a]void disclosure and deny liability.”<sup>17</sup> The lawsuit had been filed by Elaine Ross, widow of Conoco chemical plant worker Dan Ross, who died of brain cancer in 1990 at age 46 after working for the company for 23 years. Ross’ lawyer, William Baggett Jr., had fought for release of the documents for eight years.

And in the field of auto safety, many problems have come to light only when information was uncovered in litigation. For example, at least 35 people died and 130 people were injured in



Ford Explorer/Firestone Tire crashes before the National Highway Traffic and Safety Administration (NHTSA) began an investigation in May 2000. The agency did so in response to a wave of public concern following media reports, the first by a Houston television station. The story was based, in part, on information uncovered in civil lawsuits. As Northwestern University Law School Professor Steven Lubet wrote in the *Chicago Tribune*, “[H]ow did the story finally come out, with Ford and Firestone in deep denial and the NHTSA overwhelmed and short-staffed? The answer is that a group of personal-injury lawyers began filing lawsuits – and eventually succeeded in bringing the problem tires to public attention.”<sup>18</sup>

Perhaps the most well-known recent auto safety example concerns General Motors’ massive ignition switch defect. GM had known internally for a decade that millions of its cars had faulty ignition switches, resulting in power loss that would deactivate critical systems like steering, brakes and air bags.<sup>19</sup> It was not until Ken and Beth Melton sued on behalf of their late daughter Brooke that the world learned of it too. Credit goes to the Meltons’ incredibly persistent attorney, Lance Cooper, who during pre-trial discovery hired his own engineer to prove the existence of this lethal defect.<sup>20</sup> After more discovery, including a GM engineer’s deposition, the company settled the case but then publicly confirmed the cover-up. Ultimately, the company recalled millions of cars<sup>21</sup> and paid close to a billion dollars in criminal fines for that safety failure.<sup>22</sup> Sadly, hundreds of people had already died or suffered serious injuries. However, if not for the Meltons’ case, the public may never have learned about the defect and casualties would have continued to mount.

One reason this scandal did not come to light sooner was because GM insisted that victims agree to confidentiality when settling cases.<sup>23</sup> Many injury case defendants, like GM, make confidentiality a condition of settling. Defendants also typically insist that any materials they turn over to injured victims and their attorneys stay secret even if the public is endangered.

Asbestos is a prime example, where “a typical asbestos defendant who settles a case in the tort system demands confidentiality as a condition of settlement.”<sup>24</sup> Demanding secrecy from victims has been a longtime asbestos industry tactic, allowing corporations to hide the dangers posed by asbestos exposure for decades. As far back as 1933, the Johns-Manville Company settled with an attorney representing 11 former Manville employees, all asbestosis victims. The attorney was forced to sign a confidential written promise that he would not “directly or indirectly participate in the bringing of new actions against the Corporation.” This settlement did not come to light for more than 45 years.<sup>25</sup> In the meantime, the asbestos industry continued to deny responsibility for the millions of deaths and illnesses caused by its lethal product and fight damage claims. Some experts estimate the current asbestos death toll to be as high as 15,000 people per year.<sup>26</sup>

Dr. David Ozonoff, a toxicologist at Boston University, described the frustrating series of litigation defenses that the asbestos industry used in cases over the years:

Asbestos doesn’t hurt your health.

OK, it does hurt your health, but it doesn’t cause cancer.

OK, asbestos can cause cancer, but not our kind of asbestos.

OK, our kind of asbestos can cause cancer, but not the kind this person got.  
OK, our kind of asbestos can cause cancer, but not at the doses to which this person was exposed.  
OK, asbestos does cause cancer, and at this dosage, but this person got his disease from something else – like smoking.  
OK, he was exposed to our asbestos and it did cause his cancer, but we did not know about the danger when we exposed him.  
OK, we knew about the danger when we exposed him, but the statute of limitations has run out.  
OK, the statute of limitations hasn't run out, but if we're guilty we'll go out of business and everyone will be worse off.  
OK, we'll agree to go out of business, but only if you let us keep part of our company intact, and only if you limit our liability for the harms we have caused.<sup>27</sup>

However, sometimes victims like Eva Rowe refuse to agree to confidentiality demands. Eva lost both her parents in a March 23, 2005 explosion when an octane-boosting unit at BP's Texas City refinery malfunctioned, causing a geyser-like release of highly flammable liquid and vapor. Fifteen workers were killed, 180 others were injured. When victims and the families of those who died went to court, they learned that BP executives and Texas City managers willfully ignored recurring major safety problems for years before the blast. Internal company memos and reports dating back to 1999 – which the company fought to keep confidential but was forced by court order to release to claimants – showed a culture of risk denial where profit trumped worker safety.

For 16 months, Eva rejected BP's settlement offers because she wanted those documents to be made public. Rowe told *60 Minutes*, "I want everyone to know what they did, you know. If we settle and all, everything we know has to remain confidential. I don't want that to happen."<sup>28</sup> On November 9, 2006, the eve of trial, Rowe settled the case for an undisclosed amount, conditioned upon BP's pledge to, among other things, publicly release over seven million confidential documents related to the Texas City disaster, making "an entire industry accountable for ignoring dangerous realities and not learning from their mistakes." In addition, all documents and depositions obtained through discovery were shared with numerous authorities and investigative agencies, including the Justice Department, which ultimately brought criminal charges against BP.<sup>29</sup>

In sum, tort lawsuits not only help uncover information about dangerous products, they can create widespread publicity about them through the media and other means. And as the following cases show, lawsuits save lives and protect us all.

## PRODUCTS, DRUGS AND EQUIPMENT



In 1987, the industry-funded Conference Board provided a rare peek into how product liability lawsuits work to produce safe products. That year, the Board released a study of 232 risk managers at large U.S. corporations. They found, “Where product liability has had a notable impact – where it has most significantly affected management decision-making – has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit.”<sup>30</sup>

As this report shows, the impact of litigation on product safety can indeed be quite direct. Verdicts and settlements in products liability cases have pushed innumerable unsafe products off the market and led to the elimination of many dangerous practices, saving millions of people from injury or death. They also have a tremendously beneficial role in providing information to regulators so they can act on larger health risks and problems. That’s why, in the 2009 case *Wyeth v. Levine*,<sup>31</sup> the U.S. Supreme Court ruled that brand-name drug companies should not be immune from tort liability for injuring or killing patients.

The Court explained that the “FDA has limited resources to monitor the 11,000 drugs on the market and manufacturers have superior access to information about their drugs, especially in the postmarketing phase as new risks emerge” and the “FDA long maintained that state law offers an additional, and important, layer of consumer protection that complements FDA regulation.” In recognizing this, the Court looked to congressional intent, stating, “Congress did not provide a federal remedy for consumers harmed by unsafe or ineffective drugs.... Evidently, it determined that widely available state rights of action provided appropriate relief for injured consumers. It may also have recognized that state-law remedies further consumer protection by motivating manufacturers to produce safe and effective drugs and to give adequate warnings.”

Further, the Court acknowledged that “[s]tate tort suits uncover unknown drug hazards and provide incentives for drug manufacturers to disclose safety risks promptly” and that such suits “serve a distinct compensatory function that may motivate injured persons to come forward with information.” As the following cases demonstrate, the same can be said for all products, whether or not they are regulated by the federal government.

## Washing machine lacked safety switch

**FACTS:** On June 21, 1998, nine-year-old Rebecca Newcomb's right hand was caught and pulled into a White-Westinghouse washing machine at her Medford, Oregon home as she added some towels to a load of laundry during the machine's agitation cycle.

After six unsuccessful surgeries in four weeks, the child's arm had to be amputated at the elbow. The extensive tissue and nerve grafting procedures also disfigured her legs and back. Rebecca's

mother filed a products liability suit against White Consolidated Industries (WCI) and Costco Companies, Inc., the manufacturer and the seller of the washing machine, respectively, arguing that the machine should have had a stop switch to prevent parts from moving when the lid was open. In October 2001, WCI settled the case for \$3 million.

**Sources:** "Young Girl Who Lost Arm to Defective Washing Machine Reaches Settlement In Hopes No One Else Suffers Catastrophic Injury," *PR Newswire*, October 16, 2001, discussing *Newcomb v. Costco Companies Inc.*, No. 000100147 (Multnomah County Ct., Ore., filed January 5, 2001); McMillan, Dan, "Makes Washing Machines Safe," *Business Journal-Portland*, January 14, 2000; "White Sued Over Injury By Washer," *Plain Dealer*, January 8, 2000.



**EFFECT:** As part of the settlement, WCI, which made washing machines for Frigidaire, Westinghouse, Gibson, Kelvinator and Tappan, agreed to equip all new machines with a lid safety switch and make a retrofit kit available for consumers using old machines. **Sources:** "Washing machine maker settles case for \$3 million," *National Law Journal*, November 5, 2001; "Young Girl Who Lost Arm to Defective Washing Machine Reaches Settlement In Hopes No One Else Suffers Catastrophic Injury," *PR Newswire*, October 16, 2001.

## Pregnancy test produced false-positives for cancer

**FACTS:** In January 1998, 20-year-old Jennifer Rufer went to the University of Washington Medical Center after she experienced irregular vaginal bleeding and thought she had suffered a miscarriage. Doctors gave her an Abbott Laboratories pregnancy test, known as AxSym BHCG, which showed a high level of the hormone HCG, a reading typical of pregnant women or those who have a rare form of cancer. Since Rufer was not pregnant, doctors believed she had cancer and repeated the test 44 times, each one indicating that she had an elevated level of HCG. Told she had cancer, Rufer underwent a hysterectomy and had part of her right lung removed. After nearly a year of chemotherapy, Rufer learned not only that she did not have cancer but also that there were other instances in which the pregnancy test had given false-positive cancer readings. Rufer and her husband filed suit against Abbott and UW Medical Center, arguing, in part, that Abbott had failed to warn about the risk of false-positive test readings. In June 2001, the jury awarded \$16.2 million against both defendants. **Sources:** *Rufer v. Abbott Laboratories*, No. 99-2-27090-8 (King County Super. Ct., Wash., verdict June 29, 2001). *See also*, Fisk, Alan, "Warning sent after \$16M verdict; Hormone test could give false positives for cancer, company tells doctors," *National Law Journal*, December 3, 2001;

Skolnik, Sam, "Jury's Award Stands In Cancer-Test Suit," *Seattle-Post Intelligencer*, August 8, 2001; Fisk, Alan, "Misdiagnosis leads to \$15M award," *National Law Journal*, July 16, 2001; Skolnik, Sam and Scott Sunde, "Jury Awards Jennifer Rufer \$15.5 Million For Cancer-Misdiagnosis Case UW And Drug Company Share Blame," *Seattle Post-Intelligencer*, June 30, 2001; Bartley, Nancy, "Cancer mistake ravages a life," *Seattle Times*, April 25, 2001.

**EFFECT:** In November 2001, Abbott sent out warning letters to doctors and laboratories that the test may give false-positives for cancer. The letter stated that AxSym BHCG was intended for early pregnancy detection and "should not be used to diagnose any condition unrelated to pregnancy." **Sources:** Fisk, Alan, "Warning sent after \$16M verdict; Hormone test could give false positives for cancer, company tells doctors," *National Law Journal*, December 3, 2001; "Abbott letter cautions on test for pregnancy," *Chicago Tribune*, November 14, 2001; Ostrom, Carol M., "Firm that lost big suit sends warning on diagnostic test; Abbott had blamed error on doctor," *Seattle Times*, November 13, 2001.

### Dietary supplement caused life-threatening stroke

**FACTS:** In December 1998, 31-year-old Todd Weger, a career soldier and Gulf War veteran, collapsed on a treadmill at a local health club in Texas and suffered a massive stroke after periodically using Ultimate Orange – a dietary supplement containing the central nervous system supplement ephedra – for almost two years. He underwent three major brain surgeries in four days, during which time he lapsed into a coma, and later had a substantial portion of his brain removed, leaving him permanently disabled. Weger filed a lawsuit against Ultimate Orange's manufacturer, IFP, Inc., as well as Next Proteins International, a division of Next Nutrition, Inc., alleging, in part, that Next Proteins failed to adequately warn about the hazards of using Ultimate Orange. The case settled for \$4 million in February 2001. **Sources:** *Weger v. Next Proteins International*, No. 342-180401-99 (Tarrant County Ct., Tex., second amended original petition, filed November 22, 2000). *See also*, Fernas, Robert and Justin Heckert, "Substances Are Easily Obtained," *Los Angeles Times*, August 11, 2001; Cyphers, Luke and Michael O'Keeffe, "Speed Demons: Ephedra striking users fast and furiously," *Daily News*, July 16, 2001; Spake, Amanda, "Tonic or toxic? Americans are gobbling up nature's remedies for everything from obesity to depression," *U.S. News & World Report*, February 12, 2001.



**EFFECT:** As part of the settlement, Next Proteins agreed to remove from its advertising/promotional materials all claims or inferences that Ultimate Orange had been approved by the FDA and all references that Ultimate Orange should be combined with other products to enhance its stimulant effects. Next Proteins also agreed to replace Ultimate Orange's label with simple accurate language about its ingredients. In addition, as part of the settlement, Next Nutrition agreed to test incoming raw ingredients for ephedrine compounds and "change the label and promotional materials of the ephedrine-containing products to reflect an appropriate warning of the potential dangers of heart attack and stroke." Three months after settling the suit, Next Nutrition stopped selling Ultimate Orange. **Sources:** *Weger v. Next*

*Proteins International*, No. 342-180401-99 (Tarrant County Ct., Tex., full and final release, April 2001)(on file with CJ&D); Bresnahan, Mike and Martin Henderson, “Young Athletes’ Use of Stimulant Stirs Alarm,” *Los Angeles Times*, August 22, 2001; Hanley, Brian, “Taking the ultimate risk?” *Chicago Sun-Times*, August 12, 2001; Fernas, Robert and Justin Heckert, “Substances Are Easily Obtained,” *Los Angeles Times*, August 11, 2001.

## Fuel tanker loading equipment lacked safety mechanisms

**FACTS:** On December 13, 1993, 36-year-old Rodolfo Arevalo suffered a fractured skull and massive brain trauma after loading a tanker truck with heating oil at an Exxon fuel-loading facility in Everett, Massachusetts. A bubble of compressed air exploded, hurling a loading arm into his chest and throwing him off the tanker onto a concrete floor 12 feet below. He died several days later. In March 1995, the victim’s family sued Fraser Engineering, the repair company that had serviced the fuel-loading system earlier on the day that Arevalo sustained his deadly injuries. Deposition testimony revealed that the type of accident Arevalo experienced was a frequent occurrence throughout the industry. The case settled before trial for close to \$7 million in August 2000. **Sources:** *Arevalo v. Fraser Engineering Company*, No. 95-1203E, 2001 MA Jury Verdicts Review LEXIS 310 (Suffolk County Super. Ct., Mass., January 6, 2001); Ranalli, Ralph, “Fuel Tanker Suit Prompts Changes,” *Boston Globe*, September 7, 2000; *Arevalo v. Fraser Engineering Company*, No. 95-1203E, 2000 WL 33975799 (Suffolk County Super. Ct., Mass., March 1995).



**EFFECT:** The case prompted Exxon to make important safety upgrades to the Everett terminal and hundreds of similar facilities across the U.S. **Sources:** Telephone interview with Douglas Sheff, attorney for the Arevalo family, September 13, 2000; Ranalli, Ralph, “Fuel Tanker Suit Prompts Changes,” *Boston Globe*, September 7, 2000.

## Radiator fan was prone to break and injure people

**FACTS:** In 1992, 36-year-old Donald Taft lost his right eye and suffered serious facial injuries after three blades snapped off the flexible blade radiator cooling fan (“flex fan”) of a friend’s 1977 General Motors (GM) pick-up truck in Alden, New York. Taft filed a lawsuit against GM and Honeywell, the blade supplier, charging that the companies knew the flex fan had injured and killed people for decades yet refused to order a recall, instead forcing most victims to keep silent as a condition of settlement. When GM and Honeywell conditioned settlement with Taft on the signing of a confidentiality agreement, he refused. In 2000, the companies agreed to settle for over \$1.6 million without a confidentiality agreement. **Sources:** Herbeck, Dan, “GM Acknowledges Danger Of Truck Fan Blades,” *Buffalo News*, April 29, 2001; Herbeck, Dan, “4th Probe Urged Into Fan Danger,” *Buffalo News*, June 20, 2000; Herbeck, Dan, “Danger In A Fan Blade,” *Buffalo News*, June 18, 2000.



**EFFECT:** Taft and his attorneys used discovery documents to petition the National Highway Transportation Safety Administration (NHTSA) to open its fourth flex fan investigation. Soon after NHTSA probed GM for information, the company issued a safety warning and stopped selling the flex fan. **Sources:** Office of Defects Investigation, Recall Database, “NHTSA Campaign ID Number 01H004000,” citing recall date as June 5, 2001; Herbeck, Dan, “GM Acknowledges Danger Of Truck Fan Blades,” *Buffalo News*, April 29, 2001; Office of Defects Investigation, National Highway Transportation Safety Administration, “Monthly Defect Investigation Report And Civil Penalties Assessed for November 2000,” December 19, 2000 (on file with CJ&D); Herbeck, Dan, “4th Probe Urged Into Fan Danger,” *Buffalo News*, June 20, 2000.

### Latex gloves caused allergic reaction

**FACTS:** 39-year-old Linda Green developed sensitivity to latex through 13 years of occupational exposure to latex gloves made by Smith & Nephew AHP, Inc. In 1989, Green had a severe allergic reaction that forced her to quit her job as a CAT Scan technician and work as a hospital telephone operator. Green sued Smith & Nephew, arguing that its latex gloves were dangerously defective because they had a higher protein content than those made by other manufacturers. Evidence showed that Smith & Nephew had failed to take preventive measures to eliminate high levels of the allergy-causing proteins through certain types of washing steps. The jury awarded Green \$1 million, which was later upheld by the Wisconsin Supreme Court. **Sources:** *Green v. Smith & Nephew AHP, Inc.*, No. 94-CV-004199 (Milwaukee County Cir. Ct., verdict February 25, 1998), *aff'd*, 245 Wis.2d 772 (2001). *See also*, “Wis. Jury Awards \$1 Million In 1st Type 1 Latex Trial; Called ‘Definitive Case’ By Plaintiff’s Attorney,” *Emerging Toxic Torts Report*, February 27, 1998; Marchione, Marilyn, “Jury awards \$1 million in latex glove lawsuit; New Berlin health care worker’s case expected to affect others nationwide,” *Milwaukee Journal Sentinel*, February 26, 1998.

**EFFECT:** “It was the threat of future litigation that caused [latex glove manufacturers] to incorporate a washing technique sooner rather than later which eliminated significantly the proteins from the gloves.” **Source:** E-mail correspondence from Robert Habush, attorney for Linda Green, dated July 26, 2000.

### Defective escalator amputated child’s foot

**FACTS:** On November 27, 1996, four-year-old Shareif Hall’s right foot was torn off by a running escalator in a Philadelphia subway station. The top step had dropped enough to create a gap between the comb plate and the escalator. The Halls sued the Southeastern Pennsylvania Transportation Authority (SEPTA), the state transit authority, charging negligent maintenance of the escalator, and also filed a products liability action against Schindler Elevator Co., the escalator manufacturer. Evidence showed that SEPTA had been aware of the dangerous condition of its escalators since 1994, a fact revealed in SEPTA documents hidden



by the authority until mid-trial. A memo written 19 days before Shareif's accident stated not only that the escalator was in need of repair but also that the annual inspection had not been conducted. The jury levied a \$51 million verdict against SEPTA.<sup>32</sup> The case ultimately settled for \$7.4 million. **Sources:** "Ensuring the cap doesn't fit," *National Law Journal*, August 14, 2000, citing *Hall v. Southeastern Pennsylvania Transportation Authority*, No. 0732 (Philadelphia Common Pleas Ct., Pa., February 1997); Ginanni, Claudia N., "Documents Uncovered Mid-Trial Fuel \$51 Million Injury Verdict vs. Septa," *Legal Intelligencer*, December 15, 1999.

**EFFECT:** SEPTA promised to fix all broken escalators, committing \$16 million to escalator maintenance and repair, and to transform the way the authority handled accident investigations and claims against it. The case also led to the dismissal of numerous subway system executives. **Sources:** Fisk, Margaret Cronin, "10 wins shaped by pretrial hard work," *National Law Journal*, August 14, 2000; Ginanni, Claudia N., "SEPTA Settles Escalator Suit for \$7.4 Million," *Legal Intelligencer*, January 6, 2000.

## Gas well erupted in blast of fluid and gas

**FACTS:** On October 27, 1995, 42-year-old Juan Caballero was working on an Esenjay Petroleum Corp. gas well in Bee County, Texas, when a piece of equipment blew out because it was not properly installed. As a result, water under 2,000 pounds of pressure per square inch hit Caballero, tearing off his scalp, dislocating his hip and fracturing his neck, back, ankle and foot. He also suffered brain damage and permanent vision and hearing loss. Caballero filed suit against Esenjay, among others, claiming negligence for failing to install adequate safeguards to combat sudden increases in the well's pressure. The jury awarded \$42.3 million, \$30 million of which were punitive. **Sources:** Voris, Bob Van, "Trend Shows Lawyers Swapping Damages for Safety Changes," *Legal Intelligencer*, September 17, 1999, discussing *Caballero v. Esenjay Petroleum*, 95-6629-A (Nueces County Dist. Ct., Tex., verdict July 3, 1997); *National Law Journal*, February 23, 1998; "Man Gives up \$30M for Oil Safety," *AP Online*, December 1, 1997; "Plaintiff offers a swap: Damage award for safety," *Austin American-Statesman*, July 5, 1997.

**EFFECT:** Caballero gave up the punitive damages in exchange for Esenjay's agreeing to establish a new safety program at the company.<sup>33</sup> **Sources:** "Punitives swapped for safety effort," *National Law Journal*, September 3, 2001 – September 10, 2001; "Injured Employee Gives Up 30 Million In Exchange For Increased Safety Measures For Coworkers," *California Worker's Comp Advisor* (February 1998); Bradford, Michael, "A Different Kind Of Strength: Accident Victim Forfeits Award For Pledge Of Safety Program," *Business Insurance*, December 15, 1997.



## Drug caused life-threatening injuries to countless women

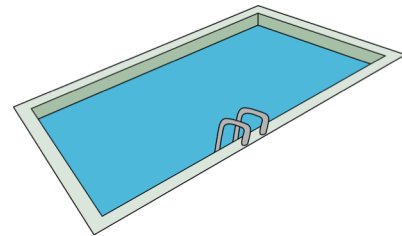
**FACTS:** Hundreds of women suffered serious injuries, including strokes, heart attacks, seizures and death, after taking Parlodel to suppress lactation following childbirth. The drug was originally developed for Parkinson's disease, tumors and other disorders but in 1980 received FDA approval for lactose suppression. In 1989, the FDA requested that manufacturers voluntarily stop marketing Parlodel for post-childbirth lactation because of the dangers to women's health. One company, Sandoz Pharmaceuticals, refused and, for the next five years, continued to promote the drug to doctors and persuaded hospitals to prescribe it despite proof that it caused life-threatening injuries. Thirty-one-year-old Rosemary Roberts filed a lawsuit against Sandoz for inadequate warnings; in July 1994, a Kentucky jury ordered the company to pay over \$2 million in damages, \$1 million of which were punitive. At the time of the verdict, Sandoz faced lawsuits from other victims seeking punitive damages.

**Sources:** Patterson, Richard, *Drugs in Litigation* (2015 ed.), citing *Sandoz Pharm. Corp. v. Roberts*, No. 94-CA-2757-MR, 1996 Ky. App. LEXIS 126 (August 9, 1996); "Kentucky Appeals Court Affirms \$2 Million Award In Parlodel Action," *Mealey's Emerging Drugs & Devices*, August 13, 1996.

**EFFECT:** A month after the Kentucky punitive verdict, Sandoz announced that it would stop selling the drug for lactation treatment. As University of Buffalo Law Professor Lucinda M. Finley explained, "The growing threat of lawsuits seeking punitive damages was also instrumental in eventually prompting Sandoz to cease marketing Parlodel as a lactation suppressant five years after the FDA had first requested that it take this action." **Sources:** Finley, Lucinda M., "Female Trouble: The Implications of Tort Reform for Women," 64 *Tenn. L. Rev.* 847, 874 n. 118 (1997); Unger, Michael, "Moms Sue Maker of Antilactation Drug," *New York Newsday*, February 8, 1995.

## Pool drain suction entrapped child

**FACTS:** On June 24, 1993, five-year-old Valerie Lakey was playing in a recreation club's wading pool whose drain cover had been removed. The child became lodged in the opening and was severely injured by the force of the suction, which pulled out almost 80 percent of her small intestine and about 70 of her large intestine. The child survived but was subjected to three years of surgeries, hospital stays and consultations with specialists and required around-the-clock care that included being fed intravenously for 12 to 14 hours a night. Evidence introduced at trial showed that Sta-Rite Industries, the pool equipment manufacturer, knew of at least 13 similar injuries but did not put warnings on its covers until mid-1987. The cover involved in Valerie's case was made in February 1987. The jury awarded \$25 million in compensatory damages. Rather than appeal the decision, Sta-Rite agreed to pay the verdict. **Sources:** "Pool-Injury Verdict Is N.C.'s Largest," *National Law Journal*, January 27, 1997;



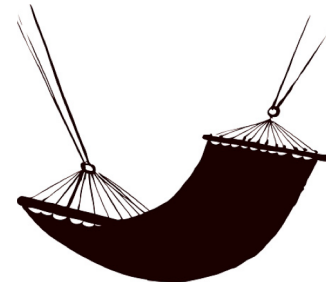
Saker, Anne, "Child hurt in drain accident talks to court," *News and Observer*, December 14, 1996; Saker, Anne, "Company papers reveal 13 accidents like Cary girl's," *News and Observer*, December 11, 1996.

**EFFECT:** After the case was filed, Sta-Rite changed its warnings and instructions regarding the safe use of its drain covers. Reports of the \$25 million settlement led to an industry-wide recall of pool drain covers. The Consumer Product Safety Commission also published extensive guidelines for pool operators to avoid similar entrapment injuries. North Carolina enacted legislation that mandated wading pool covers; the Texas Department of Health considered similar regulations. **Sources:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing questionnaire of Andrea Currccio, attorney for Valerie Lakey, dated November 20, 1998; Egerton, Brooks, "Experts warn of dangers with pool, hot tub drains; Strong suction has maimed, killed dozens," *Dallas Morning News*, January 27, 1997.

### Hammock twisted around child's neck

**FACTS:** On September 21, 1990, seven-year-old Kelly Brown suffered severe brain damage after becoming entangled in a nylon string hammock. She became wheelchair bound and mentally incapacitated. Her parents initiated a lawsuit against Consolidated Stores Corp., owner of the Big Lots store that sold the hammock.

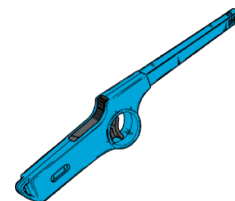
The case settled for \$6.25 million in October 1996. **Sources:** Lipka, Mitch, "This Net Puts Lives At Risk; Seventeen Died In Hammocks Without Spreader Bars. Kelly Brown Was Left Brain-Damaged," *Sun-Sentinel*, November 29, 1999; "Hammock Distributors Settle Liability Suit," *National Law Journal*, November 4, 1996; *Brown v. Consolidated Stores Corporation*, No. CV92091678, 1996 Jury Verdicts LEXIS 66184 (Butler County Ct. of Common Pleas, Ohio, October 21, 1996).



**EFFECT:** The Browns settled the case on the condition that the dangers of the hammock be disclosed. Subsequently, Consolidated recalled the 26,000 hammocks they had sold. By May 1996, the Consumer Products Safety Commission convinced ten manufacturers and importers to recall another three million hammocks. The Brown litigation was "instrumental" to the Commission's recall effort. **Sources:** Telephone interview with Thomas Jackson, attorney for the Brown family, July 11, 2000; Lipka, Mitch, "This Net Puts Lives At Risk; Seventeen Died In Hammocks Without Spreader Bars. Kelly Brown Was Left Brain-Damaged," *Sun-Sentinel*, November 29, 1999.

### Multi-purpose lighter wasn't child-proof

**FACTS:** On March 21, 1992, four-year-old Jodie Carr suffered burns over more than 60 percent of her body after a developmentally-disabled six-year-old boy staying at the Carrs' home in League City,



Texas set Jodie's clothes on fire with a Scripto-Tokai Aim 'n Flame multi-purpose lighter. The child had to undergo skin graft surgeries, which doctors said would be necessary until she reached adulthood. Her family filed suit against Scripto-Tokai and Wal-Mart, seller of the Aim 'n Flame. During litigation, it was revealed that there had been seven incidents from 1988 through 1993 where children were injured by the Aim 'n Flame, one of which resulted in the death of a four-year-old child. The case settled in early 1996 for an undisclosed amount.

**Sources:** "Safety Standard for Multi-Purpose Lighters; Final Rule," 16 CFR Part 1212 (enacted December 22, 1999); Greenslit, Dave, "Parents suing lighter maker; Marlboro boy killed in fire," *Telegram & Gazette*, July 12, 1999; Rendon, Ruth, "Children's burning curiosity, lighters may pose hazard," *Houston Chronicle*, February 1, 1998; Consumer Product Safety Commission, "Multi-Purpose Lighters; Advance Notice of Proposed Rule Making; Request for Comments and Information," 62 FR 2327, January 16, 1997.

**EFFECT:** Citing her daughter's experience, as well as the seven other incidents she learned about during the case, in February 1996, Carr's mother petitioned the Consumer Product Safety Commission to issue child safety standards for the Aim 'n Flame. The petition prompted the agency to investigate multi-purpose lighters in general, a search that identified 237 fires by children under age five from January 1, 1988 through October 15, 1999, which resulted in 45 deaths and 103 injuries. Of those 45 fatalities, 28 involved children younger than age 5. As a result, the CPSC issued a federal safety standard in December 1999, requiring that all multi-purpose lighters be child-resistant. **Sources:** "Safety Standard for Multi-Purpose Lighters; Final Rule," 16 CFR Part 1212 (enacted December 22, 1999); Consumer Product Safety Commission, "Multi-Purpose Lighters; Advance Notice of Proposed Rule Making; Request for Comments and Information," 62 FR 2327, January 16, 1997. *See also*, U.S. Consumer Product Safety Commission, Office of Information and Public Affairs, "CPSC Issues Federal Safety Standard for Multi-Purpose Lighters," Release #00-029, December 10, 1999; Rendon, Ruth, "Children's burning curiosity, lighters may pose hazard," *Houston Chronicle*, February 1, 1998.

## **Tylenol warning label failed to note dangers of mixing with alcohol**

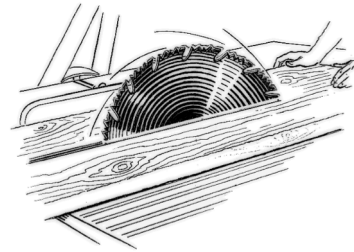
**FACTS:** When Antonio Benedi entered the hospital on February 10, 1993, he was in a coma, near death, and required an emergency liver transplant. During the prior week he had taken Extra-Strength Tylenol (a brand of acetaminophen) to treat flu symptoms and consumed three to four glasses of wine with dinner as he customarily did. When Benedi sued the manufacturer, McNeil, P.P.C., Inc., he discovered that since the late 1970s the company knew of the link between acetaminophen, alcohol and liver damage. In fact, McNeil had received 60 reports of liver injuries resulting from the combination of alcohol and Tylenol. Trial testimony from the medical director and corporate representative from McNeil also revealed that in December 1992, two months before Benedi's injury, an FDA official had suggested to McNeil that its new Tylenol product, which was very similar to Extra-Strength Tylenol, contain an alcohol warning for individuals who consumed more than two drinks on a daily basis. The jury awarded over \$8.8 million against the drug manufacturer. *Benedi v. McNeil, P.P.C., Inc.*, No. 94-345A (verdict October 20, 1994), *aff'd*, 66 F.3d 1378 (4th Cir. 1995). Before the jury verdict, the

FDA held an advisory panel hearing where it was agreed that all over-the-counter pain relievers containing acetaminophen carry a warning about the risks of alcohol. The FDA announced the plan right after the verdict. **Sources:** E-mail correspondence from Patrick Malone, attorney for Antonio Benedi, dated July 25, 2000; Bates, Steve and Charles W. Hall, “Tylenol Verdict Puts Spotlight On Drug Labels,” *Washington Post*, October 22, 1994.

**EFFECT:** “Today, labels on Tylenol and other brands of acetaminophen instruct people who drink alcohol to consult their doctor before taking the drug. Where I think we were helpful was in pushing the FDA – after the verdict we presented to the FDA medical records from about 20 patients with similar injuries, and these were referred to in the agency’s final rulemaking document – to have an ‘organ-specific’ warning for Tylenol referring to the risk of liver damage. [T]hey ultimately decided to require a liver warning on acetaminophen products and a ‘stomach bleeding’ warning on aspirin and ibuprofen for alcohol drinkers.” **Sources:** E-mail correspondence from Patrick Malone, attorney for Antonio Benedi, dated July 25, 2000. *See also*, “Tylenol to issue warning labels on caps of popular pain killer alerting users of potentially fatal risks,” *Associated Press*, August 29, 2013, <http://www.nydailynews.com/life-style/health/tylenol-issue-warnings-pill-bottles-article-1.1440915>

### Tool lacked blade guard

**FACTS:** On March 22, 1989, 46-year-old Henry Lee Dendy’s right hand and thumb were nearly amputated by a Sears Craftsman ten-inch radial arm saw. Dendy sustained the injuries in his home workshop in Paradise, California, when, after cutting a piece of wood, he turned the saw off, reached for another piece of wood and inadvertently came into contact with the saw’s unguarded lower blade. Dendy filed a products liability suit against Emerson Electric, who manufactured the saw, and Sears, who marketed and sold it. Discovery documents revealed that Sears knew for nearly 20 years of hundreds of amputations due to the lack of a lower blade guard yet failed to add an inexpensive safety feature. In March 1995, the jury awarded over \$3.8 million, the majority of which were punitive. The case ultimately settled for nearly \$5.1 million. **Sources:** “Trial Lawyer of the Year Award Finalists Announced,” *Public Justice* (Summer 2001); “Bay Areas Datelines,” *San Francisco Examiner*, March 31, 1999; Fried, Rinat, “Dendy v. Sears Roebuck & Co.,” *Recorder*, March 22, 1995; *Dendy v. Sears, Roebuck & Co.*, No. 917-161 (San Francisco County Ct., Cal., March 3, 1995).



**EFFECT:** After receiving Dendy’s discovery evidence, the Consumer Product Safety Commission recalled 3.7 million Sears Craftsman radial arm saws for repair. **Sources:** “Trial Lawyer of the Year Award Finalists Announced,” *Public Justice* (Summer 2001); “Radial Arm Saws Are Recalled,” *Associated Press*, November 16, 2000; U.S. Consumer Product Safety Commission, “CPSC, Emerson Tool Co. Announce Recall of Craftsman® Radial Arm Saws Sold by Sears, Roebuck and Co.,” Release #01-031, November 14, 2000.

## Vibrating tool injured hands and arms

**FACTS:** Workers suffered from hand-arm vibration syndrome (HAVS) after prolonged use of chainsaws, jack-hammers and sanding and scraping tools. Four hundred lawsuits were brought against tool manufacturers Chicago Pneumatic Corp., Stanley Air Tools and Dresser Industries, whose grinding machines produced vibrations that caused neurological and vascular damage to users' hands. During discovery, evidence surfaced that the manufacturers had been resisting the creation of vibration measurement and exposure standards, even discouraging the use of warnings on their tools, for nearly a decade. In one case, *Glada v. Chicago Pneumatic Corp.*, the jury awarded five injured shipyard workers over \$340,000. **Sources:** E-mail correspondence from Stephen C. Embry, attorney in *Glada*, September 30, 2000; "Hand-arm vibration ignored or misdiagnosed," *CTD News*, October 1, 1995; *Glada v. Chicago Pneumatic Corp.*, No. 86-0502481S, 1994 Jury Verdicts LEXIS 48714 (New London Super. Ct., Conn., December 20, 1994).

**EFFECT:** "Following our lawsuits the American industry began putting warnings on their machines and Chicago Pneumatic undertook the development of a rubber shock absorber to be placed on the handle of their two handled grinders." **Source:** E-mail correspondence from Stephen C. Embry, attorney in *Glada*, September 30, 2000. Embry has represented nearly 400 injured shipyard workers in lawsuits against Chicago Pneumatic Corp., Stanley Air Tools and Dresser Industries.

## Logging skidder brake system failed

**FACTS:** 24-year-old Kenneth White was seriously injured when a Timberjack logging skidder machine rolled backward down a slope, crushing his left leg. White underwent 21 surgeries before his leg eventually required amputation. Evidence introduced at trial revealed that there had been three prior accidents where workers were killed or injured by Timberjack skidders equipped with similar hydraulic brake systems. The jury found Timberjack negligent for failing to warn of the potential danger and handed down a \$2.7 million verdict. The case settled in October 1997 for over \$2.2 million. **Sources:** Telephone interview with John Ballow, attorney for Kenneth White, July 20, 2000; *White v. Timberjack FMG, Inc.*, No. 54590, 1997 Jury Verdicts LEXIS 64628 (Cattaraugus County Super. Ct., NY, October 28, 1997); *White v. Timberjack*, 209 A.D.2d 968 (4th Dept.1994).

**EFFECT:** Timberjack retrofitted the logger before settling with White. **Source:** Telephone interview with John Ballow, attorney for Kenneth White, July 20, 2000.

## Herbal tea lacked adequate warnings

**FACTS:** In July 1991, 37-year-old June Grell died in her sleep at her San Rafael, CA home after drinking Laci Le Beau's "Super Dieter's Tea" every day for nearly six months. That same year,



22-year-old Debbie Helphrey, who drank the same brand of tea, died in Palm Harbor, FL while talking on the phone. In June 1994, 37-year-old Victoria Hendry died in Champlin, MN after taking Super Dieter's Tea and an energy supplement for nearly a year. Two months later, 36-year-old Mary Jane Porter collapsed at her Scottsdale, AZ home and died, having used the tea at least three times a week for several years. Four wrongful death lawsuits were filed against manufacturer Laci Le Beau, among others, on behalf of Grell, Helphrey, Porter and Hendry, claiming that the company had failed to warn that the tea's active ingredient, senna, was a powerful laxative whose long-term use could lead to heart failure. **Sources:** Waxman, Sharon, "Lawsuits Blame Women's Deaths On Unregulated Herbal Products," *Washington Post*, March 24, 1996; Kertscher, Tom, "Concern over tea arose in 1984; Health officials did not alert public to potential dangers of dieter's tea," *Fresno Bee*, July 5, 1995; "Fresno diet tea target of another lawsuit," *Fresno Bee*, June 29, 1995; Seligman, Katherine, "Marin man: Herbal tea killed wife," *San Francisco Examiner*, May 14, 1995; Slind-Flor, Victoria, "Tea Maker Sued Over 3 Deaths," *National Law Journal*, May 8, 1995; "Diet tea lawsuit changes court," *Fresno Bee*, April 21, 1995; Kertscher, Tom, "Lawsuits say tea caused 3 deaths," *Fresno Bee*, April 19, 1995; *Grell v. Laci Le Beau Corp.*, No. SCV-965787 (San Francisco County Ct., Cal., filed December 13, 1994); *Helphrey v. Laci Le Beau*, No. 0532185 (Fresno County Ct., Cal., filed November 15, 1994).

**EFFECT:** After widespread publicity about the lawsuits, some California stores stopped carrying Super Dieter's Tea. The media coverage also caused other victims to report health problems they experienced after using "dieter's" teas to the California Department of Health Services (DHS). These complaints, coupled with the department's own investigation, prompted the DHS to issue emergency regulations requiring that a conspicuous warning label be placed on all food products sold in California that contained herbal ingredients which could have laxative effects. **Sources:** California Department of Health Services, "Warning Label Now Required On Certain Herb-Containing Food Products," News Release #69-96, November 20, 1996; California Department of Health Services, "Initial Statement of Reasons" for Emergency Regulation R-38-95 (1996) (on file with CJ&D); Kertscher, Tom, "Fresno diet tea target of another law-suit," *Fresno Bee*, June 29, 1995. *See also*, "Adverse Reactions Cause the Department of Health Services to Require a Label Notice on Foods and Dietary Supplements Containing Ingredients with Stimulant Effects," *California Morbidity* (September 1998).

### Adults fractured necks using backyard Slip 'N Slide

**FACTS:** To use a Slip 'N Slide, a person must do a running dive, going headfirst onto its slippery surface, which in turn creates air pockets under the slide. If people over a certain weight hit these pockets with their chin, their head will stop or slow down while the rest of their body continues to slide forward causing the neck to fracture. The Slip 'N Slide was originally manufactured by Wham-O, but the company discontinued the product after three people broke their necks. After Kransco purchased Wham-O and its entire product line in 1982, Kransco reintroduced the Slip 'N Slide. In June 1987, Michael Hubert, a father in his



mid-30s, became partially quadriplegic after using a neighbor's Kransco Slip 'N Slide. A statement on the box warned that it was "not intended for adult use," but such cautionary language came after the phrase, "recommended for children five years and older." There were also instructions for children on the toy itself: "Start low. Land on your stomach with your arms in front of you and your head up..." Hubert was not aware of any of those warnings, because two neighbors had set up the toy and had never alerted him to the cautionary language. At the April 1991 trial, Hubert argued that Kransco knew the warning language was insufficient from prior accidents similar to Hubert's. One of those accidents ended in the user's death; the other left the user a quadriplegic and resulted in a \$1.5 million settlement against Wham-O. The jury learned that Kransco had initially denied the existence of such accidents during pre-trial discovery, later changing its answer and admitting knowledge of the two incidents. Evidence also revealed that Wham-O had taken the Slip 'N Slide off the market in the 1970s after several cervical accidents and lawsuits. In addition, Hubert maintained that Kransco had received reports from its own forensic consultants about the toy's risks to adults. The jury awarded \$12.3 million, \$10 million of which were punitive. The case settled for \$7.5 million. **Sources:** *Kransco v. American Empire Surplus Lines Insurance Company*, 23 Cal. 4th 390, 394-96 (2000); *Hubert v. Kransco*, No. 90-CV-103, 1992 WI Jury Verdicts & Sett. LEXIS 221 (Brown County Cir. Ct., Wis., 1991). *See also*, Krinick, Evan H., "Comparative Bad Faith: A New Defense? New York Courts Have Not Yet Been Asked to Accept the Doctrine," *New York Law Journal*, January 12, 1998; Garmisa, Steven P., "Policyholder, in-surer swap bad-faith claims," *Chicago Daily Law Bulletin*, July 11, 1997; Weiser, Benjamin, "Lawsuits Spur A De-bate Over Secrets vs. Safety," *Washington Post*, July 26, 1994.

**FACTS:** In June 1991, 34-year-old Bill Evans became paralyzed from the neck down and required around-the-clock care after using a Kransco Slip 'N Slide. Upon suing the company, Evans learned not only that Wham-O had discontinued the product after three people sustained grave neck injuries but also that Kransco's decision to reintroduce the Slip 'N Slide led to at least four more critical neck injuries. When Evans and Kransco discussed settlement, Kransco conditioned the agreement upon Evans' promise to keep silent about the hazards of the Slip 'N Slide. Nevertheless, after the Evans case and other litigation, the dangerous nature of the Slip 'N Slide became public knowledge. **Sources:** Koeing, Thomas and Michael Rustad, *In Defense of Tort Law*. New York: New York University Press (2001); Letter from Matthew J. Rinaldi, attorney for Bill Evans, dated July 6, 2000; Sabar, Ariel, "A Big Fight Over a Few Words," *Recorder*, October 20, 1994; *Evans v. Kransco*, No. 943007 (San Francisco County Super. Ct., Cal., filed May 19, 1992).

**EFFECT:** "The two cases, *Evans* and *Hubert* combined, stopped Kransco's manufacture of the product and ultimately pulled the existing product from the retail pipeline. And in cooperation with the Consumer Product Safety Commission (CPSC), Kransco issued a safety alert concerning the product.<sup>34</sup> While redesigned versions of Slip 'N Slide have been introduced, none of them is identical to the original Slip 'N Slide and to our knowledge no one has broken his neck on any of the re-designed Slip 'N Slides." **Source:** Telephone interview with Matthew J. Rinaldi, attorney for Bill Evans, October 12, 2000.



## Windshield popped out during crash

**FACTS:** On July 17, 1982, 45-year-old George Miller, who lived in Colorado, borrowed his friend's light-duty GMC pickup truck. As he was proceeding slowly through an intersection where the light had been broken, Miller was rear-ended by another vehicle. The truck rotated and crashed, and the windshield popped out. Miller was ejected through the windshield opening, and he was instantly rendered quadriplegic. During trial, evidence showed that the windshield had been replaced two years earlier by Solaglas, which used a sealant and windshield retention system that differed significantly from that used by GMC. Miller showed that Solaglas deliberately installed windshields without adequate sealant as a matter of policy, choosing to ignore industry safety standards as well as requirements outlined in a GMC manual. In 1991, the jury awarded \$6.1 million, which was modified somewhat by the trial judge. **Sources:** *PPG Industries v. Transamerican Insurance Company*, 20 Cal.4th 310 (1999); *Miller v. Solaglas*, No. 83-CV-8270 (Denver County Ct., Colo.), *aff'd*, 870 P. 2d. 559 (Colo. 1993).

**EFFECT:** "After this lawsuit, a nation-wide policy change was instituted for aftermarket glass installation. Now, when consumers need a windshield replaced, the installer complies with manufacturer specifications." **Source:** Telephone interview with James Gilbert, attorney for George Miller, December 6, 2000.

## Tractors lacked rollover protection

**FACTS:** In the mid-1980s, the Kubota Corporation began facing numerous product liability suits after people suffered serious injuries or death from Kubota tractors, which were manufactured in Japan and sold in the U.S. without a rollover protection system. In one case, a Kubota tractor flipped over backwards and crushed a 21-year-old mechanic's chest while he was trying to pull-start the machine. The victim sued Kubota, claiming that the tractor should have been equipped with a rollover protection structure. In May 1987, the case settled for \$250,000. In January 1988, the family of 38-year-old Dempsey Wayne Wallis sued Kubota after Wallis' tractor rolled over and crushed him in July 1984, causing his death. **Sources:** Wells, George, *Arkansas Democrat-Gazette*, January 13, 1988; *Barnwell v. Kubota Tractor Corp.*, No. 85-9903, 2009 Jury Verdicts LEXIS 2007 (Duval County Cir. Ct., Fla., 1987).



In 1991, Athel Hunt's family filed suit against Kubota after his 2,500-pound Kubota tractor, which had flipped over and landed on his chest, crushed the 64-year-old man to death by suffocating him. Company documents from 1984 showed that Kubota chose not to equip its tractors with a rollover protection system because it would hurt sales. Rather than placing a protection system on its tractors in inventory, Kubota had decided to offer such equipment as an optional feature. The tractor involved in Hunt's accident was a 1982 model that the family purchased in 1987. **Sources:** McNutt, Michael, "Japanese Tractor Maker Denied Bid for New Trial in Enid Accident," *Daily Oklahoman*, June 18, 1993, <http://newsok.com/article/2433844>;



McNutt, Michael, "Family Awarded \$6.6 Million in Death; Tractor Firm Loses Roll-Over Argument," *Daily Oklahoman*, April 29, 1993, <http://newsok.com/article/2428962>; *Hunt v. Kubota Corp.*, No. CJ-91-268, 1993 WL 457015 (Garfield County Dist. Ct., Okla., verdict April 27, 1993).<sup>35</sup>

**EFFECT:** After the Hunt case was filed, Kubota withdrew tractors without rollover protection from the U.S. market. According to a company official, "[T]he possibility of being held responsible for damages in case of accidents under U.S. product liability laws has persuaded the company to stop exports...." Kubota also placed advertisements in U.S. newspapers to warn users about the potential for its tractors to rollover. **Sources:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001); "Kubota Cuts Exports Of Used Tractors To U.S.," *Japan Economic Newswire*, January 23, 1992.

### **Floating pool solar cover trapped child underneath**

**FACTS:** On March 28, 1988, 18-month-old Joshua Povoov suffered brain damage after he wandered into a neighbor's above-ground pool and became trapped under its floating solar cover. The child was not found for 1-2 minutes because the cover concealed him. He remained in a vegetative state until his death seven years later. The cover manufacturer, Cantar Corp., settled the case for \$400,000. **Sources:** E-mail correspondence from Ronald R. Gilbert, attorney for Joshua Povoov, dated September 11 and 15, 2000; *Povoov v. Chahine*, No. 670576, 1991 Jury Verdicts LEXIS 46835, (Santa Clara County Super. Ct., Cal., tried June 1991). Gilbert is also chairman of the Foundation for Spinal Cord Injury Prevention and Care and the Foundation for Aquatic Injury Prevention.

**EFFECT:** "That case along with a number of other near drowning solar cover cases caused the [Consumer Product Safety Commission] CPSC, to rush through what at the time I believe was the fastest standard ever to be approved by the CPSC. The standard had to do with safety and solar covers. Solar covers were an 'entrapment' for young kids. It attracted them to the water and they would then fall underneath the solar cover and not only drown but be disguised and could not be found. It is probably the most specific standard as a result of specific litigation." **Source:** Letter from Ronald R. Gilbert, attorney for Joshua Povoov, dated August 4, 2000.

### **Backseat lacked shoulder restraints**

**FACTS:** On November 13, 1988, an unlicensed driver crossed the center line on an S-curve in Carlsbad, California and crashed head-on into a 1986 Ford Escort carrying Jim and Patricia Miller and their 11-year-old sons, James and Richard. Although the boys were buckled in with lap belts, James died in the accident and Richard was rendered paraplegic. The Millers filed suit against the city of Carlsbad and the Ford Motor Company, alleging, in relevant part, that the carmaker elected not to install shoulder restraints in the rear seats even though a company study indicated that three-point belts provided better protection. Ford settled the case for \$6

million. **Sources:** “Ford settles seatbelt lawsuit out of court; Plaintiffs receive \$6 million from fatal accident in Escort,” *AutoWeek*, May 7, 1990; “Survivors of crash hope others will heed warning,” *San Diego Union-Tribune*, April 5, 1990; Anderson, Hilmer, “Ford pays \$6 million to accident victims,” *UPI*, April 4, 1990; *Miller v. Ford Motor Co.*, No. 613234 (San Diego Super. Ct., Cal., settlement April 3, 1990).

**EFFECT:** “As a result of the *Miller* case, Bill AB 1751 was passed in the California Legislature on August 31, 1992. The law requires that all used cars from 1972 onward come equipped with warning labels alerting customers to the hazards of riding in the rear seat of a car with lap-only belts.... With the passing of this bill, and with very little inconvenience to manufacturers or dealers, California consumers are now made aware of the life-saving benefits of a properly installed rear lap-shoulder belt system.... Ford began an advertising campaign for the availability of retrofit shoulder harnesses and offered a rebate for those harnesses, following the *Miller* settlement.... Ford requested confidentiality of the settlement. The Millers refused.”

**Sources:** Letter from Craig R. McClellan, attorney for the Miller family, dated August 30, 2000. *See also*, Gillam, Terry, “California Laws ’93,” *Los Angeles Times*, January 1, 1993, [http://articles.latimes.com/1993-01-01/news/mn-3074\\_1\\_law-enforcement/3](http://articles.latimes.com/1993-01-01/news/mn-3074_1_law-enforcement/3); Abrahamson, Alan, “New Ruling Lifts Veil of Secrecy in Civil Cases,” *Los Angeles Times*, September 9, 1990, [http://articles.latimes.com/1990-09-09/local/me-547\\_1\\_san-diego-superior-court](http://articles.latimes.com/1990-09-09/local/me-547_1_san-diego-superior-court)

## **Copper-7 IUD caused serious injuries and infertility in many women**

**FACTS:** In 1974, G.D. Searle & Co. began marketing the Copper-7 IUD. The device caused pelvic infections, ectopic pregnancies, perforation of the uterus and infertility in countless numbers of women. Many personal injury lawsuits were filed. In 1988, a jury reached an \$8.75 million verdict against Searle (\$7 million of which was punitive) after internal documents showed that company officials had expressed doubts about the safety of the Copper-7 design and its use by women who had not borne children. The jury found that the manufacturer intentionally withheld this information from the public and continued to misrepresent the product, targeting young women even though it clearly was not appropriate for those who had never been pregnant. **Sources:** *Kociemba v. G.D. Searle & Co.*, No. 3-85-1599, 1988 Nat. Jury Verdict Review LEXIS 797 (U.S. Dist. Ct., Minn., verdict September 9, 1988); Oberdorfer, Dan, “Now, It’s Searle’s Turn In Battle Over IUDs,” *National Law Journal*, July 4, 1998.

**EFFECT:** In 1986, after numerous lawsuits, coupled with its inability to obtain products liability insurance, G.D. Searle pulled the Copper-7 from the U.S. market. **Sources:** Testimony of Janice Toran, Assistant General Counsel of G.D. Searle & Co., before the Senate Judiciary Committee, July 26, 1995; Parachini, Allan, “Doctors, Patients Building IUD Supply System,” *Los Angeles Times*, August 8, 1986.

## Lighter failed to extinguish

**FACTS:** While on a camping trip, 34-year-old Cynthia Littlejohn suffered third degree burns over 25 percent of her body when her Bic lighter ignited in her left-front shirt pocket. Internal Bic Corp. documents revealed that the company knew of the defect not only through its own quality control audit but also from numerous reports of consumer injuries similar to Littlejohn's. Evidence introduced at trial showed that Bic was aware of 55 cases from 1980 through 1983 where fires had started in left-front shirt pockets alone. The jury ruled against Bic, and the case ultimately settled for \$3.25 million. **Sources:** "Burn Victims – Bic Settlements," *ABA Journal*, June 1, 1987; Lewin, Tamar, "Lawsuits, and Worry, Mount Over Bic Lighter," *New York Times*, April 10, 1987, <http://www.nytimes.com/1987/04/10/business/lawsuits-and-worry-mount-over-bic-lighter.html>; Nelson-Horchler, Joani, "Firms toughen defense; Like BIC they won't just flick off lawsuits," *Industry Week*, October 19, 1987; *Littlejohn v. Bic Lighter Corp.*, No. 85-5952, 1986 PA Jury Verdicts Review LEXIS 77 (E.D. Pa., verdict October 1986).



**EFFECT:** After trial, Bic attempted to retrieve company documents that showed knowledge of the defect as well as injuries arising from the flawed design. Bic had supplied Littlejohn's attorney with those memoranda on the condition that they be returned at the end of litigation. When he refused, Bic initiated a civil contempt proceeding against him and lost. Shortly thereafter, Bic recalled 12 million defective lighters and changed the lighter's design. **Sources:** Telephone interview with Mel Kardos, attorney for Cynthia Littlejohn, July 19, 2000; *Bic Corporation v. Kardos*, 697 F.Supp.192 (1988).

Upon learning of as many as 1,000 lawsuits against Bic worldwide, then-U.S. Representative Jim Florio (D-N.J.) ordered the CPSC and House Energy and Commerce Subcommittee on Commerce, Consumer Protection and Competitiveness to investigate the lighters with specific concern for child safety. After Representative Florio released the findings of a CPSC study showing that Bic lighters, among others, fell short of voluntary industry standards, Bic said it would put warning labels on every new lighter until it designed one that was both childproof and convenient. **Sources:** Gillman, Todd J., "Commission Study Faults Bic Lighters on Safety," *Washington Post*, August 5, 1987; Gilpin, Kenneth N., "Company News; Bic Says There Are 42 Suits," *New York Times*, April 17, 1987.

## Twist-off aluminum bottle cap blew off soft drink bottle

**FACTS:** In 1985, 80-year-old Mae Roberts was legally blinded in her left eye when a twist-off aluminum cap blew off a plastic two-liter Diet 7-Up bottle and struck her in the eye as she began to remove the cap with a wrench. Roberts suffered from arthritis and would often use pliers to unscrew the cap from similar types of bottles. 7-Up documents revealed that the company knew of the problem of



inadvertent exploding bottle caps and of numerous resulting eye injuries since the early 1970s yet failed to act. In addition, evidence showed that following a prior lawsuit arising out of facts similar to those involved in the Roberts case, in which punitive damages were awarded, 7-Up had added a warning label to all bottles in 1983 which stated, “Contents under pressure – Open with care.” More importantly, an internal memorandum from 7-Up’s senior legal officer showed that the company had added the warning label for the sole purpose of avoiding punitive damages in future similar cases rather than to effectively warn and protect consumers. In December 1987, the jury awarded Roberts over \$10.5 million, \$10 million of which were punitive. **Sources:** “Accidents; A Costly Pop In the Eye,” *Time*, December 21, 1987; *Roberts v. Aluminum Company of America*, No. C86-0013, 987 Nat. Jury Verdict Review LEXIS 694 (Salt Lake County Ct., Utah, December 5, 1987).

**EFFECT:** “[T]he whole industry felt the shock waves of this verdict...and 7-Up and the others quickly converted over to the plastic preformed caps which greatly reduced the likelihood of caps blowing off. The fact is they were going that direction anyway, but the verdict, from our sources, greatly accelerated that switchover. 7-Up also switched to a more appropriate and specific warning on the bottles, which now says something like ‘CAUTION, CONTENTS UNDER PRESSURE. CAP MAY BLOW OFF CAUSING EYE OR OTHER SERIOUS INJURY. POINT AWAY FROM FACE AND PEOPLE, ESPECIALLY WHILE OPENING.’” **Source:** E-mail correspondence from Colin King, attorney for Mae Roberts, dated July 21, 2000.

## **Clothing and toys caught on corner knob, causing strangulation**

**FACTS:** Bassett Furniture manufactured a crib with three-inch-high corner-post extensions – round, wooden knobs that were purely decorative. When children tried to crawl out of the cribs, their clothing and toys would catch the extension and strangle them. Problems with the finial were rampant. On July 14, 1984, 23-month old Danny Lineweaver suffered brain damage and was permanently paralyzed after his shirt became entangled on a corner-post knob and almost choked him to death. He remained in a comatose state, requiring around-the-clock care until his death in October 1993. The Lineweavers filed two lawsuits against Bassett that ultimately settled for \$3.5 million. **Sources:** “Danny Lineweaver, 11; Crib Accident as Toddler Led to Reforms,” *Associated Press*, October 7, 1993, [http://articles.latimes.com/1993-10-07/news/mn-43003\\_1\\_crib-accident](http://articles.latimes.com/1993-10-07/news/mn-43003_1_crib-accident); Winter, Mary, “Crib corner-post danger cited; Infant deaths spur call for new government regulation,” *Chicago Tribune*, August 26, 1990; Kids in Danger, “Danny Lineweaver’s Story,” <http://www.kidsindanger.org/family-voices/danny-lineweaver>; *Home Ins. Co. v. Liberty Mut. Ins. Co.*, 678 F. Supp. 1066 (S.D.N.Y. 1988), discussing *Lineweaver v. Bassett Furniture Industries Inc.*, No. 267008 (Contra Costa County Super Ct., Cal., amended complaint January 23, 1985) and *Lineweaver v. Bassett Furniture Industries, Inc.*, No. 285895 (Contra Costa County Super. Ct., Cal., filed May 5, 1983).

**EFFECT:** “The Danny Foundation was established 14 years ago as a result of a lawsuit against Bassett. The result was a change in crib design. The crib that took the life of Danny can no longer be made or sold.” **Sources:** E-mail correspondence from Jack Walsh, attorney for the

Lineweavers, dated August 17, 2000. See also, Schevitz, Tanya, "Alamo Couple Crusades for Crib Safety; Toddler's accident left him with severe brain damage," *San Francisco Chronicle*, November 3, 1997, <http://www.sfgate.com/news/article/Alamo-Couple-Crusades-for-Crib-Safety-Toddler-s-2823605.php>; Danny Foundation website, <http://dannyfoundation.com>

## Gun was used principally for criminal activity

**FACTS:** Olen Kelley was injured by a handgun during a 1981 armed robbery of the grocery store where he worked. The weapon used by the assailant was a type of cheap handgun known as a Saturday Night Special. The Maryland Court of Appeals found that the manufacturer, R.G. Industries, Inc., knew or ought to know that the chief use of the gun was for criminal activity. Given that such use was foreseeable, the manufacturer could be held strictly liable for deaths and injuries inflicted by its product on innocent persons. **Sources:** *Kelley v. R.G. Industries, Inc.*, 304 Md. 124 (1985). See also, "Handgun Makers and Sellers Ruled Liable in Attacks," *Associated Press*, October 4, 1985, [http://articles.latimes.com/1985-10-04/news/mn-5007\\_1\\_cheap-handguns](http://articles.latimes.com/1985-10-04/news/mn-5007_1_cheap-handguns).



**EFFECT:** Because of the potential liability created by *Kelley*, R.G. Industries was unable to obtain liability insurance and discontinued the manufacture of Saturday Night Specials in the United States. In January 1986, the company went out of business. **Sources:** Teret, Stephen P., "Litigating for the Public's Health," 76 *AJPH* 1027, 1028 (August 1986), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1646653/>; "Ain't Good For Nothing," *Trial Lawyers Doing Public Justice* (July 1986).

## Super-absorbent tampons caused toxic shock syndrome (TSS)

**FACTS:** On April 2, 1983, Betty O'Gilvie, 21, died from TSS after using Playtex super-absorbent tampons. Although the package warning complied with the minimum FDA standard, experts testified that mere compliance was inadequate under the circumstances. At trial, it was argued that Playtex should have taken additional steps to alert buyers to the increased risk of TSS associated with use of its product. In February 1985, the jury awarded over \$1.5 million in compensatory damages and \$10 million in punitive damages. The trial judge agreed to consider a reduction in the punitive damage award if Playtex took its polyacrylate tampon off the market. **Source:** *O'Gilvie v. International Playtex, Inc.*, 609 F. Supp. 817 (D. Kan. 1985), *rev'd in part and remanded*, 821 F.2d 1438 (10th Cir. 1987), *cert. denied*, 108 S.Ct. 2014 (1988); *O'Gilvie v. International Playtex, Inc.*, No. 83-18848-K, 1985 Nat. Jury Verdict Review LEXIS 342 (Sedgwick County Dist. Ct., Kan., February 25, 1985).

**EFFECT:** Following the verdict, Playtex stopped producing tampons containing polyacrylate fiber and took all such tampons off the market, causing the court to reduce the punitive award to \$1.35 million. Playtex then modified the TSS warning statement on its tampon packaging to



read: “There are scientific studies which have concluded that tampons contribute to the cause of TSS.” The company also agreed to inform the public about TSS. **Sources:** “Tampons Fine Cut By Judge,” *Associated Press*, May 25, 1985; *O’Gilvie v. International Playtex, Inc.*, 609 F. Supp. 817 (D. Kan. 1985).

## Swimming pool warnings about diving were deficient

**FACTS:** In the late 1960s, the above-ground pool industry received numerous reports of life-threatening injuries resulting from dives into its swimming pools. Despite such knowledge, the industry failed to act or discontinue ads featuring people diving from pool decks. Many personal injury lawsuits followed. On June 3, 1978, 27-year-old Joe Corbin became quadriplegic after diving into and hitting his head on the bottom of an above-ground Coleco swimming pool. Two years later, Corbin and his wife filed a lawsuit against the pool manufacturer. **Sources:** Ranii, David, “Rulings Boost Aquatic Injury Suits,” *National Law Journal*, December 10, 1984; *Corbin v. Coleco Industries, Inc.*, 748 F.2d 411 (7th Cir. 1984).



**EFFECT:** *Corbin* “helped carve out for the next decade a number of decisions that helped lead to much safer swimming pools across the country especially for above ground pools.” These included “much more stringent warning signs properly placed around the pool” and issuance of “much more detailed consumer information,” such as “The Sensible Way to Enjoy Your Pool book series which is now used by about every company in the business.” **Source:** E-mail and letter from Ronald R. Gilbert, attorney for the Corbins, dated January 30, 2001 and August 4, 2000, respectively. Gilbert is also chairman of the Foundation for Spinal Cord Injury Prevention and Care and the Foundation for Aquatic Injury Prevention.

## Dalkon Shield IUD caused serious injuries and infertility in many women

**FACTS:** The Dalkon Shield IUD was a birth control device made of plastic with a string attached that had a tendency to wick, trapping bacteria in the uterus and causing pelvic infections, septic abortions, infertility and death. A.H. Robins Co., Inc. first put it on the market in 1971. During the 17-month period between June 1972 and November 1973, Robins received 22 reports of spontaneous infected abortions in IUD users. Despite this knowledge, the company didn’t immediately warn the medical community. In June 1974, at the request of the FDA, the product was pulled from the U.S. market. But for the next 10 years, Robins continued to defend the device, thereby jeopardizing the health of hundreds of thousands of women. By 1984, over 10,000 women had sued the company. **Sources:** Walsh, Mary Williams, “A.H. Robins Begins Removal Campaign for Dalkon Wearers,” *Wall Street Journal*, October 30, 1984; *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

In addition to thousands of lawsuits, A.H. Robins faced several large punitive damage awards. For example, in *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984), a jury awarded \$6.2 million in punitive damages to a woman who, after using the Dalkon Shield at age 24, had

suffered a spontaneous septic abortion and underwent a total hysterectomy in which her uterus, fallopian tubes and ovaries were removed. Similarly, in *Tetuan v. A.H. Robins Company*, 738 P.2d 1210 (Kan. 1987), a jury returned a \$7.5 million punitive damage verdict in favor of a woman who had suffered a severe pelvic infection requiring the complete removal of her uterus, Fallopian tubes and ovaries after wearing an IUD for several years. Following surgery, the woman's marriage disintegrated and she divorced. She had to take synthetic hormones for the rest of her life that increased her risk of developing endometrial cancer.

**EFFECT:** After 11 punitive damage awards over a number of years, totaling in excess of \$24.8 million, the company finally agreed to urge doctors and women to remove the Dalkon Shield and offered to pay for the removal. **Sources:** Finley, Lucinda, "Female Trouble: The Implications Of Tort Reform For Women," 64 *Tenn. L. Rev.* 847, 866 (Spring 1997); *Tetuan v. A.H. Robins Company*, 738 P.2d 1210, 1243 (Kan. 1987); Walsh, Mary Williams, "A.H. Robins Begins Removal Campaign for Dalkon Wearers," *Wall Street Journal*, Oct. 30, 1984.

Robins would not have taken this needed action without "growing concern about the rising tide of punitive damages claims against the company." Moreover, "[t]he FDA did not respond to the Dalkon Shield danger until the courts had already exacted punitive damages. Presently, IUD manufacturers routinely require properly worded 'informed consent' forms." **Sources:** Rustad, Michael, "In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data," 78 *Iowa L. Rev.* 1, 74 (October 1992); Walsh, Mary Williams, "A.H. Robins Begins Removal Campaign for Dalkon Wearers," *Wall Street Journal*, Oct. 30, 1984.

## Drain cleaner injured young children

**FACTS:** Many infants and toddlers suffered serious injuries in the 1970s after coming into contact with "Liquid Plum'r," a sodium-hydroxide-based household drain cleaner. For example, on August 19, 1970, two-year-old Susan Bowen sustained severe burns to her esophagus, necessitating over 240 surgical procedures, after she ingested some drops of Liquid Plum'r at her Mississippi home. Susan's parents filed a lawsuit against the Clorox Company and the Jiffee Chemical Corporation, charging that their product was unsafe for home use, especially in households with young children. The case settled before trial for several million dollars. **Sources:** Rustad, Michael, "The Jurisprudence of Hope: Preserving Humanism In Tort Law," 28 *Suffolk U. L. Rev.* 1099 (Winter 1994); *Bowen v. Jiffee Chemical Corporation*, Case No. 82-2183, 1984 U.S. Dist. LEXIS 21926 (D. Kan., November 16, 1984); *Bowen v. Jiffee Chemical Corporation*, No. 82-2183, 1984 U.S. Dist. LEXIS 22303 (D. Kan., October 31, 1984).



**EFFECT:** The Bowen case, together with over 20 similar lawsuits filed on behalf of young children, caused the Clorox Company to change Liquid Plum'r's formula and redesign its container. In addition, the lawsuits "helped move the Food and Drug Administration and the Consumer Product Safety Commission to adopt more stringent child restraint closure and

labeling standards” for products containing sodium hydroxide. **Source:** Smith, Wesley J., *Fighting for Public Justice* (2001) at 50-51.

## 84 Ortho-Novum 1/80 oral contraceptive caused life-threatening injuries

**FACTS:** Carol Lynn Wooderson suffered acute renal failure after taking the oral contraceptive Ortho-Novum 1/80 from the fall of 1972 until June 1976. She underwent dialysis, kidney removal and kidney transplant surgeries; one-third of her large intestine became gangrenous and had to be removed. She also suffered blind spots in her right eye. Her medical condition was so delicate that it precluded bearing children. Wooderson filed suit against Ortho Pharmaceutical Corp., alleging that the manufacturer failed to warn of the drug’s dangers despite knowledge that the contraceptive’s estrogen level was potentially toxic. The jury awarded \$4.75 million, \$2.75 of which were punitive. The Kansas Supreme Court upheld the award. **Source:** *Wooderson v. Ortho Pharmaceutical Corporation*, 235 Kan. 387 (1984).

**EFFECT:** Ortho lowered estrogen levels in its oral contraceptive after the punitive damages award. **Source:** Koenig, Thomas and Michael Rustad, “His And Her Tort Reform: Gender Injustice in Disguise,” 70 *Wash. L. Rev.* 1, 51 (January 1995).

## Lawn mower lacked sufficient warnings and safety apparatus

**FACTS:** James Sauppitty, a 22-year-old civilian employee of the United States at Fort Sill, Oklahoma, suffered an arm injury and finger amputation after being thrown from a Yazoo Manufacturing Co. lawn mower while cutting the grass on the Fort Sill grounds. The gear shifting had momentarily locked the mower’s drive wheels, hurling Sauppitty forward over the top of the machine. In attempting to stop his fall, his thumb and two fingers on his left hand went into the mower’s cutting blades. At trial, Sauppitty claimed that the machine was defectively designed and unreasonably dangerous. Evidence showed that Yazoo knew of prior injuries but refused to retrofit, repair or warn about the mower’s dangerous design. The jury awarded \$560,000 in compensatory damages and \$440,000 in punitive damages. The verdict was upheld on appeal. **Sources:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing questionnaire of John M. Baum, attorney for James Sauppitty, dated September 25, 1992; Rustad, Michael, “In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data,” 78 *Iowa L. Rev.* 1, 80 (October 1992); *Sauppitty v. Yazoo Manufacturing Co.*, 726 F.2d 657 (10th Cir. 1984).



**EFFECT:** “After the verdict, [Yazoo] recalled the mowers and retrofitted them with deadman switches, a safety device that would avoid such mishaps.” **Source:** Rustad, Michael, “In



Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data,” 78 *Iowa L. Rev.* 1, 80 (October 1992), citing questionnaire of John M. Baum, attorney for James Sauppity, dated September 25, 1992.

### **Mechanism rendered safety device inoperative**

**FACTS:** A 27-year-old assembly line worker’s hand was crushed by a 45-ton punch press after the machine’s safety device was inadvertently overridden by a palm control button sold by Minster Machine Co. Trial evidence revealed that the palm button was designed to specifically bypass a standard safety device on the punch press and that Minster had advertised the button for that purpose. The jury ruled against Minster and awarded punitive damages. **Sources:** Koenig, Thomas and Michael Rustad, “His And Her Tort Reform: Gender Injustice In Disguise,” 70 *Wash. L. Rev.* 1 (January 1995), n. 138, citing *Rush v. Minster Machine Co.*, No. 81-CV-191 (Mahoning County, Ohio C.P., 1984); Rustad, Michael, “In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data,” 78 *Iowa L. Rev.* 1, 80 (October 1992).

**EFFECT:** The palm button was redesigned to prohibit bypass of the safety device. Also, “after the verdict, Minster stopped advertising the palm control button as an option for the presses.” **Sources:** Rustad, Michael, “In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data,” 78 *Iowa L. Rev.* 1, 80 (October 1992); E-mail correspondence from Michael Rustad, dated July 14, 2000, citing interview with Frank J. Bruzzese, attorney in the Rush case.

### **Automakers failed to equip car with airbag**

**FACTS:** From the late 1960s through the 1980s, auto companies bitterly fought regulations to mandate airbags in cars. In the late 1970s, 18-year-old Rebecca Burgess suffered severe burns, brain damage and quadriplegia when the fuel tank in a Ford Pinto in which she was riding exploded in a front-end collision. Burgess sued Ford Motor Company for its failure to equip the car with an airbag. After ten days of trial in March of 1984, the case settled for \$1.8 million. **Sources:** Teret, Stephen P., “Litigating for the Public’s Health,” 76 *AJPH* 1027, 1028 (August 1986); Frank, Cheryl, “Pumped-up issue,” 71 *A.B.A.* 22 (August 1985); Nag, Amal, “Ford settles lawsuit over accident victim for \$1.8 million total,” *Wall Street Journal*, March 16, 1984.



**EFFECT:** Wide publicity surrounding the case, including a segment on the *Today* show, helped trigger many more airbag cases and led Ford finally to offer airbags as optional equipment on certain models. Other carmakers began to sell airbag-equipped cars as well. Congress eventually ordered airbags to be mandatory for model year cars sold in the U.S after 1997. **Sources:** Teret, Stephen P., “Litigating for the Public’s Health,” 76 *AJPH* 1027, 1028

(August 1986); Passell, Peter, "The Editorial Notebook; Air Bags Make It to the Showroom," *New York Times*, November 8, 1985; Holusha, John, "Ford To Offer Air Bags As Options On '86 Compacts," *New York Times*, November 2, 1985.

## **Complications suffered from breast implant ruptures and leaks**

**FACTS:** Since November 1984, when 38-year-old Maria Stern won \$1.5 million in punitive damages against Dow Corning for illness caused by breast implant ruptures, there has been a series of jury awards against breast implant manufacturers. For example, in December 1991, a California jury awarded Mariann Hopkins over \$7.3 million for mixed connective tissue disease caused when her breast implants ruptured; \$ 6.5 million of that verdict was punitive damages. **Sources:** *Hopkins v. Dow Corning Corporation*, 33 F.3d 1116 (9th Cir. 1994); *Stern v. Dow Corning Corporation*, No. C-83-2348, 1984 WL 319810 (N.D. Cal., verdict November 5, 1984).

**EFFECT:** Following the Hopkins verdict, FDA Commissioner David Kessler called for a moratorium on the sale of silicone breast implants. "[T]he FDA was motivated to require more safety data from manufacturers by several large punitive damages judgments, combined with documents obtained by lawyers in breast implant litigation that showed high rupture and contracture rates, internal company knowledge of these risks, and shoddy manufacturing practices." **Source:** Finley, Lucinda, "Female Trouble: The Implications Of Tort Reform For Women," 64 *Tenn. L. Rev.* 847, 877 (Spring 1997).

In April 1992, the FDA restricted silicone gel-filled implant use to women seeking breast reconstruction or revision of an existing breast implant. In January 1993, the FDA announced that it would require safety and effectiveness data from saline breast implant manufacturers. **Source:** Center for Devices and Radiological Health, U.S. Food and Drug Administration, "Breast Implants: An Information Update 2000" (September 2000).

## **Filter and skimmer placement were too close to pool wall**

**FACTS:** Children use "ladder" skimmers and filters to get wet, look at bugs, toys or anything floating in swimming pools. Mandy Andrews, less than two-years-old, nearly drowned after climbing up on a filter and skimmer as a way of obtaining access to the pool. After the accident, she remained in a vegetative state until her death nearly seven years later. **Source:** E-mail correspondence from Ronald R. Gilbert, attorney for the Andrews family, dated September 11, 2000, regarding *Andrews v. Coleco Industries, Inc.*, No. 82-60066 (E.D. Mich., 1983). Gilbert is also chairman of the Foundation for Spinal Cord Injury Prevention and Care and the Foundation for Aquatic Injury Prevention.

**EFFECT:** "As a result of that and some other litigation...we were able to get the industry to change their standards to require that the skimmer and filter be placed at least six feet from the

pool wall on above ground pools.” **Source:** Letter from Ronald R. Gilbert, attorney for the Andrews family, dated August 4, 2000.

## **Anti-arthritis drug caused debilitating illnesses or death**

**FACTS:** Eli Lilly & Co. began to sell Oraflex abroad in October 1980 and in the United States in May 1982. After 61 reported deaths in connection with the drug, British officials banned it on August 4, 1982. When the FDA approved Oraflex on April 19, 1982, Eli Lilly failed to tell the agency that company executives knew of over 30 overseas deaths linked to the drug.

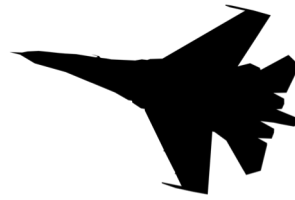
**Sources:** Mintz, Morton, “Lilly Case Sent Message To All Pharmaceuticals,” *Washington Post*, November 25, 1983, <https://www.washingtonpost.com/archive/business/1983/11/25/lilly-case-sent-message-to-all-pharmaceuticals/bcb42696-c616-4c48-b8b8-0e855fae9d06>; Mintz, Morton, “Ga. Jury Awards \$6 Million in Oraflex Death,” *Washington Post*, November 22, 1983, <https://www.washingtonpost.com/archive/politics/1983/11/22/ga-jury-awards-6-million-in-oraflex-death/f57272e2-1274-4cb3-b118-694cb934e99d>

81-year-old Lola Jones died after taking Oraflex. Preliminary court papers revealed that Dr. Ian H. Shedden, former Lilly vice president and chief medical officer, knew of 29 overseas deaths associated with Oraflex yet withheld this information from the FDA. At trial, Lilly Chairman and CEO Robert D. Wood admitted that the company knew of at least five European deaths but denied any misconduct. However, Wood had conceded to stockholders that the drug’s promotional campaign went “beyond the bounds of good practice” in making claims of safety and efficacy. The jury awarded \$6 million to Jones’ son; a settlement was reached in May 1984. **Sources:** “Settlement Set In Oraflex Suit Against Eli Lilly,” *Washington Post*, May 17, 1984, <https://www.washingtonpost.com/archive/business/1984/05/17/settlement-set-in-oraflex-suit-against-eli-lilly/>; Mintz, Morton, “Lilly Case Sent Message To All Pharmaceuticals,” *Washington Post*, November 25, 1983, <https://www.washingtonpost.com/archive/business/1983/11/25/lilly-case-sent-message-to-all-pharmaceuticals/bcb42696-c616-4c48-b8b8-0e855fae9d06>; Mintz, Morton, “Ga. Jury Awards \$6 Million in Oraflex Death,” *Washington Post*, November 22, 1983, <https://www.washingtonpost.com/archive/politics/1983/11/22/ga-jury-awards-6-million-in-oraflex-death/f57272e2-1274-4cb3-b118-694cb934e99d>; *Borom v. Eli Lilly & Company*, No. 83-0038-COL (M.D. Ga., verdict November 21, 1983).

**EFFECT:** As a result of this lawsuit, Lilly and its executives were held criminally responsible. In cooperation with the Department of Justice, Lilly pleaded guilty and Shedden pleaded no contest to misdemeanor charges of mislabeling and failing to report fatal side effects and illnesses related to Oraflex. Lilly and Shedden also agreed to a \$40,000 fine. **Sources:** Perlman, Lisa, “Pharmaceutical Firm, Former Researcher Plead Guilty In Drug Labeling Case,” *Associated Press*, August 22, 1985; Shenon, Philip, “Lilly Pleads Guilty to Oraflex Charges,” *New York Times*, August 22, 1985.

## Air Force jet ejection seat was defective

**FACTS:** In November 1979, while on a training mission in Arizona, Air Force pilot Harry Wahl tried to recover his Thunderbolt II combat jet from a dive. The jet's flight controls jammed, forcing Wahl to eject at 400 mph from 2,000 feet. The ejection seat snapped his neck and severed his spinal cord when the parachute opened, killing him instantly. At trial, it was shown that there were prior incidents of injuries and deaths caused by the seat's parachute. Wahl's family won a \$1.55 million judgment against Fairchild Industries, maker of the Thunderbolt II, and was awarded \$1.95 million from McDonnell Douglas, maker of the ejection seat. **Sources:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing *Wahl v. McDonnell Douglas Corp. et al.*, No. A-80, CA-214 (W.D. Tex., December 1981); "\$3.5 Million Crash Death Award," *Washington Post*, December 14, 1981.



**EFFECT:** "After the punitive damages award, the manufacturer [Fairchild Industries] made design changes to the flight controls in all Air Force jets to eliminate the possibility of similar accidents." **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001).

## Jeep rollover propensity and rollbar collapse caused fatal crash

**FACTS:** On April 18, 1976, Paul and Cynthia Vance died and backseat passengers Jeanne and Carl Leichtamer suffered critical injuries after the Vances' CJ-7 jeep pitched over down a steep hill in an off-road recreation area. Jeanne was rendered paraplegic; her brother Carl sustained a skull fracture. The Leichtamers sued American Motors, claiming that the collapse of the jeep's rollbar after the pitch-over was solely responsible for their devastating injuries. Pre-trial discovery revealed that the company had failed to test the safety of the roll bar device. Other evidence showed that American Motors had advertised the CJ-7 Jeep as suitable for "off-road" use on rugged terrain, stating that it was "tough enough to go any-where." Expert testimony further supported the Leichtamers' claim that the jeep's rollbar was ineffective, chosen for its aesthetic rather than protective value. The jury returned a \$2.2 million verdict, \$1.1 million of which were punitive. **Source:** *Leichtamer v. American Motors Corp.*, 1980 Ohio App. Lexis 13923 (1980), *aff'd*, 424 N.E.2d 568 (Ohio 1981).

**EFFECT:** After the punitive damage award, the CJ-7 Jeep was redesigned to reduce its rollover propensity. **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001).

## Trigger caused gun to fire intermittently and unexpectedly

**FACTS:** In 1977, John Coates became paralyzed after a Remington Mohawk air rifle held by his son suddenly discharged during a hunting trip even though the safety release was pushed into the “OFF” position. The discharge was due to a defective safety mechanism. In 1978, the case settled for \$6.8 million. **Sources:** “Update: Remington settles lawsuit over trigger,” *Guns.com*, July 14, 2014, <http://www.guns.com/2014/07/14/remington-settles-lawsuit-over-trigger-possibly-recalling-5-million-rifles>; *Pollard v. Remington Arms Company*, No. 13-86 (W.D. Mo., complaint filed January 28, 2013); “Tris Bill Pocket Vetoed,” *Facts on File World News Digest*, December 8, 1978.

**EFFECT:** Remington recalled 200,000 air rifles and air pistols within a few days of the settlement. **Sources:** Letter from attorney Richard C. Miller to Joan Claybrook, Public Citizen, dated May 19, 1997 (on file with Public Citizen); Minutes of Remington Arms Company Product Safety Subcommittee Meeting, dated January 2, 1979). *See also*, *Pollard v. Remington Arms Company*, No. 13-86 (W.D. Mo., complaint filed January 28, 2013); *New York Times Abstracts*, October 26, 1978.

## Warnings about use of indoor charcoal briquets were deficient

**FACTS:** In November 1957, 27-year-old John Alfieri and 25-year-old Warren Carlie decided to spend a weekend at Carlie’s cabin in rural Pennsylvania. On the way there, they purchased a bag of “Cabot E-Z Glo Charcoal Briquets,” whose label stated, “[E]asy to light and quick to give off heat that’s even and long lasting. Ideal for cooking in or out of doors. Excellent for picnics and barbecues and for emergencies.” The friends used the briquets in a charcoal grill outside and later brought the grill inside the cabin to finish cooking ears of corn. The briquets continued to burn in the grill as Alfieri and Carlie slept in the unventilated cabin. The following morning Carlie awoke feeling ill from monoxide poisoning; Alfieri died from the poisonous fumes. The jury returned a verdict of \$200,000 for Alfieri and \$12,500 for Carlie. **Source:** *Alfieri v. Cabot Corporation*, 17 A.D.2d 455 (1962).



**FACTS:** In November 1972, Clyne Robinson, his wife Edna Faye and their two young children died from carbon monoxide poisoning caused by burning ten pounds of charcoal briquets indoors to heat their house. Each bag of briquets carried the warning: “CAUTION – FOR INDOOR USE – COOK ONLY IN PROPERLY VENTILATED AREAS.” Family members filed a wrongful death suit against Husky Industries, Inc., manufacturer and packager of the charcoal, arguing that the warning label failed to adequately warn of the dangers of using the briquets without sufficient ventilation. The jury awarded \$425,000, half of which were punitive. **Source:** *Johnson v. Husky Industries, Inc.*, 536 F.2d 645 (6th Cir. 1976).

**EFFECT:** *Alfieri*, *Johnson* and the threat of future liability led charcoal briquet manufacturers to place prominent warnings about the deadly hazards of using charcoal without ventilation on

every charcoal bag. **Sources:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press, 2001; Lambert, Thomas, “Suing for Safety,” *Trial* (November 1983).

## Children’s pajamas were highly flammable

**FACTS:** On December 8, 1969, four-year-old Lee Ann Gryc was severely burned when her 100% untreated cotton flannelette pajama top ignited as she leaned over an electric stove. The pajama top burned for approximately eight to twelve seconds before it was extinguished. The child remained in the hospital for nearly two months, having suffered severe second- and third- degree burns and permanent scars on her arms, chest, breasts, stomach, back, neck and chin. Evidence showed that the flannelette manufacturer, Reigel Textile Corp., knew as early as 1956 that the fabric was flammable and posed a serious threat to public safety, with a 1956 internal memorandum entitled, “Flammability – Liability,” stating that Reigel was sitting on a “powder keg as regards our flannelette being so inflammable.” At trial, Reigel argued that it could not warn consumers about the material’s flammability because such a warning would “stigmatize” its product, clearly hurting sales. Reigel’s focus on profit over safety was further exposed in an April 1968 letter from a Reigel official who explained that the company would not treat the fabric with a flame-retardant chemical until required by federal law because it was not cost-effective. The jury awarded \$750,000 in compensatory damages and \$1 million in punitive damages. The verdict was upheld on appeal. *Gryc v. Dayton-Hudson Corp.*, 297 N.W.2d 727 (Minn. 1980), *cert. denied*, 449 U.S. 921 (1980).



**EFFECT:** “After the verdict, the company stopped selling the pajamas. The dangerous pajamas at issue in the case actually met the lax federal standard then in effect, and Congress subsequently amended the Flammable Fabrics Act to provide for more stringent regulation of children’s sleepwear.” **Sources:** Nader, Ralph and Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America*. New York: Random House (1996). *See also*, Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001).

## Airplane engine failed due to defective power generator

**FACTS:** A twin-engine airplane en route to Lake Tahoe crashed after the right engine quit at 1,000 feet, ultimately killing the pilot and three of the four passengers aboard. Mr. Rosendin, the lone crash survivor, lost both legs and the use of one arm in the accident. Evidence introduced at trial showed that Avco Lycoming, the engine manufacturer, knew of at least 55 prior instances of engine failure caused by defective generators, yet chose to keep the engines on the market. It was company policy to



wait for one to two percent failures before taking corrective action. The jury awarded \$1.2 million in compensatory damages and \$10.5 million in punitive damages. **Source:** E-mail correspondence from Suffolk University Law School Professor Michael Rustad, dated January 16, 2001, discussing *Rosendin v. Avco Lycoming Div.*, No. 202,715 (Santa Clara County Super. Ct., Cal., verdict June 7, 1972).

**EFFECT:** After the verdict, Avco Lycoming issued a detailed inspection procedure to mechanics to prevent future generator failures. **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing 15 *ATLA News* 103 (1973).

### **Antibiotic caused fatal blood disorder**

**FACTS:** Chloramphenicol, also known by one of its brand names, Chloromycetin, is a “broad spectrum” antibiotic used to control and cure a wide range of infectious diseases. Six-year-old Mary Ann Incollingo died from aplastic anemia after taking Chloromycetin over a one-year period to treat the various illnesses she suffered. At trial, it was argued that the drug manufacturer, Parke, Davis and Company, failed to adequately warn, direct or instruct doctors and pharmacists regarding the potential toxicity of the drug. The jury awarded \$215,000. **Source:** *Incollingo v. Ewing*, 444 Pa. 263 (1971).

**EFFECT:** The antibiotic’s propensity to cause cancer “was unknown to the medical profession until it was revealed during the course of a medical malpractice lawsuit. Since then chloramphenicol has carried on its label the warning that it is the drug of choice only for such virulent but rare diseases as typhoid and Rocky Mountain spotted fever.” **Source:** Guinther, John, *The Malpractitioners*. New York: Doubleday (1978).

### **Drain cleaner screw top allowed moisture to seep in, causing explosion**

**FACTS:** In November 1959, Frances Moore was blinded in both eyes when a can of Drano exploded before she had a chance to open it. Evidence introduced at trial revealed that the Drackett Company, Drano’s manufacturer, knew from its chief of quality control that the caps were put on the cans too loosely, and were therefore dangerous, yet chose to ignore his warnings. It was also shown that Drackett had never tested the container used to market Drano, thereby placing the product in a can with a screw-on top without knowing whether, in the event of pressure within the can, the cap would remain in position while the can itself burst. Trial evidence also revealed that there had been at least three prior spontaneous explosions of Drano cans under circumstances similar to those involved Moore’s case. The jury awarded \$900,000 in compensatory damages and \$10,000 in punitive damages to Moore and \$20,000 to her husband. *Moore v. Jewel Tea Co. et al.*, 253 N.E.2d 636 (Illinois 1969), *aff’d*, 263 N.E.2d 103 (Illinois 1970).

**EFFECT:** After the punitive damages verdict, Drackett redesigned the can with a flip-top lid that would release before pressure built up in the can. **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001).

### Vaporizer easily tipped over, causing severe burns

**FACTS:** In November 1960, three-year-old Andrea McCormack suffered third-degree burns on more than 30 percent of her body when she accidentally tipped over a Hankscraft vaporizer. The child's mother had left her daughter unattended, relying on the manual's assurances that the device was tip-proof and safe to leave in the presence of children without supervision. As a result of the accident, Andrea spent over two months in the hospital where she underwent two skin graft surgeries. The child was then admitted to a treatment facility, remained there for 102 days and was later taken to the Mayo Clinic for additional skin graft surgery. At the time of trial, she had heavy scar tissue on her chest, stomach, legs and body, a deformed jaw and restricted movement of her head; she also faced the possibility of 6 to 12 more surgeries during her lifetime. Evidence showed that an exertion of two pounds of force could overturn the vaporizer. At trial, it was also revealed that Hankscraft knew the unit was dangerous – company officers were aware of at least 10 to 12 children before McCormack who had suffered similar life-threatening burns – but still failed to add a screw-on or child-guard top that would have prevented such injuries. The jury awarded \$150,000. **Source:** *McCormack v. Hankscraft Company, Inc.*, 154 N.W.2d 488 (Minn. 1967).

**EFFECT:** There were more than 100 claims pending against Hankscraft when its insurance carrier suggested a simple and inexpensive design change – fastening a cap to the water jar. After Hankscraft refused, the insurance company threatened to discontinue coverage unless the vaporizer was recalled and redesigned. Faced with litigation and no insurance, Hankscraft redesigned the vaporizer to include a cover-lock top. **Source:** Lambert, Thomas, “Suing for Safety,” *Trial* (November 1983).

### Warnings about furniture polish ingestion were deficient

**FACTS:** In November 1959, a 14-month-old baby died from ingesting Old English Red Oil Furniture Polish. His mother had been polishing furniture and left the room for a few minutes. She was not aware that the polish could be poisonous to her son, Marion. At trial, the child's mother testified that she read the first warning on the back of the bottle, “CAUTION COMBUSTIBLE MIXTURE,” printed in red ink letters 1/8 of an inch high and placed at the top of the label. The label also stated that the product might be harmful to children, but the warning was placed eight lines under the directions, in brown ink and measured only 1/32 of an inch in height. The child's mother did not read those directions because she knew how to use furniture polish. Regardless of her failure to look at the directions, experts asserted that the warning as it existed – “Contains refined petroleum

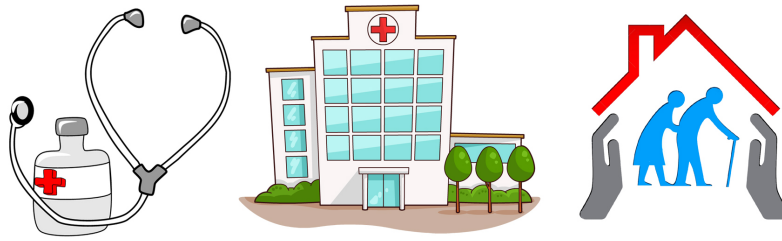




distillates. May be harmful if swallowed, especially by children” – was misleading because ingestion would necessarily cause death. Moreover, evidence showed that the manufacturer knew of at least 32 prior cases of poisoning from ingestion: seven involved infants, four of whom died. The jury awarded wrongful death damages totaling \$20,000. **Source:** *Spruill v. Boyle-Midway et al.*, 308 F.2d 79 (4th Cir. 1962).

**EFFECT:** The label was changed to read: “DANGER. HARMFUL OR FATAL IF SWALLOWED. COMBUSTIBLE. KEEP OUT OF REACH OF CHILDREN. SAFETY CAP.” **Source:** Lambert, Thomas, “Suing for Safety,” *Trial* (November 1983).

## HEALTH CARE



Lawsuits promote safety. This is particularly true in the area of health care, as many academic experts have found. They note that “the reason why tort liability promotes patient safety is obvious,” namely, “it’s the incentives, stupid’: Providers are rational. When injuring patients becomes more expensive than not injuring them, providers will stop injuring patients.”<sup>36</sup>

For example, in the early 1980s, malpractice exposure in the field of surgical anesthesia famously led to major safety improvements and a dramatic reduction in injuries and deaths.<sup>37</sup> More recently, UCLA Law Professor Joanna C. Schwartz interviewed a nationwide group of those responsible for risk management, claims management and quality improvement in hospitals and found that over 95 percent of hospitals in the study “incorporate information from each stage of malpractice litigation in their patient safety efforts and consider lawsuits a valuable source of information about patient safety.”<sup>38</sup> She discovered that

litigation data have proven useful in their efforts to identify and address error. Lawsuits reveal allegations of medical negligence and other patient safety issues that fall through the cracks of hospitals’ reporting systems, depositions and discovery materials expose previously unknown details of adverse events, analyses of claim trends bring to light problematic procedures and departments, and closed claims files serve as rich teaching tools.<sup>39</sup>

In addition, the authors of the Harvard Medical Practice Study acknowledged that the “litigation system seems to protect many patients from being injured in the first place. And since prevention before the fact is generally preferable to compensation after the fact, the apparent injury prevention effect must be an important factor in the debate about the future of the malpractice litigation system.”<sup>40</sup> Similarly, the *New England Journal of Medicine* published a 2006 article confirming this point: that litigation against hospitals improves the quality of care for patients and that “more liability suits against hospitals may be necessary to motivate hospital boards to take patient safety more seriously.”<sup>41</sup> And conversely, “tort reforms,” like “caps” on damages, harm not just injured patients and their families; they also result in “higher rates of preventable adverse patient safety events in hospitals.”<sup>42</sup>

The following cases show how litigation can directly lead to specific improvements in patient safety.

## Paramedics severely burned newborn

**FACTS:** On August 12, 2014, Londyn Porter was unexpectedly born at home in Rexburg, ID. City paramedics arrived, decided to separate Londyn from her mother and put the newborn in an ambulance, wrapping her in a foil blanket and applying heat packs outside it to help Londyn retain body heat en route to the hospital. Almost immediately Londyn suffered



deep second-degree burns to her buttocks and right leg; she was admitted to the neonatal ICU, where her wounds were scrubbed daily for six weeks. Because of her premature birth, doctors could not give Londyn pain medication stronger than Tylenol before they removed dead skin and treated the burns. Londyn's parents filed suit, arguing that the city failed to train employees about safely warming newborns, also pointing to the fact that the heat packs contained printed warnings that they could exceed 130 degrees and that substantial material should be placed between skin and the heating devices. The case settled before trial for an undisclosed amount. **Sources:** Careaga, Esmi, "Update: Family and City settle dispute over burned baby out of court," *Local News 8 (Idaho)*, October 28, 2016, <http://www.localnews8.com/news/rexburg/burned-baby/130975523>; Dayley, Lisa Smith, "Baby injured, parents sue paramedic and City of Rexburg," *Rexburg Standard Journal*, October 24, 2016, [http://www.rexburgstandardjournal.com/news/local/baby-injured-parents-sue-paramedic-and-city-of-rexburg/article\\_eba50952-9a4f-11e6-a20c-e37f21ed2c6c.html](http://www.rexburgstandardjournal.com/news/local/baby-injured-parents-sue-paramedic-and-city-of-rexburg/article_eba50952-9a4f-11e6-a20c-e37f21ed2c6c.html)

**EFFECT:** As part of the settlement, the parties announced the "Londyn Porter Policy," which requires "that all fire department personnel be trained in the uses of heat packs and use them in accordance with manufacturer's specifications to ensure safe application and zero injury," according to a joint press release. As the city's attorney told the *Rexburg Standard Journal* when the settlement became public, "[T]he suit was more about preventing a repeat incident. 'It was never about money for the Porters. They wanted to ensure that it never happened again,'" he said. **Source:** Dayley, Lisa Smith, "City settles lawsuit with Porter family," *Rexburg Standard Journal*, October 28, 2016, [http://www.rexburgstandardjournal.com/news/city-settles-lawsuit-with-porter-family/article\\_f9d1fda4-9d39-11e6-b4ef-430844847b4d.html](http://www.rexburgstandardjournal.com/news/city-settles-lawsuit-with-porter-family/article_f9d1fda4-9d39-11e6-b4ef-430844847b4d.html)

## Hospital ignored patient warnings about pre-existing condition

**FACTS:** In May 2013, head Microsoft Xbox designer August de los Reyes became paralyzed after emergency room staff repeatedly failed to document a pre-existing condition that made his spine more susceptible to fracturing and ignored his warnings about a spinal fracture. De los Reyes, 42, had fallen out of bed at home and suffered severe back and abdominal pain as well as symptoms of nerve damage. Despite going to Overlake Medical Center's ER three times in the two days after the fall, staff never noted his pre-existing condition and concerns; they also didn't notice the hairline fracture in de los Reyes' spine that was evident from a scan during his first ER visit. Instead, he was assured there was no fracture and sent home with pain

medication. Two weeks after the ER visits, de los Reyes checked into the hospital in “unspeakable pain,” reported the same fears and felt a sharp tingling in his waist and legs. Later that day, medical staff broke his back while positioning him for an MRI scan, leaving him paralyzed from the chest down. In 2014, Reyes sued Overlake; the case settled for \$20 million. **Sources:** Barnet, Shannon, “After medical error, former Microsoft designer works with hospital to find where things went wrong,” *Becker’s Infection Control & Clinical Quality*, June 20, 2016, <http://www.beckershospitalreview.com/quality/after-medical-error-former-microsoft-designer-works-with-hospital-to-find-where-things-went-wrong.html>; Mangan, Dan, “A hospital’s mistake paralyzes a designer. He got \$20M, and an Unusual Promise,” *CNBC*, June 19, 2016, <http://www.cnn.com/2016/06/19/a-hospitals-mistake-paralyzes-a-designer-he-got-20m-and-an-unusual-promise.html>; Aleccia, JoNel, “Paralyzed by errors, this Xbox designer is taking on hospital safety,” *Seattle Times*, June 18, 2016, <http://www.seattletimes.com/seattle-news/health/paralyzed-by-medical-mistakes-this-xbox-designer-is-taking-on-hospital-safety>

**EFFECT:** As part of the settlement, de los Reyes “refused to keep terms of the agreement secret and demanded that the hospital investigate and evaluate the circumstances that led to his injury – with his participation.” More specifically, “he got Overlake to agree to work with him on analyzing how and why things went wrong for him, conducting what he said would be ‘a case study,’” whose ultimate goal “is to take the lessons learned and develop solutions that can be applied at Overlake – and potentially other hospitals.” **Sources:** Barnet, Shannon, “After medical error, former Microsoft designer works with hospital to find where things went wrong,” *Becker’s Infection Control & Clinical Quality*, June 20, 2016, <http://www.beckershospitalreview.com/quality/after-medical-error-former-microsoft-designer-works-with-hospital-to-find-where-things-went-wrong.html>; Mangan, Dan, “A hospital’s mistake paralyzes a designer. He got \$20M, and an Unusual Promise,” *CNBC*, June 19, 2016, <http://www.cnn.com/2016/06/19/a-hospitals-mistake-paralyzes-a-designer-he-got-20m-and-an-unusual-promise.html>; Aleccia, JoNel, “Paralyzed by errors, this Xbox designer is taking on hospital safety,” *Seattle Times*, June 18, 2016, <http://www.seattletimes.com/seattle-news/health/paralyzed-by-medical-mistakes-this-xbox-designer-is-taking-on-hospital-safety>

## Camp served dessert killing child with severe allergies

**FACTS:** On July 26, 2013, 13-year-old Natalie Giorgi died after eating a Rice Krispie treat containing undetectable peanut butter while at Camp Sacramento in California. The camp’s baker had added Reese’s peanut butter pieces to the dessert without any warning or label that the treats contained nuts. Natalie’s parents had repeatedly informed camp employees in writing and in person of her daughter’s allergy. Natalie ultimately died from anaphylactic shock. In September 2016, the case settled for \$15 million, \$12 million of which was for wrongful death, with the remainder in non-economic damages to Natalie’s parents. **Sources:** Smith, Darrell, “Parents, city reach \$15 million settlement in girl’s death at Camp Sacramento,” *Sacramento Bee*, October 5, 2016, <http://www.sacbee.com/news/local/health-and-medicine/article106161017.html>; *Giorgi v. City of Sacramento*, No. 34-2014-00162222, 2016



WA Jury Verdicts & Sett. LEXIS 274 (Sacramento County Super. Ct., Cal., settlement September 26, 2016); *Giorgi v. City of Sacramento*, No. 34-2014-00162222, 2014 WL 1621574 (Sacramento County Super. Ct., Cal.)(complaint filed April 18, 2014).

**EFFECT:** As part of the agreement, the city pledged that Camp Sacramento would become accredited by the American Camping Association (ACA) within 12 months of the settlement. ACA accreditation – considered the gold standard for camping operations – requires the camp to adopt and adhere to safety measures and food service protocols that protect campers from known food allergens. In addition, “the city agreed to publish a statement acknowledging the tragedy and the need to use this event as an opportunity to implement policies and procedures to protect future campers.” As Louis Giorgi told *Allergic Living*, “The City of Sacramento has made their statement and it is quite strong – they are going to make changes and those changes are going to protect future campers. Therefore, hopefully, there will never be another story like Natalie’s with those changes.” **Sources:** “Giorgi Family on Lawsuit and Natalie’s Impact on Allergy Advocacy, Research,” *Allergic Living*, October 19, 2016, <http://allergicliving.com/2016/10/19/giorgi-family-on-lawsuit-and-natalies-impact-on-allergy-advocacy-research>; Smith, Darrell, “Parents, city reach \$15 million settlement in girl’s death at Camp Sacramento,” *Sacramento Bee*, October 5, 2016, <http://www.sacbee.com/news/local/health-and-medicine/article106161017.html>; City of Sacramento press release, “Settlement of Giorgi Case,” October 5, 2016, <http://www.cityofsacramento.org/City-Manager/Media-Releases/Settlement-of-Giorgi-Case>; *Giorgi v. City of Sacramento*, 2016 WA Jury Verdicts & Sett. LEXIS 274 (Sacramento County Super. Ct., Cal., settlement September 26, 2016).

## High school student athlete suffered traumatic brain injury

**FACTS:** On October 9, 2013, Sean McNamee fractured his skull while warming up before football practice at Wharton High School in Hillsborough County, FL. He was not wearing a helmet at the time of injury. After being examined by the athletic trainer, given a bag of ice and left alone in the training room for over 30 minutes, McNamee got into his car and drove home before his mother, called by the trainer, had arrived to pick him up. His sister discovered him at home incoherent; she called their father, who rushed home and took McNamee to the ER, where he underwent life-saving surgery that required partial skull removal and being placed in an induced coma. Over a week later, McNamee emerged from the coma. He left the hospital almost two weeks later and required around-the-clock care. Within a month and half of being home, McNamee had a titanium plate permanently inserted in his skull. He also suffered from epileptic seizure disorder, headaches and other cognitive problems. After the Hillsborough County School District rejected their offer to avoid a lawsuit in exchange for new safety measures, McNamee’s parents went to court against the school board in September 2014. Among their allegations: negligent supervision, absence of an emergency response plan and lack of appropriate medical attention. In October 2015, the school board agreed to a \$2 million settlement. **Sources:** Dawson, Anastasia, “New procedures added in settlement over Wharton athlete’s injury,” *Tampa Bay Times*, October 27, 2015, <http://www.tbo.com/news/education/new-procedures-added-in-settlement-over-wharton->

[athletes-injury-20151026](#); *McNamee v. School Bd. of Hillsborough County, Florida*, No. 14-CA-009239, 2014 FL Cir. Ct. Pleadings LEXIS 9445 (Hillsborough County Cir. Ct., Fla., second amended complaint filed December 8, 2014).

**EFFECT:** “The school board also agreed to institute ‘The McNamee Protocol,’ which puts specific procedures in place that school officials must now follow when students suffer potentially serious head injuries.” **Sources:** “Football Coach’s Neglect Caused Player’s Brain Injury, Plaintiff Claimed,” 2015 Jury Verdicts LEXIS 9029, November 16, 2015. *See also*, Dawson, Anastasia, “Hillsborough OKs record \$2 million settlement for injured prep football player,” *Tampa Bay Times*, October 28, 2015, <http://www.tbo.com/news/politics/high-school-football-lawsuit-brings-new-rules-biggest-settlement-20151027>; Dawson, Anastasia, “New procedures added in settlement over Wharton athlete’s injury,” *Tampa Bay Times*, October 27, 2015, <http://www.tbo.com/news/education/new-procedures-added-in-settlement-over-wharton-athletes-injury-20151026>

## HMO forced psychiatrists to prescribe psychiatric drugs

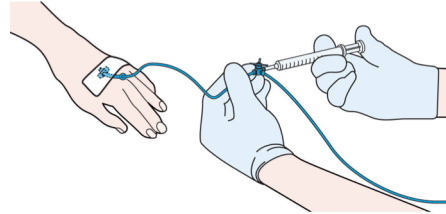
**FACTS:** On April 10, 2000, Dr. Thomas Jensen filed a lawsuit against Kaiser Permanente, California’s largest health maintenance organization, after he was fired for refusing to prescribe medications for mental health patients whom he did not personally examine. Kaiser required psychiatrists to prescribe anti-depressant drugs for depression and anxiety at the recommendation of non-medical psychotherapists, such as social workers, family therapists and social-work interns. **Sources:** Fong, Tony, “Kaiser sued over policy on medicine; S.D. psychiatrist says doctors must prescribe drugs to unseen patients,” *San Diego Union-Tribune*, April 13, 2000; Bernstein, Sharon and Davan Maharaj, “Kaiser Drug Policy Prompts State Inquiry,” *Los Angeles Times*, April 12, 2000.

**EFFECT:** The lawsuit prompted state regulators to investigate Kaiser’s prescription policy. Faced with an onslaught of negative publicity arising from Jensen’s lawsuit, Kaiser eliminated the practice in August 2000. Kaiser also required psychiatrists to rely on their own examination of patients before writing prescriptions. **Sources:** “Kaiser Permanente has reached a settlement with Thomas Jensen, M.D. of San Diego,” *Managed Care Week*, Vol. 10, No. 32, September 11, 2000; Bernstein, Sharon, “Kaiser Settles Doctor’s Suit Over Drug Policy,” *Los Angeles Times*, August 26, 2000; Abate, Tom, “Kaiser to End Controversial Prescriptions,” *San Francisco Chronicle*, May 3, 2000; Maharaj, Davan, “Kaiser Tightens Rule On Writing Prescriptions,” *Los Angeles Times*, May 3, 2000; “California Investigates Kaiser Prescriptions Policy,” *BestWire*, April 17, 2000; Abate, Tom, “State Probing Kaiser’s Protocol for Depression; Prescriptions allegedly given without exams,” *San Francisco Chronicle*, April 13, 2000.



## Patient was prescribed incorrect chemotherapy dosage

**FACTS:** When 41-year-old Vincent Gargano was diagnosed with testicular cancer in 1994, he was given a 90 to 95 percent chance of survival. On May 26, 1995, he entered the University of Chicago Hospitals to undergo his last phase of chemotherapy.



For four consecutive days Gargano received a dosage that was four times the needed amount, a mistake that went undetected by at least one doctor, two pharmacists and four nurses until four overdoses had already been administered. Hospital records showed that the prescribing doctor wrote the incorrect dosage and that three registered nurses failed to double-check the prescription against the doctor's original order. As a result, Gargano suffered hearing loss, severe kidney damage, festering sores and ultimately the pneumonia that caused his death the following month. The case settled for \$7.9 million. **Sources:** Berens, Michael J., "Problem nurses escape punishment; State agency often withholds key details of violations," *Chicago Tribune*, September 12, 2000; "Notable settlement," *National Law Journal*, November 8, 1999, citing *Gargano v. University of Chicago Hospitals*, 95 L 10088 (Cook County Cir. Ct., Illinois, settled October 7, 1999); "University hospital to pay \$7.9 million for fatal doses of chemotherapy," *Associated Press*, October 8, 1999; "Cancer Patient in Chicago Dies After Chemotherapy Overdose," *New York Times*, June 18, 1995; "Cancer Patient Dies After Chemo Overdose," *Legal Intelligencer*, June 16, 1995.

**EFFECT:** The hospital implemented new policies to ensure that doctors and nurses better document and cross-check medication orders. **Sources:** Berens, Michael J. and Bruce Japsen, "140 Nurses' Aides Fired By U. Of C. Hospitals; Registered Nurses Fear Work Burden," *Chicago Tribune*, October 31, 2000; Berens, Michael J., "U. Of C. To Pay \$7.9 Million In Death Of Cancer Patient," *Chicago Tribune*, October 8, 1999.

## Nursing home provided inadequate patient monitoring

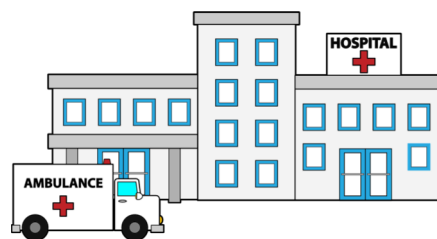
**FACTS:** In 1996, 78-year-old Margaret Hutcheson lapsed into a coma and died after a two-and-a-half month stay at Chisolm Trail Living & Rehabilitation Center. Hutcheson had been admitted to Chisolm for short-term rehabilitation after fracturing her hip and wrist at home. While residing at the center, she suffered severe pressure sores, malnourishment and dehydration, which required three hospitalizations. Hutcheson's family sued the facility and its personnel for wrongful death, arguing that Chisolm was understaffed and failed to follow internal procedures to ensure Hutcheson's safety. The jury awarded \$25 million. **Sources:** *Olson v. Chisolm Trail Living & Rehabilitation Center*, No. 98-0363, 1999 TX Trial Ct. Rptr. LEXIS 1903 (Caldwell County



Ct., Tex., verdict August 26, 1999). *See also*, Osborn, Claire, “Family of care center resident who died awarded \$25 million,” *Austin American-Statesman*, August 27, 1999.

**EFFECT:** As part of the settlement, Diversicare, the nursing home operator, “agreed to adopt a policy requiring the residents’ charts be monitored on a weekly basis to ensure their needs are being met. This policy has been implemented in all 65 nursing homes owned or operated by Diversicare, and will benefit over 7,000 nursing home residents.” **Sources:** *Texas Reporter Soele’s Trial Report* (November 1999). *See also*, Malone, Julia, “Lawyers Filling Gap Left By Regulators,” *Palm Beach Post*, September 25, 2000.

### Poor hospital staffing endangered patients



**FACTS:** On January 26, 1998, Dr. Roberto C. Perez suffered severe brain damage after a nurse, who had been working over 70 hours a week and was just finishing an 18-hour shift, injected him with the wrong drug. Perez had been admitted to Mercy Hospital in Laredo, Texas two weeks earlier after a fainting spell and was almost ready to be discharged. His family filed a medical malpractice suit against Mercy Hospital, among others, arguing that hospital administrators knew since 1994 that staffing problems existed yet failed to do anything about the nursing shortage. The case settled before trial, with the hospital paying \$14 million. **Sources:** “Hospital Changes Work Hours Policy as Part of \$ 15 Million Med-Mal Settlement,” 1999 Dolan Media Jury Verdicts LEXIS 5093, November 29, 1999; *Perez v. Mercy Hospital*, No. 98-CVQ-492-D3 (Webb County Dist. Ct., Tex., fourth amended original petition, filed October 22, 1999)(on file with CJ&D).

**EFFECT:** As part of the settlement, Mercy Hospital agreed that no nurse in the ICU would be allowed to work more than 60 hours per week. **Sources:** “Hospital Changes Work Hours Policy as Part of \$ 15 Million Med-Mal Settlement,” 1999 Dolan Media Jury Verdicts LEXIS 5093, November 29, 1999; *Perez v. Mercy Hospital*, No. 98-CVQ-492-D3 (Webb County Dist. Ct., Tex., release and settlement agreement, October 28, 1999)(on file with CJ&D).

### Serious trauma patients not taken to trauma centers

**FACTS:** On December 20, 1992, 20-year-old Jason Griffith was rushed to an Ohio community hospital after being accidentally shot in the chest by his best friend. Although Griffith was losing massive amounts of blood, his attending doctor – a fifth-year resident in general surgery – waited more than five hours before taking him to surgery. Griffith went into shock ten days later and ultimately suffered cardiopulmonary arrest and brain damage. He required constant care until his death in January 1994. His parents filed suit against the hospital and the doctors who treated him. The case settled for \$2.5 million two days after the trial began. **Sources:** Somerson, Mark D., “Lawsuits might move trauma system forward,” *Columbus Dispatch*, June 1, 1997, discussing *Griffith v. Booher*, No. 94CVA-09-6799 (Franklin County Ct. of Common



Pleas, Ohio, settlement May 21, 1997); Cadwallader, Bruce, "Mount Carmel lawsuit settled; Insurers to pay \$2.5 million in Pickerington man's death," *Columbus Dispatch*, May 27, 1997; Cadwallader, Bruce, "Mount Carmel East lawsuit trial begins," *Columbus Dispatch*, May 21, 1997; Somerson, Mark D., "Lawsuit highlights trauma care issue; Parents: Son died for lack of timely care," *Columbus Dispatch*, April 27, 1997.

**FACTS:** On May 3, 1997, 37-year-old Joyce Lyons sustained abdominal injuries from a car accident on a rural road in Ohio. Lyons was admitted to Mary Rutan Hospital, subjected to a CT scan and kept overnight. The following morning, Lyons' condition had worsened from internal bleeding, which required emergency surgery. Lyons was then flown by helicopter to a trauma center where she was operated on immediately. On May 12, after suffering complications, she underwent additional surgery; she died nine days later. Lyons' husband filed a negligence suit against Mary Rutan and the doctors there who treated his wife. The jury awarded \$5 million. **Sources:** Koehler, Kathryn L., "Delay In Performing Surgery Cost Patient's Life; Late Operation Could Not Prevent Complications," *Ohio Lawyers Weekly*, February 28, 2000, citing *Lyons v. Clarkston et al.*, No. 978CVC-08-7796 (Franklin County Ct. of Common Pleas, Ohio, verdict September 3, 1999); Doulin, Tim and Joe Hoover, "Family of crash victim is awarded \$5 million," *Columbus Dispatch*, September 4, 1999; Somerson, Mark D., "Crash victim's care on trial," *Columbus Dispatch*, August 23, 1999.

**EFFECT:** On July 27, 2000, after nearly a decade of active opposition, Ohio enacted legislation mandating that patients with serious trauma be transported to selected, certified trauma hospitals. The Griffith and Lyons cases "put a face to the numbers of 'preventable deaths' in Ohio, and I believe gave the Governor and sponsors of the legislation the leverage needed to enact this legislation." **Sources:** Letter from Gerald Leeseberg, attorney for the Griffith and Lyons families, dated November 16, 2000. *See also*, Crane, Misti, "Trauma cases, hospitals to be matched," *Columbus Dispatch*, July 28, 2000; Somerson, Mark D., "Trauma system would save hundreds of lives," *Columbus Dispatch*, September 7, 1997.

## **Bed rail restraints entrapped patients**

**FACTS:** On September 28, 1993, Billie Trew, a 63-year-old Alzheimer patient at Lakeview Christian Home Northgate Center in Carlsbad, New Mexico, was strangled to death by the restraints in her bed rails while sleeping. Trew's family filed suit against Lakeview Christian, which settled the case for \$900,000 before trial, and the Smith & Davis Manufacturing Company, maker of the bed rail. Evidence produced at trial showed that at least 20 elderly nursing home patients died and more than 60 suffered injuries after becoming entrapped in beds similar to that used by Trew. Additional evidence revealed that Everest & Jennings, Smith & Davis' parent company, had received complaints of strangling prior to Trew's death yet failed to act. The jury awarded \$4.6 million; the case settled in February 1997 for \$3 million. **Sources:** Amos, Denise Smith, "E&J Hit With \$4.6 Million Judgment In Liability Case," *St. Louis Post-Dispatch*, September 5, 1996, discussing *Trew v. Smith & Davis Mfg. Co.*, No. SF 95-354 (Santa Fe County Dist. Ct., N. Mex., verdict July 19, 1996); Toppo, Greg, "Strangled woman's family wins damages," *Santa Fe New Mexican*, July 20, 1996.

**EFFECT:** As part of the settlement, Lakeview Christian “committed to a package of operational reforms, including a reduction in the use of patient restraints and bed rails, increased staff training, and the hiring of a full-time quality assurance administrator to monitor patient treatment.” The nursing home also agreed to “certify to plaintiff’s attorney, in writing, that from the time plaintiff had filed this lawsuit and until the time the suit had settled, there was a 90% reduction in the use of restraints.” In addition to paying \$3 million, Everest & Jennings “agreed to issue a warning to its customers about the dangers of bed rail entrapment.”

**Sources:** Romo, Rene, “Bedrail Maker Settles Death Suit,” *Albuquerque Journal*, February 28, 1997; “Briefs; Bed rail company makes settlement,” *Santa Fe New Mexican*, February 28, 1997; Romo, Rene, “Nursing Home Agrees to Reforms,” *Albuquerque Journal*, September 21, 1996; *Verdicts, Settlements & Tactics* (August 1996), discussing *Trew v. Smith & Davis Mfg. Co.*, No. SF 95-354 (Santa Fe County Dist. Ct., N. Mex.).

## Hospital failed to stock treatment for heart clots

**FACTS:** Tissue plasminogen activator (TPA) is a drug that dissolves blood clots responsible for causing heart attacks. On February 27, 1994, 58-year-old Suzanne Huffman was taken to Bethesda/Warren County Hospital after suffering a heart attack. Although many experts considered TPA standard treatment for heart clots, the hospital did not have the drug, and Huffman sustained heart damage. The hospital claimed it did not have TPA available because there was not enough demand for the drug, *i.e.*, not enough people were having heart attacks to warrant purchasing a supply of TPA. **Sources:** Letter from Gary J. Leppla, attorney for Huffman, dated July 14, 2000, regarding *Huffman v. Goldman*, No. 95-CV-52341 (Warren County Common Pleas Ct., Ohio, filed February 24, 1995); telephone interview with Leppla, July 11, 2000.



**EFFECT:** After Huffman filed suit, but prior to settlement, Bethesda/North Hospital stocked TPA. “As discovery progressed in this case (which was ultimately settled by the doctor and the emergency room and hospital) it became apparent that although TPA was not available at the time of the incident, it became available immediately afterward. These facts were verified informally, however, I can also point to portions of two transcripts...Karen Rhude, RN was an emergency room team leader at Bethesda/Warren County Hospital in February of 1994. She testified that the drug became available after the filing of the lawsuit in February of 1995... Philip Mark Goldman, M.D., also testified as the emergency room physician who actually treated Suzanne Huffman on the date in question...he specifically says that TPA first became available at Bethesda/Warren County Hospital in June of 1995, just a few months after the filing of the Suzanne Huffman lawsuit.” **Source:** Letter from Gary J. Leppla, dated July 14, 2000.

## Lack of nursing home supervision caused patient's death

**FACTS:** On May 31, 1989, Mr. Beale, a 79-year-old nursing home patient suffering from Alzheimer's disease, drowned in a bathtub after being left unattended. Beale was found with an abrasion on his head and blood on the back of the bathtub, indicating that he had slipped and fallen. Beale's family filed suit against Beechnut Manor Living Center, arguing that the nursing home failed to properly care for and supervise him. Evidence produced at trial showed that Beechnut Manor never reviewed Beale's records from earlier nursing homes and had attempted to cover up the drowning by getting the autopsy report changed. The jury awarded \$1 million, \$950,000 of which were punitive. **Source:** *Beale v. Beechnut Manor Living*, No. 90-18826 (Harris County Dist. Ct., Tex., verdict May 1992).

**EFFECT:** After the punitive damage award, Beechnut Manor installed safety strips in bathtubs and exercised closer supervision of its elderly patients. **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing questionnaire of Vanessa Gilmore, attorney for Beale, dated May 10, 1994.

## Catheter misinsertion caused death

**FACTS:** Rebecca Perryman was admitted to Georgia's DeKalb Medical Center after suffering from kidney failure. While undergoing dialysis, a catheter inserted in her chest punctured a vein, causing her chest cavity to fill with blood. Perryman suffered massive brain damage and lapsed into a coma. She died two weeks later. Perryman's husband Henry filed suit against DeKalb and its Radiology Group, as well as the doctor who failed not only to spot the misplaced catheter in Perryman's chest x-ray but also to quickly respond to the victim's excessive bleeding. DeKalb and the Radiology Group settled before trial for an undisclosed amount; a jury awarded \$585,000 against the doctor, \$85,000 of which were punitive. **Source:** *Perryman v. Rosenbaum*, No. 86-3453, 1991 GA Trial Rptr. LEXIS 1349 (DeKalb County Super. Ct., Ga., verdict June 5, 1991).

**EFFECT:** "After the award, the radiology department instituted new protocol for verifying proper placement of catheters." **Source:** Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001), citing letter from W. Fred Orr III, attorney for Henry Perryman, dated April 26, 1994.

## Bacterial infection spread to hospital roommate

**FACTS:** In 1983, 72-year-old Julius Barowski contracted a bacterial infection from a fellow patient after undergoing knee replacement surgery. His condition required 11 hospitalizations and 9 surgeries; his leg lost all mobility. As the infection spread, he suffered excruciating pain and was institutionalized for



depression until his death one year later. Barowski's representative filed suit, alleging that the hospital breached its own infection control standards. The jury awarded \$500,000. **Sources:** *Widman v. Paoli Memorial Hospital*, No. 85-1034, 1988 Nat. Jury Verdict Review LEXIS 803 (E.D. Pa., verdict December 9, 1988). *See also*, Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 55-56.

**EFFECT:** "The Widman ruling and similar cases have had a catalytic impact in health care facilities around the country. Facilities are much more attentive to the clinical importance of cleanliness in all its dimensions – hand-washing, routine monitoring of infection risks, and more vigorous reviews of hospital infection control protocols." **Source:** Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 55-56.

### Staff reported false AIDS diagnosis to patients

**FACTS:** Gerard Brogan went to a Kimberly Services testing center in 1985 after coming into contact with blood from an AIDS patient while working as a nurse in a San Francisco hospital. On two separate occasions, Kimberly Services employees told Brogan over the phone that he was infected with the AIDS virus. When Brogan visited the center to have his wife tested, he learned that his chart had been misread. Brogan and his wife filed a lawsuit against Kimberly Services, claiming that the firm should be held responsible for misreading his chart, reporting results over the phone and failing to provide counseling to patients diagnosed with AIDS. The case settled in December 1990 for \$75,000. **Sources:** "False Positive AIDS Test Suit Settles," *Public Justice Newsletter* (Winter 1991), discussing *Brogan v. Kimberly Services Inc.*, No. 89-34-14 (San Francisco County Super. Ct., Cal., filed June 17, 1988); Adler, Stacy, "False reports on AIDS test spur lawsuits," *Business Insurance*, December 12, 1988; "First False Positive AIDS Lawsuit Filed," *TLPJ Newsletter* (November 1988); "The State," *Los Angeles Times*, September 14, 1988.

**EFFECT:** After the lawsuit, Kimberly offered pre-test education and post-test counseling and changed its disclosure procedures. **Source:** "False Positive AIDS Test Suit Settles," *Public Justice Newsletter* (Winter 1991).

### Nurses feared consequences of challenging doctors' actions

**FACTS:** On April 30, 1979, Jennifer Campbell suffered permanent brain damage after becoming entangled in her mother's umbilical cord before delivery. Although a nurse had expressed concern when she noticed abnormalities on the fetal monitor, the obstetrician failed to act. Despite the doctor's unresponsiveness, the nurse never notified her supervisor or anyone else in her administrative chain of command. The child developed cerebral palsy, requiring constant care and supervision. Evidence revealed that the



hospital lacked an effective mechanism for the nursing staff to report negligent or dangerous treatment of a patient. In addition, the nursing supervisor testified that an employee could be fired for questioning a physician's judgment. The jury awarded the Campbells over \$6.5 million. **Sources:** *Campbell v. Pitt County Memorial Hospital, Inc.*, 84 N.C. App. 314 (1987). *See also*, Mahlmeister, Laura, "The perinatal nurse's role in obstetric emergencies: legal issues and practice issues in the era of health care redesign," *Journal of Perinatal & Neonatal Nursing* (December 1996); Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 57.

**EFFECT:** "Because of this verdict and its subsequent publicity, hospitals throughout North Carolina have adopted a new protocol that allows nurses to use their specialized training and judgment on behalf of patients, without risking their jobs." **Source:** Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 57.

### **Anesthesiologist failed to properly monitor patient**

**FACTS:** Marilyn Hathaway suffered brain damage after an anesthesiologist didn't monitor her cardiopulmonary status during surgery. In 1983, Hathaway sued the physician for medical negligence. The jury awarded \$5 million in damages. *Frank v. Superior Court of the State of Arizona*, 150 Ariz. 228 (1986).



**EFFECT:** "After having to pay repeated medical malpractice claims arising from faulty anesthesia practices...Arizona's malpractice insurance companies took action. For example, the Mutual Insurance Company of Arizona, which insures over 75 percent of the state's physicians, began levying a \$25,000 surcharge on insurance premiums for anesthesiologists against whom claims had been made because constant monitoring of the patient was not performed during general anesthesia. As a result of litigation, adequate anesthesia monitoring during surgery has become a standard medical practice in Arizona." **Source:** Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 56, citing Holzer, James F., "The Advent of Clinical Standards for Professional Liability," *Quality Review Bulletin*, Vol. 16, No. 2 (February 1990).

### **Newborns left in nursery without supervision**

**FACTS:** In September 1982, James Talley was born at Doctors Hospital in Little Rock, Arkansas. He was left alone for 35 minutes, 10 to 15 of which he stopped breathing. When a nurse came to check on him, his heart had stopped and he had turned blue. The oxygen deprivation caused permanent brain damage. The Talleys sued Hospital Corporation of America (HCA), Doctors Hospital's parent company, arguing that HCA's cost-cutting procedure of reducing the number of nurses in the pediatric unit placed newborns at risk of injury or death. At trial, evidence showed that it would have cost Doctors Hospital an additional \$70,000 per year per nurse to have someone in the nursery at all times and that the

hospital was consistently two nurses short on the nightshift. The jury awarded \$1.85 million in compensatory damages for James, \$777,000 to his mother and \$2 million in punitive damages.

**Sources:** “Saving The Newborn,” *Public Justice* (July 1987), citing *National Bank of Commerce v. HCA Health Services of Midwest, Inc.*, No. 84-160 (Saline County Cir. Ct., Ark., verdict October 6, 1986). *See also*, Rosenfeld, Harvey, *Silent Violence, Silent Death*. Washington, DC: Essential Books (1994) at 57-8.

**EFFECT:** “As a result of this decision, HCA changed its policy on staffing pediatric units throughout its chain of hospitals, potentially saving hundreds of new lives and preventing as many injuries.” **Source:** “Saving The Newborn,” *Public Justice* (July 1987).

### **Ventilator machine impaired patient’s breathing during surgery**

**FACTS:** On May 14, 1980, Georgia Huchingson underwent surgery at a hospital in Little Rock, Arkansas. Because drugs administered in connection with the operation impaired her breathing, the anesthetist connected Huchingson to an Airco, Inc. ventilator. Since the apparatus had been set up incorrectly before surgery, Huchingson’s lungs filled with air without any way for the air to escape. As a result, she suffered lung and brain damage. Evidence showed that Airco knew the apparatus was prone to be set up incorrectly before placing the ventilator on the market yet disregarded the information. Airco’s staff engineer who designed the machine testified that he was aware of the hazard, admitting that he had seen a 1977 article about an incident similar to Huchingson’s. Pre-market field tests also showed that the machine was both dangerous and potentially lethal. The jury found that the ventilator was defectively designed and assessed \$3 million in punitive damages against Airco. The Arkansas Supreme Court upheld the punitive award, marking the first time the court had done so in a product liability suit. **Sources:** *Airco, Inc. v. Simmons First National Bank*, 276 Ark. 486 (1982). *See also*, Koenig, Thomas and Michael Rustad, *In Defense Of Tort Law*. New York: New York University Press (2001); Nader, Ralph and Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America*. New York: Random House (1996) at 316.

**EFFECT:** After the verdict was upheld on appeal, Airco issued an FDA-sponsored medical device alert, warning doctors and hospitals nationwide of the potential for product misuse.

**Source:** Nader, Ralph and Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America*. New York: Random House (1996) at 316.

## ENVIRONMENT, UTILITIES, ROADS AND PUBLIC SPACES

Lawsuits against polluters, utilities, trucking companies and others with control over the safety of public spaces can often lead to widespread changes in dangerous behavior. Indeed, lawsuits can be critical when an underfunded regulatory agency must rely on self-policing by industry. This is a situation which less responsible businesses may exploit to their advantage. And many health and safety advocates would argue that even when regulatory standards exist, they are not strict enough to prevent harm, and that, in many instances, the fines imposed for violations of laws are simply not high enough to force a company to stop hazardous but financially lucrative conduct.

Lawsuits by the sick and injured play a critical role in filling these enforcement gaps by holding companies directly accountable for harm. Indeed, if companies are not held responsible for the harm they cause, then the costs of that harm are not figured into their “bottom line.” The civil justice system is needed not only to compensate people for health impacts and property damage but also to end unsafe practices. The following cases provide important illustrations of how lawsuits can stop misconduct that hurts communities and the public.

### Trucking company failed to stop dangerous driver cellphone use

**FACTS:** Vernon O’Tuel suffered severe injuries after his car was rear-ended by a Unifi tractor-trailer at dusk on October 16, 2014 in Bennettville, NC. The truck had been traveling too fast on the highway and collided with O’Tuel’s vehicle as he decelerated to turn into his driveway. The truck driver had been on his cellphone at the time of the crash, had been using his phone for seven hours during his nearly eight-and-a-half-hour driving shift and his employer had failed to enforce its policy that limited driver cellphone use. In November 2016, Unifi settled O’Tuel’s lawsuit for \$3.75 million. **Sources:** Wren, David, “Lawsuit settlement could lead to more cellphone bans by trucking firms,” *Post and Courier*, November 21, 2016, [http://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking/article\\_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html](http://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking/article_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html); *O’Tuel v. Unifi Manufacturing, Inc.*, No. 2015-CP-34-00069 (Marlboro County Ct. Common Pleas, S.C.)(amended complaint filed April 24, 2015).



**EFFECT:** As a result of the case, Unifi agreed to ban drivers from using cellphones while their trucks are on the road, making operation of all 60 of Unifi’s tractor-trailers safer as they travel in the Carolinas and 13 other states. **Source:** Wren, David, “Lawsuit settlement could lead to more cellphone bans by trucking firms,” *Post and Courier*, November 21, 2016, [http://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking/article\\_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html](http://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking/article_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html)



## Building fire code violations trapped residents

**FACTS:** A September 18, 2014 fire trapped Michael Moore, 23, and his friend and roommate James Ford, 21, in their Biddeford, Me. third-floor apartment. Flames had engulfed the only staircase and they couldn't escape through a window. Both died. The Maine State Fire Marshall's Office concluded that 27 code violations in the building "significantly contributed" to Ford and Moore's deaths. The victims' families filed wrongful death claims against the building owner. In May 2016, the case settled for an undisclosed amount. **Sources:** Gotthelf, Liz, "Victims' families, landlord reach settlement in lawsuit over fatal Biddeford fire," *Journal Tribune*, May 12, 2016,

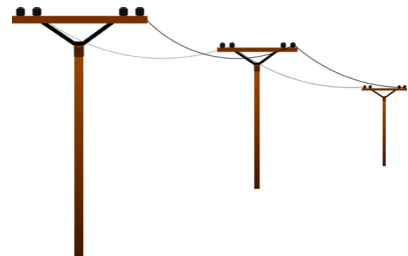


[http://www.journaltribune.com/news/2016-05-12/Front\\_Page/Settlement\\_reached\\_in\\_lawsuit\\_over\\_Biddeford\\_apart.html](http://www.journaltribune.com/news/2016-05-12/Front_Page/Settlement_reached_in_lawsuit_over_Biddeford_apart.html); *Dalbo v. Clark*, No. 2:15-cv-249-JAW, 2015 U.S. Dist. LEXIS 166158 (D. Me., December 11, 2015); *DiPietro v. Clark*, No. 2:15-cv-248-JAW, 2015 U.S. Dist. LEXIS 166201 (D. Me., December 11, 2015); *DiPietro v. Clark*, No. 2:15-cv-248-JAW, 2015 U.S. Dist. LEXIS 133407 (D. Me., September 30, 2015); "Fire Victims File Lawsuit Against Landlord," *WCSH TV 6*, June 15, 2015, <https://www.youtube.com/watch?v=lk6EabblrLk>; "Families of men killed in Maine fire sue building owner," *Associated Press*, June 12, 2015, <http://www.seacoastonline.com/article/20150612/NEWS/150619606>

**EFFECT:** "[T]he lawsuits helped bring attention to the lack of safety code compliance by landlords around Maine, and the need for better enforcement." They "were always about justice for the families of James and Michael...[b]ut the families had a larger goal. We wanted to improve the housing safety of all people in Maine by bringing code compliance into the public spotlight." **Sources:** Berman & Simmons press release, "Settlements reached in Maine apartment fire deaths," May 12, 2016, <https://www.bermansimmons.com/news/settlements-reached-maine-apartment-fire-deaths>. See also, Bigos, Michael, "Out of fire tragedy, an opportunity for change," *Journal Tribune*, June 8, 2016, [http://www.journaltribune.com/news/2016-06-08/Opinion/Out\\_of\\_fire\\_tragedy\\_an\\_opportunity\\_for\\_change.html](http://www.journaltribune.com/news/2016-06-08/Opinion/Out_of_fire_tragedy_an_opportunity_for_change.html); Graham, Gillian, "Families of fire victims settle lawsuit against Biddeford landlord," *Portland Press Herald*, May 13, 2016, <http://www.pressherald.com/2016/05/12/families-of-fire-victims-settle-lawsuit-against-biddeford-landlord>

## Power line caused fatal electrocution

**FACTS:** Carrie Goretzka was killed by a 7200-volt power line that fell on her during a June 2, 2009 power outage at her Irwin Township, PA home. The 39-year-old wife and mother had gone outside to get her cellphone from the car to call 911 after





her house lost power and she saw trees in her yard on fire. While dialing, a power line snapped from the power poll, trapping Goretzka underneath. She was electrocuted for 20 minutes in front of her children, ages 2 and 4, as well as her mother-in-law, who was also shocked as she tried to help. By the time utility crews shut off the power, Goretzka had suffered third and fourth degree burns on more than 80 percent of her body; she died three days later. At trial, the victim's family argued that West Penn Power: 1) ignored manufacturer instructions about how to splice power lines; 2) knew for years that failure to properly clean power lines had caused splices to overheat and fail; and 3) was on notice years before the accident that power lines had dropped into the Goretzka's backyard. The jury returned a \$109 million verdict against the utility company – \$48 million in compensatory damages and \$61 million in punitive damages. In February 2013, the case settled for \$105 million. **Sources:** *Estate of Carrie Goretzka v. West Penn Power*, 31 Pa. J.V.R.A. 4:C2, 2012 WL 8262740 (Allegheny Common Pleas Ct., Pa., verdict December 6, 2012). *See also*, Elliott-Engel, Amaris, "Energy Co. Settles Case Over Power Line Death for \$105 Mil." *Legal Intelligencer*, February 21, 2013, <http://www.thelegalintelligencer.com/id=1202588983256>

**EFFECT:** Evidence uncovered by the family's attorneys during pre-trial discovery prompted the Pennsylvania Public Utility Commission (PUC) to pursue an enforcement action against West Penn. In the February 2013 settlement, the utility company agreed to retrain workers about how to properly splice power lines within one year and to inspect any current splices for potential problems within three years. **Sources:** Mandak, Joe, "West Penn Settles Fatal Power Line Case for \$105M," *Associated Press*, February 22, 2013, <http://www.claimsjournal.com/news/east/2013/02/22/223621.htm>; Elliott-Engel, Amaris, "Energy Co. Settles Case Over Power Line Death for \$105 Mil.," *Legal Intelligencer*, February 21, 2013, <http://www.thelegalintelligencer.com/id=1202588983256>

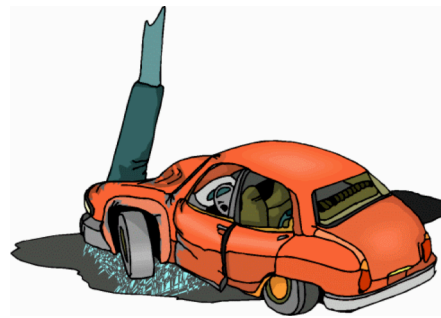
## **Brewery allowed intoxicated customer to leave, resulting in deadly car crash**

**FACTS:** On December 4, 2010, a drunk driver killed seven-year-old Lexa Cleland and severely injured her pregnant mother Nicole, who were en route to pick up Lexa's father from work. The driver had been served more than six liters of beer and multiple shots of liquor over a four-hour period at Pittsburgh, PA's Hofbrauhaus brewery. Despite multiple warning signs that he was extremely drunk, Hofbrauhaus management allowed the man to leave and drive away after he settled his tab. In less than 15 minutes he crashed head-on into Nicole Cleland's car at 67 mph. The posted speed limit was 25 mph. Lexa died and Nicole, who was severely injured, suffered a miscarriage. In May 2013, the parties settled for \$15.6 million. **Sources:** *Cleland v. Isiminger*, No. G.D. 11-5712 (Allegheny Common Pleas Ct., Pa., settlement petition, filed May 8, 2013); Ward, Paula Reed, "Owners of South Side's Hofbrauhaus settle in girl's death for \$15.6 million," *Pittsburgh Post-Gazette*, May 7, 2013, <http://www.post-gazette.com/local/city/2013/05/07/Owners-of-South-Side-s-Hofbrauhaus-settle-in-girl-s-death-for-15-6-million/stories/201305070253>; *Cleland v. Isiminger*, No. G.D. 11-5712 (Allegheny Common Pleas Ct., Pa., complaint filed March 24, 2011).

**EFFECT:** As part of the settlement, Hofbrauhaus agreed to “hire a Pennsylvania Liquor Control Board trainer to establish a Responsible Alcohol Management Program and that all front-of-house managers, servers, bartenders and security personnel must be certified in the program; include in the job descriptions and training materials of security personnel the responsibility for identifying intoxicated guests; use a point-of-sale system to split checks for large groups to better track how much guests are drinking individually; help intoxicated guests until they have a safe method of transportation, and to call security or police if they refuse; [and] offer designated drivers free nonalcoholic beverages.” **Source:** Schooley, Tim, “\$15.5M settlement requires changes at Hofbrauhaus,” *Pittsburgh Business Times*, May 9, 2013, <http://www.bizjournals.com/pittsburgh/news/2013/05/08/lawyer-hopeful-for-hofbrauhaus.html>

### Cruise control policy led to fatal crash

**FACTS:** In February 2011, Daniel Van Dyke, 44, and Richard Hannah, 47, were killed by a tractor-trailer that rear-ended Van Dyke’s car on I-94 near Portage, IN. Van Dyke had stopped to avoid colliding with a vehicle that spun out on the icy highway. The tractor-trailer was traveling on cruise control at 65 mph right before impact. The trucking company allowed employees to use cruise control on icy roads to save money on truck fuel, flouting multiple federal safety regulations. The jury awarded a total of \$18.5 million to the victims’ families. Their wrongful death claims ultimately settled for that amount. **Sources:** Newman, Jeff, “Celadon to pay \$18.5M settlement over fatal crash,” *Indianapolis Business Journal*, August 2, 2013, <http://www.ibj.com/articles/42809-celadon-to-pay-18-5m-settlement-over-fatal-crash>; Barradas, Samuel, “Celadon Cruise Control Crash Costs Them \$18.5 Million In Court,” *Truckers Report* (August 2013), <http://www.thetruckersreport.com/celadon-cruise-control-crash-costs-them-18-5-million-in-court/>; *Hannah v. Celadon Trucking Services Inc.*, No. 64D01-1102-CT-001249, 2012 WL 7177082 (Ind. Super. Ct., verdict and settlement summary, December 13, 2012).



**EFFECT:** After the jury award, Celadon changed company policy, training drivers that they could no longer use cruise control in inclement weather. **Sources:** Grisolano, Greg, “Celadon Changes Cruise Control Policy After \$18.5 Million Award,” *Land Line Magazine*, August 12, 2013, <http://www.landlinemag.com/Story.aspx?StoryID=25565>; “Trucking Company Reviews Policy Following Suit,” *93.1 FM WIBC*, August 9, 2013, <http://www.wibc.com/blogs/trucking-company-reviews-policy-following-suit>

## Chrome-plating facility emitted cancer-causing pollutants

**FACTS:** In 1963, Chrome Crankshaft Inc. began operating a chrome-plating facility adjacent to the Suva Street Elementary and Intermediate School (SUVA) and nearby residential homes in Bell Gardens, California. 22 students and six SUVA teachers were diagnosed with various forms of cancer over a subsequent eight-year period. A number of



teachers also reported miscarriages. In 1998, four former SUVA students with cancer, the families of two deceased students and the family of a deceased SUVA teacher filed a personal injury lawsuit against Chrome Crankshaft, J&S Chrome Plating Co., the Montebello Unified School District, the city of Bell Gardens, the South Coast Air Board, Los Angeles County, the California Department of Education and the Regional Water Quality Board. The residents alleged that the “cancer cluster” resulted from exposure at SUVA to various toxins, primarily chromium, released from the chrome-plating plant. **Sources:** Gold, Matea, “A School, Factories And Plenty Of Fear,” *Los Angeles Times*, February 28, 1999, <http://articles.latimes.com/1999/feb/27/news/mn-12186>, discussing *Brock v. Chrome Crankshaft Co.*, No. VC-027-180 (Los Angeles County Super. Ct., Cal., filed October 28, 1998).

In January 1999, Communities for a Better Environment, an environmental group based in San Francisco and Los Angeles, filed another civil lawsuit against Chrome Crankshaft, claiming that the 22 SUVA students and six teachers contracted cancer because of toxic pollution released into the groundwater by the plating facility. **Sources:** “CA Suit Says Chrome Plating Facilities Tainted Schools’ Water Supply,” *Toxic Chemicals Litigation Reporter*, Vol. 16, No. 18, February 16, 1999, citing *Communities for a Better Environment v. Chrome Crankshaft, Inc.*, No. VC-028-531 (Los Angeles County Super. Ct., Cal., first amended complaint filed December 22, 1998; complaint for civil penalties filed January 19, 1999). *See also*, Gold, Matea, “Group Sues Plant Over Cancer Deaths,” *Los Angeles Times*, January 20, 1999, <http://articles.latimes.com/1999/jan/20/local/me-65377>

**EFFECT:** In exchange for dismissal of both cases, Chrome Crankshaft settled the two lawsuits for an undisclosed amount. The company agreed to discontinue the chrome-plating portion of its operations and to contribute \$25,000 to an environmental awareness organization. **Source:** Olivo, Antonio, “Families’ Lawsuit Targeting Factory’s Contamination Is Settled,” *Los Angeles Times*, August 7, 2000, <http://articles.latimes.com/2000/aug/07/local/me-181>

## Dump emitted toxic fumes

**FACTS:** Beginning in 1994, residents of Grand Bois, Louisiana suffered headaches, dizziness, nausea and diarrhea after breathing toxic fumes from oilfield sludge



owned by Exxon Corp. and disposed of at a Campbell Wells Corp. waste treatment site adjacent to the community. The sludge contained toluene, benzene, xylene, barium, hydrogen sulfide, arsenic and other hazardous materials. Three hundred and one individuals brought suit, claiming that Exxon and Campbell Wells mishandled the waste, recklessly exposing nearby residential neighborhoods to the deadly fumes. Although the first suit heard involved only 11 victims, Campbell Wells settled the case with all 301 residents before jury deliberations began for \$7 million, leaving Exxon as the sole defendant. The jury awarded \$130,000 against Exxon. **Sources:** *Friloux v. Campbell Wells*, No. 75,524 (Lafourche Parish Dist. Ct., La., verdict August 9, 1998); Sack, Kevin, "Louisiana Town Goes to Trial Over Waste Pit," *New York Times*, July 13, 1998, <http://www.nytimes.com/1998/07/13/us/louisiana-town-goes-to-trial-over-waste-pit.html>

**EFFECT:** As part of the settlement, Campbell Wells and its new owner, U.S. Liquids, agreed to expand the waste treatment facility's buffer zone and erect screens along its boundary with the community. **Sources:** McQuaid, John, "Uneasy Proximity," *Times-Picayune*, May 23, 2000; "Controversy erupts over Grand Bois oil field waste pit cleanup," *Associated Press*, February 21, 2000; Dunne, Mike, "Grand Bois defendant settles with plaintiffs; Exxon now stands alone against allegations," *Advocate*, August 8, 1998.

### **Airport electronic billboards caused car accidents**

**FACTS:** On December 4, 1993, Anwar Soliman and Ralph Roberts suffered serious injuries in a car wreck in Texas after a driver had stopped to read flight information on American Airlines' electronic billboards. The eight 50-foot-tall signs were located on the main roadway at the Dallas-Ft. Worth Airport. Roberts and Soliman filed suit against American Airlines, among others, claiming that the company had ignored warnings from airport engineers and police that the billboards would distract motorists and cause numerous accidents. Records produced at trial showed that there had been 29 accidents at the same site with 22 injuries. The jury awarded over \$24.5 million against the airline, \$10 million of which were punitive. **Sources:** "Airline Billboards Found To Have Caused Collision," *National Law Journal*, January 27, 1997, citing *Soliman v. American Airlines Inc.*, No. 94-8428-C (Dallas County Dist. Ct., Tex., verdict November 22, 1996); "Updates: Airport Sign Suit Gets \$24.5 Million Verdict," *Texas Lawyer*, December 2, 1996; "Airline Owes \$20 Million – Sign Caused Car Accident," *Orlando Sentinel*, November 24, 1996.

**EFFECT:** After the verdict, American Airlines turned off the signs. **Sources:** Curriden, Mark, "Power of 12," *ABA Journal* (August 2001); Stanton, Russ, "Orange County Briefly; American Air-lines Settles Auto Crash Suit," *Los Angeles Times*, February 5, 1998; Lunsford, J. Lynn, "Plaintiffs, American Airlines settle lawsuit over D/FW signs," *Dallas Morning News*, February 4, 1998; *Soliman v. American Airlines, Inc.*, cited in *Blue Sheet of Northeast Texas*, January 26, 1998.

## Chromium poisoning caused life-threatening illnesses

**FACTS:** Between 1951 and 1972, Pacific Gas & Electric Company (PG&E) contaminated the groundwater in Hinkley, California, exposing area residents to cancer-causing chromium. In 1993, 650 area residents filed suit against PG&E for poisoning their water supply. The company entered into arbitration and ultimately settled the case for \$333 million. **Source:** *Anderson v. Pacific Gas & Electric*, No. BCV-00822 (San Bernardino County Super. Ct., Cal., settlement July 2, 1996).



**EFFECT:** In addition to paying the victims, PG&E agreed to clean up the environment and stop using chromium. “This case has prompted other utilities to take similar actions and has resulted in environmental remediation at other contaminated sites.” **Source:** “Proving and Stopping Toxic Water Pollution,” *Public Justice* 1997.

## 30-minute delivery policy led to car crash

**FACTS:** On January 19, 1989, Jean Kinder was driving through an intersection when a Domino’s delivery driver ran a red light and broadsided her car. Kinder suffered head and spinal injuries. In her lawsuit, Kinder claimed that Domino’s 30-minute policy caused pizza-delivery personnel to drive recklessly in order to meet the company’s service guarantee. The jury awarded \$78 million in punitive damages. **Source:** *Kinder v. Hively Corp.*, No. 902-1235, 1999 MO & IL Jury Verdicts LEXIS 6478 (St. Louis County Ct., Mo., verdict December 17, 1993).

**EFFECT:** When asked about the connection between litigation and the end of the 30-minute policy, Cheryl A. Bachelder, Domino’s Vice President of Customer Satisfaction, replied, “We dumped our famous ‘30 minute’ free-delivery guarantee in 1993 following costly lawsuits from accidents involving its drivers.” In announcing the change in 1993, Domino’s President Thomas Monaghan admitted that the jury verdict four days earlier had persuaded the company to rescind its 30-minute promise. “That was certainly the thing that put us over the edge,” he explained, adding that “there continues to be a perception – a perception I believe is not supported by the facts – that the guarantee is unsafe. We got that message loud and clear. So, we are eliminating the element that creates that negative perception.” **Sources:** E-mail correspondence from Cheryl A. Bachelder, Vice President Customer Satisfaction, dated July 24, 2000; Janofsky, Michael, “Domino’s Ends Fast-Pizza Pledge After Big Award to Crash Victim,” *New York Times*, December 22, 1993, <http://www.nytimes.com/1993/12/22/business/domino-s-ends-fast-pizza-pledge-after-big-award-to-crash-victim.html>



## CRIME, VIOLENCE AND OFFICIAL MISCONDUCT

Crime victims often face terrible financial burdens, like medical and mental health care bills, and also experience trauma, suffering, pain and lost quality of life. The criminal justice system isn't designed to compensate them – but the civil justice system is. The criminal justice system also doesn't hold perpetrators directly accountable to victims – but civil cases do. And sometimes, the criminal justice system just fails. So it is not uncommon for crime victims to file civil cases against perpetrators or responsible third parties.

Throughout history, there have been numerous instances where civil cases involving crimes, assault and violence, as well as official misconduct, have led to specific safety improvements benefiting large segments of the population. The following examples illustrate how lawsuits have held accountable those responsible for everything from workplace assaults to hate crimes.

### Police use of excessive force resulted in death

**FACTS:** 28-year-old Jaime Reyes died on June 6, 2012 after being shot multiple times in the back by a Fresno, CA police officer. Reyes, on meth, had run away from police; an officer shot him as he neared the top of a fence and then three more times in the back as he lay face down on the ground. He was frisked, handcuffed and later provided with medical assistance, ultimately



dying at the hospital after failed emergency surgery. Less than a year later, Reyes' parents filed a wrongful death action against the City of Fresno, its police chief and officers from the Fresno Police Department. According to the complaint, Reyes never had anything in his hands, never threatened the officers and was more than five yards ahead of the officer when he was first shot. It was only as he lay motionless from the three additional shots that officers found an unloaded gun wrapped in a plastic bag in his shorts pocket. In November 2016, the case settled for \$2.2 million. **Sources:** Lopez, Pablo, "Fresno settles police shooting lawsuit for \$2.2 million," *Fresno Bee*, November 22, 2016, <http://www.fresnobee.com/news/local/crime/article116526138.html>; *Reyes v. City of Fresno*, No. 1:13-cv-00418-LJO-SKO (E.D. Cal.)(first amended complaint filed November 1, 2013), <https://assets.documentcloud.org/documents/2111668/jaime-reyes-v-fresno-police.pdf>; *Reyes v. City of Fresno*, No. 1:13-cv-00418-LJO-SKO, 2013 WL 2147023 (E.D. Cal., order on defendants' motion to dismiss filed May 15, 2013); "Fresno Family Files Lawsuit Against FPD," *KFSN-TV Fresno*, March 23, 2013, <http://abc30.com/archive/9037821>; *Reyes v. City of Fresno*, No. 1:13-cv-00418-LJO-SKO (E.D. Cal., complaint filed March 20, 2013).

**EFFECT:** As part of the settlement, the Fresno Police Department agreed to: 1) change its use-of-force policy; 2) train sergeants and patrol officers not to fire extra bullets unnecessarily; and 3) train homicide detectives and police Internal Affairs officers to consider witness statements

that conflict with accounts by officers at the scene. **Sources:** Lopez, Pablo, “Fresno settles police shooting lawsuit for \$2.2 million,” *Fresno Bee*, November 22, 2016, <http://www.fresnobee.com/news/local/crime/article116526138.html>; “City of Fresno Settles Police Shooting lawsuit for \$2-Million,” *KFSN-TV Fresno*, November 22, 2016, [http://abc30.com/news/city-of-fresno-settles-police-shooting-lawsuit-for-\\$2-million/1621417](http://abc30.com/news/city-of-fresno-settles-police-shooting-lawsuit-for-$2-million/1621417)

## **Sergeant killed by inadequately trained officer**

**FACTS:** Bay Area Rapid Transit (BART) Det. Sgt. Tommy Smith died on January 21, 2014 after being shot in the chest while leading a team on a probation search of a Dublin, CA apartment. A fellow officer had mistaken Smith, age 42, for an armed criminal. His widow, herself a 20-year BART police veteran, filed a lawsuit against the agency, top BART Police Department officials and other employees, alleging wrongful death and civil rights violations. According to the complaint, the BART Police Department had routinely made “understaffed and undertrained units” like Smith’s responsible for “more dangerous tactical assignments with less training and supervision” and without “the specialized tactical training that was required to complete these duties safely, but which was made available to other tactical units.” In addition, Smith and others in the police department “on multiple occasions requested that management provide its officers with appropriate training and/or utilize appropriate personnel to conduct these [probation, building and parole] searches” but their “repeated requests for training and tactical assistance were summarily denied.” In November 2016, the case settled for \$3.1 million. **Sources:** Dinzeo, Maria, “Judge Advances Claims in BART Officer’s Death,” *Courthouse News Service*, December 1, 2015, <http://www.courthousenews.com/2015/12/01/judge-advances-claims-in-bart-officers-death.htm>; McGall, Andrew, “Slain BART officer’s family sues, claims ‘poor training,’” *Mercury News*, June 1, 2015, <http://www.mercurynews.com/2015/06/01/slain-bart-officers-family-sues-claims-poor-training>; “Slain BART officer’s family sues, claims ‘poor training,’” *East Bay Times*, June 1, 2015, <http://www.eastbaytimes.com/2015/06/01/slain-bart-officers-family-sues-claims-poor-training>; *Smith v. Bay Area Rapid Transit District*, Case No. 3:15-cv-02402-TEH (N.D. Cal.) (complaint filed May 29, 2015), [http://www.eastbaytimes.com/wp-content/uploads/2016/11/sgt-smith\\_bartpd\\_wrongful-death-complaint1.pdf](http://www.eastbaytimes.com/wp-content/uploads/2016/11/sgt-smith_bartpd_wrongful-death-complaint1.pdf); “Detective Sergeant Thomas A. Smith, Jr.” *Officer Down Memorial Page*, <http://www.odmp.org/officer/21919-detective-sergeant-thomas-a-smith-jr>

**EFFECT:** Under the settlement, “the BART Police Department, working in collaboration with attorneys for Smith’s family, has revised existing training policies to provide that any officer can contact their immediate supervisor and request remedial training on any basic law enforcement practice and that their supervisor will provide and document it.” In addition, “if the department isn’t able to provide an in-house training regimen to address any perceived or identified deficiencies, officers will be sent to an outside approved training provider to address them.” As Smith’s widow said in a statement, “I am very hopeful that these policy changes will avoid another tragedy like this from happening in the future. I wish more than anything that none of my fellow officers’ families from the BART Police Department will ever have to suffer through what our family has over the past three years.” **Sources:** Shuttleworth, Jeff,

“BART to pay \$3.1M to settle suit with family of slain local officer,” *Bay Area News*, November 20, 2016, <http://pleasantonweekly.com/news/2016/11/20/bart-to-pay-31m-to-settle-suit-with-family-of-slain-local-officer>. See also, Baldassari, Erin, “BART: Family of officer slain in friendly fire settles suit for \$3.1 million,” *East Bay Times*, November 18, 2016, <http://www.eastbaytimes.com/2016/11/18/bart-to-pay-family-of-officer-shot-killed-in-friendly-fire-3-1-million-settlement>; Palomino, Joaquin, “BART to pay \$3.1 million to family of cop killed by friendly fire,” *San Francisco Chronicle*, November 18, 2016, <http://www.sfgate.com/bayarea/article/BART-to-pay-3-1-million-to-family-of-officer-10623596.php>

## Jail’s failure to monitor inmate with mental health issues led to suicide

**FACTS:** Sandra Bland died in a Waller County, Texas jail cell three days after being stopped by a state trooper for failing to properly signal a lane change. Bland had pulled over and given the officer her identification, but when she refused to put out her cigarette, the trooper threatened her with a Taser, demanded she exit her vehicle, tried to physically remove her from her car, handcuffed, wrestled, and slammed her into the ground and then arrested her for assault on a public servant. Though Bland told jail intake screening staff that she had a history of attempted suicide, she was still placed alone in a camera-less, obstructed-view cell with potentially lethal items and not checked on at intervals consistent with jail protocol. While incarcerated, Bland stopped eating, had episodes of uncontrollable crying and was barred from calling family or friends. On July 13, 2015, Bland was found hanged in her cell with a garbage bag around her neck; her death was ruled a suicide. She was 28 years old. In August 2015, her mother filed a wrongful death lawsuit against Waller County, multiple County Sheriff’s Office employees, the arresting officer and the Texas Department of Public Safety. The parties reached a \$1.9 million settlement in September 2016. **Sources:** *Reed-Veal v. Encina*, No. 4:15-cv-02232, 2016 Jury Verdicts LEXIS 6917 (N.D. Tex., settlement September 15, 2016); Berman, Mark, “Sandra Bland’s family says they reached a \$1.9 million settlement in wrongful death lawsuit,” *Washington Post*, September 15, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/09/15/sandra-blands-family-reportedly-reaches-settlement-in-wrongful-death-lawsuit>; Hassan, Carma, Holly Yan and Max Blau, “Sandra Bland’s family settles for \$1.9M in wrongful death suit,” *CNN*, September 15, 2016, <http://www.cnn.com/2016/09/15/us/sandra-bland-wrongful-death-settlement>



**EFFECT:** Under the agreement, the Waller County jail “will use automated electronic sensors to ensure accurate and timely cell checks” and “provide an on-duty nurse or EMT for all shifts.” In addition, the Waller County Sheriff’s Office is required to “provide additional jailer training (including ongoing continuing education) on booking and intake screening.” State legislation in Bland’s honor is also a term of the settlement. The bill would provide “for more funding for jail intake, booking, screening training and other jail support like telemedicine



access for Texas county jails” and is expected to be introduced during the 2017 session. Her mother said, “I can’t bring Sandy back, she’s not coming back. But I got to tell you, there will be lots of lives saved and changed with this new agreement.” **Sources:** Silver, Johnathan, “Sandra Bland’s Family Looks Forward from Lawsuit Settlement,” *Texas Tribune*, September 19, 2016, <https://www.texastribune.org/2016/09/19/sandra-blands-family-settled-their-lawsuit-heres-w>; Silver, Johnathan, “Sandra Bland’s Family Settles Wrongful Death Lawsuit,” *Texas Tribune*, September 15, 2016, <https://www.texastribune.org/2016/09/15/sandra-blands-family-settles-wrongful-death-lawsui>; “Sandra Bland’s Mom Hopes \$1.9 Million Settlement Will Help ‘Save Lots Of Lives,’” *NewsOne Now* (September 2016), <http://newsone.com/3539360/geneva-reed-veal-says-19000000-settlement-will-save-lives>

## Man suffered in solitary confinement without trial or treatment

**FACTS:** For over one and a half years, Stephen Slevin was held in solitary confinement at New Mexico’s Dona Ana County Detention Center (DACDC) without a hearing or medical care after being arrested on suspicion of drunk driving and receiving a stolen vehicle. He developed severe mental and physical problems. After 14 days of mental health treatment – where Slevin “was reintroduced to human interaction and socialization” and “became alert and aware of his situation” – he was put back into solitary confinement. Once again, his mental health began to deteriorate and he was denied medical care, including dental treatment, which led him to yank out his own tooth. The charges against Slevin were ultimately dismissed and he was released in June 2007. The jury handed down a \$22 million verdict, including \$6.5 million in punitive damages, which was upheld by the judge. The case ultimately settled in March 2013 for \$15.5 million, making it one of the largest federal civil rights settlements in history. **Sources:** Dolak, Kevin, “Prisoner Left in Solitary 2 Years Receives \$15.5M Settlement,” *ABC News*, March 7, 2013, <http://abcnews.go.com/US/prisoner-left-solitary-years-receives-155m-settlement/story?id=18677197>; Ortiz, Erik, “Man left in solitary confinement in New Mexico jail for 22 MONTHS after horrific treatment awarded \$15.5M,” *New York Daily News*, March 7, 2013, <http://www.nydailynews.com/news/national/man-awarded-millions-n-m-jail-left-solitary-article-1.1281739>; *Slevin v. Board of Commissioners for County of Dona Ana*, No. 08-cv-1185 (U.S. Dist. Ct. N. Mex.)(complaint filed December 23, 2008), <http://www.plainsite.org/dockets/download.html?id=32551698&z=c910350e>

**EFFECT:** “After Slevin filed his lawsuit, the detention center implemented new training programs and procedures, which provide inmates better access to medical care and mental health service.” And after the case settled, the county “said it has taken ‘bold steps’ to improve the 846-bed jail, which it said would make it ‘the model for detention centers and the care of the mentally ill in the state of New Mexico.’” As the county put it in a press release announcing the settlement, “In the wake of this large settlement, we can say definitively that we have learned from the past. We can also say with confidence that we are leading the way for the future.” **Sources:** Duke, Alan, “‘Forgotten’ inmate gets \$15.5 million settlement from N.M. county,” *CNN*, March 8, 2013, <http://www.cnn.com/2013/03/07/justice/new-mexico-inmate-settlement>; St. Cyr, Peter, “Former Inmate, Left in Solitary Confinement, Settles for \$15.5M,” *Santa Fe Reporter Blog*, March 6, 2013, <http://www.sfreporter.com/santafe/blog->

[4318-former-inmate-left-i.html](#); Dona Ana County press release, “Slevin Lawsuit Settled for \$15.5 Million,” March 5, 2013, <https://www.donaanacounty.org/node/135597>

## School allowed repeated abuse of student by classmates

**FACTS:** A middle schooler was verbally and physically bullied by male students because of his perceived sexual orientation while attending sixth and seventh grades at Maine’s Brunswick Junior High School during the 2010-2012 school years. Teachers and the school principal dismissed the victim’s repeated complaints and allowed the hostility to persist, with the principal essentially telling the child’s mother that “boys will be boys.” The student was ultimately hospitalized and diagnosed with depression and post-traumatic stress disorder stemming from the bullying and harassment. After settlement discussions failed, the victim’s mother filed a lawsuit against the Brunswick School Department, town of Brunswick and the Brunswick Junior High School principal. In November 2016, the case settled for \$125,000.



**Sources:** *Doe v. Brunswick School Department*, No. 2:15-CV-257-DBH (D. Me., report of pre-filing conference under Local Rule 56 dated July 1, 2016), <https://ecf.med.uscourts.gov/docpub/09101889103>; *Doe v. Brunswick School Department*, No. 2:15-CV-257-DBH (D. Me., memorandum decision and order on discovery dispute dated April 29, 2016), [http://www.med.uscourts.gov/Opinions/Rich/2016/JHR\\_04292016\\_2-15cv257\\_Doe\\_v\\_Brunswick.pdf](http://www.med.uscourts.gov/Opinions/Rich/2016/JHR_04292016_2-15cv257_Doe_v_Brunswick.pdf); Wuthmann, Walter, “Maine Human Rights Commission, parent sue Brunswick School Department, principal over bullying,” *The Forecaster*, July 8, 2015, <http://www.theforecaster.net/maine-human-rights-commission-parent-sue-brunswick-school-department-principal-over-bullying>; Brogan, Beth, “Former Brunswick student sues over alleged bullying, sexual assault” *Bangor Daily News*, July 7, 2015, <https://bangordailynews.com/2015/07/07/news/midcoast/former-brunswick-student-sues-over-alleged-bullying-sexual-assault>

**EFFECT:** Under the agreement, “Brunswick Junior High School is required to implement stronger anti-bullying programs as part of the settlement. New programs include a centralized digital system to keep records of all bullying incidents, data monitoring for trends, and the formation of a gay-straight alliance at the school. The school also must continue annual, in-person staff training sessions to identify and stop bullying, with particular instruction on sexual stereotyping, and hold annual schoolwide assemblies to prevent and stop bullying.” In addition, as the *Portland Press Herald* explained, “[H]uman rights advocates pointed to anti-bullying programs required in Brunswick as part of the settlement agreement as a model for other districts.” **Source:** Doyle, Megan, “Brunswick schools agree to pay \$125,000 to settle bullying lawsuit,” *Portland Press Herald*, November 15, 2016, <http://www.pressherald.com/2016/11/15/brunswick-schools-pay-125000-to-settle-bullying-suit>

## Klansmen assaulted teenager

**FACTS:** On July 30, 2006, 16-year-old Jordan Gruver was attacked by Imperial Klans of America (IKA) members during a “white-only” recruiting mission at the Meade County Fair in Kentucky. Three Klansmen had mistakenly assumed the Panamanian-Indian teen was Hispanic and “began calling him racial slurs such as ‘spic,’ spit on him, and poured alcohol on him,” then knocked him to the ground, “and kicked and hit him repeatedly, without any provocation or justification,” while an IKA official looked on, according to the complaint. One of the attackers was over a foot taller than the 5-foot-3, 150-pound Gruver and double his weight. Gruver suffered severe physical and psychological damage from the beating – a broken jaw that had to be wired shut, broken teeth, permanent nerve damage and post-traumatic stress disorder – prompting him to file a civil lawsuit. Two Klansmen settled before trial; the case proceeded against attacker “Grand Titan” Jarred R. Hensley, Klan leader Ron Edwards and IKA itself, which was under Edwards’ complete control. Evidence showed that IKA had a history of encouraging violence against non-whites, knew or had reason to know there would be racial and ethnic minorities at the fair and likely knew that IKA members would attack these individuals. Among the other evidence presented to the jury: a pair of steel-toed boots worn by Hensley the night he repeatedly kicked Gruver. The jury awarded \$1.5 million in compensatory damages and \$1 million in punitive damages. **Sources:** Southern Poverty Law Center, “Gruver v. Imperial Klans of America,” <https://www.splcenter.org/seeking-justice/case-docket/jordan-gruver-v-imperial-klans-america> (viewed October 21, 2016); O’Neill, Ann, “Jury awards \$2.5 million to teen beaten by Klan members,” *CNN*, November 17, 2008, <http://www.cnn.com/2008/CRIME/11/14/klan.sued.verdict/index.html>; O’Neill, Ann, “Lawsuit seeks to bankrupt Klan group,” *CNN*, November 12, 2008, <http://www.cnn.com/2008/CRIME/11/12/klan.sued>; Bacon, Brittany, “Suing the KKK: Klan Under Fire,” *ABC News*, July 26, 2007, <http://abcnews.go.com/TheLaw/BlackHistory/story?id=3416862&page=1>

**EFFECT:** The verdict “decimated the IKA,” reducing it from 16 chapters in eight states to two chapters. **Sources:** Southern Poverty Law Center, “Gruver v. Imperial Klans of America,” <https://www.splcenter.org/seeking-justice/case-docket/jordan-gruver-v-imperial-klans-america> (viewed October 21, 2016); Southern Poverty Law Center, “Kentucky Supreme Court Upholds SPLC’s Crushing Legal Victory Against Notorious Klan Leader,” March 16, 2012, <https://www.splcenter.org/news/2012/03/16/kentucky-supreme-court-upholds-splc’s-crushing-legal-victory-against-notorious-klan-leader>

## Church failed to protect children from molestation

**FACTS:** From the 1970s until the early 1990s, Monsignor Michael Harris molested students while teaching at various Catholic high schools in California. One of Harris’ victims, Ryan DiMaria, filed suit against the Los Angeles and Orange County Dioceses and Harris over sexual abuse he experienced in 1991. DiMaria argued that the Dioceses were aware of the priest’s behavior yet failed to act. In August 2001, the case settled for \$5.2 million before trial. **Sources:** Lobdell, William and Jean



O. Pasco, "Judging the Sins of the Father," *Los Angeles Times*, November 10, 2001, discussing *DiMaria v. Roman Catholic Bishop of Orange County*, No. 786901 (Orange County Super. Ct., Cal., filed November 14, 1997); Niebuhr, Gustav, "Dioceses Settle Case of Man Accusing Priest of Molestation," *New York Times*, August 22, 2001.

**EFFECT:** As part of the settlement, the Catholic Church agreed to change the way it handled allegations of sexual abuse. Changes included "monitoring of schools and parishes, establishing a toll-free phone number and Web site for anonymous abuse complaints and forbidding priests to be alone in social settings with minors. ... The church also agreed to allow an independent group to regularly interview departing students about possible sexual misconduct at St. John's Seminary in Camarillo, from which Harris graduated in 1972." In addition, the judge ordered the dioceses to issue public apologies to DiMaria and four other victims. **Sources:** Carter, Chelsea J., "SoCal Catholic leaders agree to policy changes as part of molestation settlement," *Associated Press*, August 22, 2001; Lobdell, William and Jean O. Pasco, "Church Settles Suit, Toughens Policies," *Los Angeles Times*, August 21, 2001.

## **Aryan Nation guards assaulted woman and her son**

**FACTS:** In July 1998, Aryan Nation security chief Jesse Warfield and guard John Yeager chased and shot at Victoria Keenan and her teenage son Jason after their car backfired while driving past the group's Idaho compound. When their car went into a ditch, Warfield assaulted Keenan and threatened to kill her while guards beat her son. The Southern Poverty Law Center brought a negligence suit against the Aryan Nations and its leader, Richard Butler, as well as Michael Teague, Butler's chief of staff, Warfield, Yeager and the Nation's corporate entity, Sapphire, Inc. Trial testimony revealed that Butler and his staff not only failed to train and investigate security personnel but also tried to hide the absence of safety checks after the lawsuit was filed. The jury awarded over \$6.3 million, \$6 million of which were punitive. \$4.8 million of that punitive damage award was levied against Butler and the Aryan Nations. **Sources:** Southern Poverty Law Center, "Aryan Nations on the Verge of Collapse Following Judgment," *Intelligence Report*, December 6, 2000, <https://www.splcenter.org/fighting-hate/intelligence-report/2000/aryan-nations-verge-collapse-following-judgment>; Murphy, Kim, "Jury Verdict Could Bankrupt Aryans," *Los Angeles Times*, September 8, 2000; "Jury finds Aryan leader negligent," *Idaho Statesman*, September 8, 2000.

**EFFECT:** In addition to not using the name "Aryan Nations," Butler agreed to transfer the compound to the Keenans. He moved out of the 20-acre complex that consisted of the neo-Nazis' church, barracks and Butler's home. **Source:** Gerianos, Nicholas K., "Butler reportedly has moved into a new home," *Associated Press*, October 24, 2000.

## School failed to protect student from sexual harassment by teacher

**FACTS:** During the 1994-1995 school year, Special Education teacher and band director Stephen Hopkins tried to seduce a student at the East Bank High School in West Virginia. Hopkins had sent the girl love letters and roses, called her at home, tried to kiss her, gave her rides and exposed himself, once attempting to unbutton her shirt and fondle her while the two were in his car. In November 1997, the victim filed suit against Hopkins and the Kanawha County School Board, claiming, in part, that the board had failed to protect her. The case

settled in July 2000 for \$920,000. **Sources:** Eyre, Eric, "Schools make harassment policy changes," *Charleston Gazette*, October 11, 2000; Eyre, Eric, "Kanawha schools, former student to settle for \$900,000," *Charleston Gazette*, September 1, 2000; *Doe v. Kanawha County Board*, No. 97-CV-1143 (S.D. W.Va., settlement July 25, 2000).



**EFFECT:** As part of the settlement, school administrators "assigned a former school system social worker to investigate sexual harassment complaints. School officials also agreed to hold sexual harassment training sessions for teachers and students. And they plan to assign a counselor to students who are victims of sexual harassment." The county also promised to create an oversight committee that would periodically review policies and procedures related to sexual harassment prevention. **Sources:** Eyre, Eric, "Schools make harassment policy changes," *Charleston Gazette*, October 11, 2000. *See also*, "Student sexually harassed by teacher," 44 *ATLA Law Reporter* 149 (May 2001); Eyre, Eric, "Kanawha schools, former student to settle for \$900,000," *Charleston Gazette*, September 1, 2000.

## Bribery scheme led to issuance of licenses to unfit drivers

**FACTS:** On November 8, 1994, Rev. Duane Scott Willis and Jane Willis lost six children after their minivan ran over a mud-flap/tail light assembly that had fallen off a truck. During discovery, whistleblowers revealed a bribery scheme involving the sale of commercial driver's licenses run through the Illinois Secretary of State's office. The driver involved in the Willis accident had purchased his commercial license with a bribe. One witness testified that state officials were on notice of the licenses-for-bribes scheme. The Willises settled the case for \$100 million. **Sources:** Marx, Gary, "Truck Bribe Whistle-Blower Tells of 'Emotional Seesaw,'" *Chicago Tribune*, February 16, 2000; Gibson, Ray and Bradley Keoun, "Ryan's Wife Says She Doesn't Recall Whistleblower Kin's Note," *Chicago Tribune*, February 6, 2000; Robinson, Mike, "Couple settle for \$100 million in death of six children," *Associated Press*, August 27, 1999; *Willis v. Transamerica Leasing, Inc.*, No. 98-L-3127, 1999 Nat. Jury Verdict Review LEXIS 2616 (Cook County Cir. Ct., Ill., August 26, 1999).

**EFFECT:** *Willis* prompted a federal investigation of the bribery scheme, resulting in over 30 criminal convictions. In addition, "thousands of truck drivers in Illinois and other states have



had to undergo retesting or risk losing their licenses.” **Sources:** Thomas, Jo, “Illinois Drivers Face Retesting After U.S. Inquiry Finds Licenses Had Been Sold,” *New York Times*, November 8, 2000, <http://www.nytimes.com/2000/11/08/us/illinois-drivers-face-retesting-after-us-inquiry-finds-licenses-had-been-sold.html>; Ross, Brian, “Who’s At The Wheel,” *20/20 Friday*, April 28, 2000, <http://www.aparchive.com/metadata/BRIAN-ROSS-UNIT-BRS-Who-s-at-the-Wheel-Some-truckers-in-Illinois-obtain-licenses-through-bribery/6fee6b078401436586206ac0dd42ea3f>; Trial Lawyers for Public Justice, “2000 Trial Lawyer of the Year Finalists.”

## Poor security led to workplace shootings

**FACTS:** On May 17, 1995, Gerald Allman, Anthony Balogh and Frank Knox were killed by James Davis, a former employee who went on a shooting rampage at the Union Butterfield/Dormer Tools plant in North Carolina. Warehouse foreman Larry Cogdill was wounded by gunfire. Davis was convicted on three counts of first-degree murder and sentenced to death. The victims’ families and Cogdill filed three separate lawsuits against Union Butterfield and Dormer Tools, charging that the companies had been negligent in preventing Davis from storming the facility and opening fire on the workers. At trial, it was argued that the companies should have provided better security since they

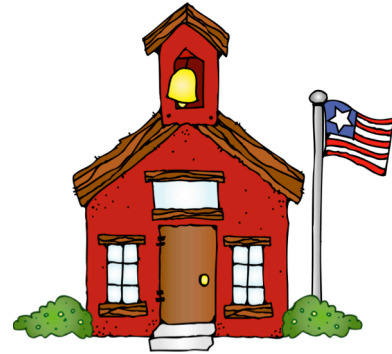


knew the gunman had a history of violence and had made a death threat after being fired. The jury awarded \$7.9 million. **Sources:** “Employee rampage kills 3; employer found negligent,” *National Law Journal*, June 28, 1999, discussing *Allman v. Dormer Tools Inc.*; *Knox v. Union Butterfield Corp.*, (consolidated), No. 97CVS1161 (Buncombe County Super. Ct., N.C., 1999); Willis, Laurie, “Jury awards millions over plant slayings,” *News & Observer*, May 5, 1999; O’Neal, Glenn, “Union Butterfield Civil Lawsuits Mirror Trend,” *Asheville Citizen-Times*, May 26, 1997.

**EFFECT:** “As a result of the shooting and legal action Union Butterfield undertook greater security, specifically installing a card access system which limits access to only current employees.... [Another attorney told me] that as a result of our case he had advised his client to obtain on premise security during and immediately following the termination of an employee who was thought to be potentially violent. This shows the new awareness of employers regarding the issues of potential threats and short-term security to minimize the opportunity for violence until things cool off. I have also talked to an architect who designs industrial facilities locally. He told me that due to the case architects are now designing facilities with limited access, and secured access to lobby and front office areas. Union Butterfield had an open reception area which was not secured in any way.” **Source:** E-mail correspondence from Thomas Ramer, attorney for Gerald Allman’s widow and Larry Cogdill, dated September 28, 2000.

## Elementary school teacher molested students

**FACTS:** 34-year-old computer teacher David Paul White sexually molested five girls between the ages of 7 and 11 at Nederland Elementary School between 1994 and 1996. In 1997, White was sentenced to five years in prison and 12 years of probation. The victims' families sued the principal, two superintendents and the Boulder Valley School District, arguing that the District knew of White's abuse from similar allegations in 1994, which resulted in White's name being placed on Colorado's confidential sex-offender list. The case settled in 1999 for \$1.25 million. **Sources:** McCullen,



Kevin, "Judge Refuses To Reduce Molester's Sentence; Prosecutor Supported Ex-Teacher's Motion To Avoid Prison Time," *Denver Rocky Mountain News*, April 13, 1999; Go, Kristen, "Victim's get \$1.25 million," *Denver Post*, March 20, 1999; George, Mary, "Girls sue district in assaults; School lax in protection, suit says," *Denver Post*, February 19, 1998; McCullen, Kevin, "Former Teacher Admits Fondling Students; Man Gets Five Years In Prison, Apologizes To Girls Branded Liars," *Denver Rocky Mountain News*, December 24, 1997; George, Mary, "Teacher guilty of sex assault; Boulder instructor fondled 2 students," *Denver Post*, November 21, 1997; McCullen, Kevin, "Girl tells of fondling by teacher," *Denver Rocky Mountain News*, November 18, 1997.

**EFFECT:** As part of the settlement, the District agreed not only to immediately investigate any future reports of sexual misconduct by staff toward students but also to appoint a committee to review the training and procedures their schools used to report complaints of sexual assault.

**Sources:** McCullen, Kevin, "'I Don't Trust Anyone Anymore,' Simple Encounters Terrify Girl, Mom Since Molestation By Teacher," *Denver Rocky Mountain News*, October 8, 2000; Ensslin, John C., "Parents Settle In Abuse Case; Boulder Valley Agrees To Cash Payment For Molestation By Teacher," *Denver Rocky Mountain News*, March 17, 1999.

## Church ignored and covered up molestation

**FACTS:** From 1981 to 1992, Reverend Rudolph Kos molested boys, age 14 or younger, at three different Dallas-area churches. Eleven victims filed suit against the priest, the Roman Catholic Diocese of Dallas and its bishop. Trial testimony revealed that the Diocese knew the priest had been sexually abusing children for years yet ignored and then tried to hide the evidence. The jury awarded \$119.6 million, \$18 million of which were punitive. In March 1998, three of the eleven victims settled for \$7.5 million. Four months later, the remaining plaintiffs and another former altar boy who had filed his case after the trial settled their claims for \$23.4 million. **Sources:** "\$119 million Texas award against church is settled," *National Law Journal*, September 3, 2001 – September 10, 2001; "Priest's defense to accept Dallas trial," *U.P.I.*, December 18, 1997; Blaney, Betsy, "Priest will face Irving charges; Kos is

suspected in 8 more cases,” *Fort-Worth Star-Telegram*, October 16, 1997; *Doe v. Kos*, No. 93-5258, 1997 North Texas Rep. LEXIS 5972 (Dallas County Ct., Tex., verdict July 1997).

**EFFECT:** As a result of the lawsuit, prosecutors pursued criminal charges against the priest. He was found guilty of aggravated sexual abuse, sexual assault and indecency and was ultimately sentenced to life in prison. **Sources:** “\$119 million Texas award against church is settled,” *National Law Journal*, September 3, 2001 – September 10, 2001; Curriden, Mark, “Power of 12: Jurors increasingly are sending loud messages of censure with megabuck verdicts,” 87 *A.B.A.J.* 36 (August 2001); Frazier, Joseph, “Plaintiffs, Catholic Church Reach Settlement Over Sex Molestations,” *Legal Intelligencer*, October 11, 2000; “Diocese OKs \$23 Million Payout In Abuse Case,” *Chicago Tribune*, July 11, 1998.

### Christian Knights of the Ku Klux Klan members burned down church

**FACTS:** In June 1995, Klan members burned down Macedonia Baptist Church, a black church in Clarendon County, South Carolina. The Southern Poverty Law Center filed suit against four Klan members, the Klan’s North Carolina parent corporation, the South Carolina chapter of the Christian Knights of the Ku Klux Klan and Horace King, the “Grand Dragon” of the South Carolina Klan. The jury verdict totaled \$37.8 million, including \$37.5 million in punitives, \$15 million of which were levied against King and \$22 million of which were assessed against the Klan’s North and South Carolina organizations. In November



1998, the punitive damages were reduced to \$21.5 million. **Sources:** “Reductions; Verdicts Reduced After Trial,” *National Law Journal*, February 22, 1999; *Macedonia Baptist Church v. Christian Knights of the Klu Klux Klan-Invisible Empire, Inc.*, 96-CP-14-217 (Clarendon County Ct. Common Pleas, S.C., verdict July 24, 1998),

[https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/macedoniavkkk\\_judgment.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/macedoniavkkk_judgment.pdf); *Macedonia Baptist Church v. Christian Knights of the Klu Klux Klan-Invisible Empire, Inc.*, 96-CP-14-217 (Clarendon County Ct. Common Pleas, S.C., second amended complaint), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/macedoniavkkk\\_2complaint.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/macedoniavkkk_2complaint.pdf)

**EFFECT:** The jury verdict put an end to the Christian Knights as a viable hate group.

**Sources:** Southern Poverty Law Center, “Macedonia v. Christian Knights of the Ku Klux Klan,” <https://www.splcenter.org/seeking-justice/case-docket/macedonia-v-christian-knights-ku-klux-klan> (viewed December 5, 2016); “Exposing And Correcting Racial Violence,” *Public Justice* 1999.



## Reckless driving by police caused fatal accident

**FACTS:** On the evening of August 19, 1997, Philadelphia police officers Constantine Stylios and Terrence Fussell raced their separate police cars through stop signs and red lights after hearing a routine request for a “wagon” over the police radio. With emergency lights and sirens activated, Stylios and Fussell eventually reached the same intersection, each driving over 45 mph, and collided. After the collision, Fussell’s car struck and killed 39-year-old Lee More Rich and his seven-month-old son. Gwenessa Moore, who saw the squad car kill her fiancé and her son, was injured but survived. A lawsuit was filed on behalf of Rich against Stylios, Fussell and the City of Philadelphia. Discovery revealed that Philadelphia police had been involved in more than 3,800 collisions between January 1, 1993 and August 19, 1997, the date of Rich’s accident. Moreover, the police department’s Safety Review Board had concluded that 61 percent of those collisions could have been prevented. **Sources:** Duffy, Shannon, P., “Police Settle Second Suit Stemming From Speeding Patrol Car Crash Deaths,” *Legal Intelligencer*, June 2, 1999; Riccardi, Michael A., “City Sued Over August Police Car Crash,” *Legal Intelligencer*, October 7, 1997; *Gillyard v. Stylios*, No. 97-6555 (E.D. Pa., filed October 6, 1997).



**EFFECT:** After a meeting with Philadelphia Police Commissioner John Timoney, the case settled for over \$1.3 million. As part of the settlement, Timoney agreed to improve the police’s response to emergency and non-emergency calls. Procedures were changed so that “[n]ew officers won’t be allowed to drive alone in squad cars until they have logged at least 60 hours behind the wheel with a veteran. A squad car on its way to an emergency must slow to 10 miles per hour when approaching a stop sign or a red light. Discipline has also been enhanced ...so that district commanders will now have the power to suspend a reckless driver for up to five days ‘on the spot.’” **Source:** Duffy, Shannon P., “Police Settle Second Suit Stemming From Speeding Patrol Car Crash Deaths,” *Legal Intelligencer*, June 2, 1999.

## Police restraints caused asphyxiation

**FACTS:** In August 1995, 25-year-old Bruce Klobuchar died after Los Angeles police bound his legs and hands together behind his back. The officers had decided to “hogtie” him when other restraint methods proved ineffective. The case settled for \$750,000. **Source:** Lait, Matt, “Controversial Police Restraint To Be Banned,” *Los Angeles Times*, July 4, 1997, <http://articles.latimes.com/1997/jul/04/local/me-9731>



**EFFECT:** “After discovery showed that dozens of people had died while, or immediately after being hog-tied, the City of Los Angeles stipulated to an injunction to ban hog-tying...the ban

on hog-tying appears to have reduced deaths from positional asphyxia.” **Source:** E-mail correspondence from Carol Watson, attorney for Klobuchar’s family, dated October 3, 2000, regarding *Klobuchar v. City of Los Angeles*, No. BC-144490 (Los Angeles County Super. Ct., Cal., filed February 15, 1996).

## School athletes committed sexual assault during hazing ritual

**FACTS:** In March 1997, a 15-year-old freshman baseball player was raped with a broomstick by three teammates at Rancho Bernardo High School in California. The three students were expelled and sentenced to a minimum of 30 days in Juvenile Hall, weekend work projects and a one-year suspension of driving privileges. The victim argued that the Poway Unified School District knew about the hazing “tradition,” where varsity team members would intimidate freshmen by threatening to rape them and simulating rape. After months of mediation, the claim settled for \$675,000. **Sources:** *Doe v. Poway Unified School District*, Confidential Report for Attorneys, No. 9833 (settlement September 1997).<sup>43</sup> See also, Cearley, Anna, “Poway settlement in locker-room rape totals \$675,000,” *San Diego Union-Tribune*, August 4, 1998.

**EFFECT:** The Poway Unified School District instituted an anti-hazing policy and required coaches and vice principals to undergo yearly training on the topic. In addition, the “local California Interscholastic Federation office, which sets eligibility guidelines for high school sports programs, added an anti-hazing provision to its policy book.” **Source:** Kucher, Karen, “Hazing not ‘just fun’ anymore; Schools enact strict policies on pranks,” *San Diego Union-Tribune*, October 1, 2000.

## Officer assaulted and hid identity from protestor

**FACTS:** On November 15, 1991, 33-year-old Peter Mackler was beaten by Los Angeles Police Department (LAPD) Officer David Peck while attending a gay rights demonstration. As the protest was breaking up, police had begun pushing activists, prompting Mackler to try to get the badge number of the policeman who was shoving him. Officer Peck struck him in the face with a baton, injuring his eye, and knocked him to the ground. Mackler filed a lawsuit against the City of Los Angeles, its Chief of Police and Officer Peck; the case settled in February 1997 for \$87,000. **Sources:** “Brutality Claim Settled; City To Pay Protesters,” *Daily News of Los Angeles*, August 6, 1997; “L.A. Pays Gay Man \$87,000,” *Seattle Times*, February 10, 1997; *Mackler v. City of Los Angeles*, No. BC066121 (Los Angeles Super. Ct., Cal., settlement February 6, 1997).



**EFFECT:** As part of the settlement, the LAPD was “required to issue a training bulletin instructing officers to provide their name and badge number upon request when physically able

to do so” and to refrain from retaliating against those who asked about their identity. **Sources:** Boxall, Bettina, “City Settles Police Brutality Suit Over Incident At Gay Rights Protest,” *Los Angeles Times*, February 7, 1997; Hartlaub, Peter, “Police Lawsuit,” *City News Service*, February 6, 1997; “Anti-gay police-brutality suit settled,” *U.P.I.*, February 6, 1997.

## Elementary school teacher sexually assaulted students

**FACTS:** From 1984 to 1993, a fourth grade teacher in California molested young girls, ages 7 to 12. Molestations involved touching the victims’ breast and vaginal areas both inside and outside their clothing and masturbation by the teacher while the children sat on his lap. One episode included attempted rape and oral copulation. The victims’ parents sued the school district for failing to investigate and follow up earlier reports of molestation by the teacher. The case settled for over \$1.9 million. **Source:** “Female Students Molested by Teacher,” 1996 Jury Verdicts LEXIS 63031, June 19, 2002, citing *Sojourner T .v. Confidential School District*, No. S97-06-08 (U.S. Dist. Ct., Cal., settlement July 1996).

**EFFECT:** As part of the settlement, the District “agreed to conduct district-wide training regarding sexual harassment and abuse, and to revise policies and procedures on these issues.” **Source:** “Female Students Molested by Teacher,” 1996 Jury Verdicts LEXIS 63031, June 19, 2002, citing *Sojourner T .v. Confidential School District*, No. S97-06-08 (U.S. Dist. Ct., Cal., settlement July 1996).

## Inadequate parking lot security led to rape and murder

**FACTS:** On September 7, 1990, 37-year-old Dorothy McClung was abducted at gunpoint by Joseph Harper from a Wal-Mart parking lot in the Delta Square Shopping Center in Memphis, Tennessee. Harper then raped and forced McClung into the trunk of her car where she suffocated. Her husband, Roger, sued Wal-Mart and Delta Square for negligence, producing police records showing that the lot and its immediate vicinity had been the site of almost 164 crimes from May 1989 through September 1990, when his wife was abducted. The Tennessee Supreme Court ruled that businesses had a duty to take reasonable steps to protect their customers from foreseeable criminal acts. **Source:** *McClung v. Delta Square Limited Partnership et al.*, 937 S.W.2d 891 (1996).



**EFFECT:** According to McClung’s attorney, “Since *McClung*, I’ve seen dramatic changes in safety in every shopping mall, center and mom and pop outfit in the Tennessee area. Exposure to lawsuits has changed their ways.” **Sources:** Telephone interview with Bruce S. Kramer, attorney for Roger McClung, August 2, 2000. *See also*, Lee, Louise, “Parking lots open to crime; Retailers ignore threat at their peril,” *Houston Chronicle*, April 27, 1997; Robertshaw,

Nicky, "State Supreme Court ruling puts added responsibility on businesses for safety," *Memphis Business Journal*, Vol. 18, No. 36, January 13, 1997.

## Police failed to safeguard witness

**FACTS:** On November 2, 1983, 18-year-old Demetria Wallace was shot to death days before she was scheduled to testify against a murder suspect. According to discovery documents, Los Angeles Police Detective Donald Richards knew the suspect had been linked to two other murders and had been intimidating witnesses but never informed Wallace. Even after Wallace received an anonymous death threat, Richards failed to mention any danger, assuring her that she was safe. On appeal, the court agreed that Richards had lulled Wallace into a false sense of security. The wrongful death case ultimately settled for \$735,000. **Sources:** "Safeguarding Witnesses of Crimes," *Trial Lawyers Doing Public Justice 1994*; *Wallace v. City of Los Angeles et al.*, 12 Cal. App. 4th 1385 (1993).

**EFFECT:** "The Wallace case and a similar lawsuit led the Police Department to issue a bulletin last year advising officers to properly warn witnesses of potential threats to their safety." **Sources:** Rainey, James, "City To Pay \$1.2 Million To Settle Police, Fire Dept. Cases," *Los Angeles Times*, March 30, 1994, [http://articles.latimes.com/1994-03-30/local/me-39994\\_1\\_police-department](http://articles.latimes.com/1994-03-30/local/me-39994_1_police-department). See also, "Safeguarding Witnesses of Crimes," *Trial Lawyers Doing Public Justice 1994*.

## Invisible Empire Klansmen threw rocks and bottles at protesters

**FACTS:** In January 1987, an interracial group marched to celebrate Dr. Martin Luther King's legacy in predominantly white Forsyth County, Georgia. Klansmen threw rocks and bottles at the 57 civil rights activists. The Southern Poverty Law Center filed suit in federal court against two Klan organizations, including the Invisible Empire, and the 11 Klan members responsible for the attack. In October 1988, a jury issued a verdict of \$1 million. **Sources:** Rankin, Bill, "Judge rules KKK faction must disband," *Atlanta Journal and Constitution*, May 20, 1993; *McKinney v. Southern White Knights*, 1:87-565-CAM (N.D. Ga., complaint filed March 24, 1987),

[https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/mckinneyvsouthern\\_complaint.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/mckinneyvsouthern_complaint.pdf)



**EFFECT:** In 1994, the "Invisible Empire leader was forced to pay damages and disband his organization. The KKK office equipment was given to the NAACP." **Sources:** Morlin, Bill, "Dee's Center has Compiled Extensive Resume; Forced KKK To Turn Its Headquarters Over To Lynching Victim's Mother," *Spokane Review*, January 26, 1999. See also, Southern Poverty Law Center, "McKinney v. Southern White Knights,"

<https://www.splcenter.org/seeking-justice/case-docket/mckinney-v-southern-white-knights>  
(viewed December 5, 2016).

## White Aryan Resistance members killed Ethiopian student

**FACTS:** In 1988, White Aryan Resistance (WAR) founders Tom Metzger and his son John sent a recruiter from WAR to Portland, Oregon to organize a skinhead gang, later known as East Side White Pride. On November 13, 1988, three gang members killed Mulugeta Seraw, a 26-year-old Ethiopian student, as he approached his front door on his way home from work. Attorneys from the Southern Poverty Law Center and the Anti-Defamation League of B'nai B'rith filed suit against the Metzgers, the White Aryan Resistance and two skinheads, charging them with wrongful death and conspiracy to violate Seraw's civil rights. Evidence showed that the skinhead gang received WAR propaganda, which targeted blacks, Jews and other "enemies" of the white race. More importantly, a tape produced at trial contained a telephone message from Metzger saying that it may have been the skinheads' "civic duty" to kill Seraw. In October 1990, a jury awarded \$12.5 million. **Sources:** "Verdicts Revisited: How Time Does Tell," *National Law Journal*, September 26, 1994, citing *Berhanu v. Metzger*, A8911-07007 (Multnomah County Cir. Ct., Ore., verdict October 1990); "Battling Racist Violence," *Public Justice* (August 1991). *See also*, Southern Poverty Law Center, "Berhanu v. Metzger," <https://www.splcenter.org/seeking-justice/case-docket/berhanu-v-metzger> (viewed December 5, 2016).

**EFFECT:** The White Aryan Resistance was shut down. Moreover, "[a]fter the trial, the plaintiffs got a court order enabling them to monitor all mail sent to Tom Metzger and WAR and claim 50 percent of all money enclosed.... And Mr. Metzger, because of the monitoring, has become a pariah in the white supremacist movement." **Sources:** "Verdicts Revisited: How Time Does Tell," *National Law Journal*, September 26, 1994. *See also*, "Battling Racist Violence," *Public Justice* (August 1991).

## Agency covered up officer's wrongdoing

**FACTS:** On August 30, 1984, 19-year-old Kelly Rastello died after his motorcycle was hit by Torrance Police Sergeant Rollo Green's truck. The off-duty officer had been driving in the opposite direction of traffic and made an illegal left turn, cutting directly in front of Rastello's motorcycle. Although Green reeked of alcohol and admitted to having "a few beers" and two bourbons, he was never subjected to field sobriety tests or a blood alcohol test, nor was he ever arrested or charged. Three weeks later, the Torrance Police Department (TPD) issued a report, holding Rastello responsible for his own death. Rastello's parents filed a wrongful death suit against Sgt. Green and a civil rights action against six police officers, Chief of Police Donald Nash and the city of Torrance. At trial, it was established that Green had been drinking for seven hours before the accident and that the policemen on the scene made a concerted effort to protect him. Evidence also showed that Green's drinking problem was common knowledge within the department and that the TPD typically condoned such misbehavior. The jury

awarded \$380,000 against Sgt. Green and over \$5.5 million against the city, Chief Nash and the officers involved in the cover-up. **Source:** *Rastello v. City of Torrance*, No. SWC74882 (Los Angeles County Super. Ct., verdict September 1989).

**EFFECT:** “[T]he policy of allowing Torrance officers to investigate accidents involving their officers was changed and an independent agency was brought in.” **Source:** E-mail correspondence from Brian Panish, attorney for Rastello’s parents, dated September 15, 2000.

### **Invisible Empire Klan members clashed with civil rights protesters**

**FACTS:** On May 26, 1979, over 100 members of the Invisible Empire Klan – armed with bats, ax handles and guns – attacked and injured civil rights marchers in Decatur, Alabama. After the FBI dropped its investigation of the Klan, citing lack of evidence to support conspiracy charges, the Southern Poverty Law Center initiated a lawsuit on the victims’ behalf in 1980. **Sources:** Southern Poverty Law Center, “Brown v. Invisible Empire, Knights of the Ku Klux Klan,” <https://www.splcenter.org/seeking-justice/case-docket/brown-v-invisible-empire-knights-ku-klux-klan> (viewed December 5, 2016); “Klansmen To Get Race Relations Course,” *New York Times News Service*, July 25, 1989, [http://articles.chicagotribune.com/1989-07-25/news/8902200053\\_1\\_ku-klux-klan-klan-members-marchers](http://articles.chicagotribune.com/1989-07-25/news/8902200053_1_ku-klux-klan-klan-members-marchers)

**EFFECT:** In 1990, a settlement was reached with the Klansmen, requiring them to pay damages, perform community service and halt all white supremacist activity. They were also required to attend a course on race relations and prejudice; the course was taught by the leaders of the civil rights group that the Klansmen had attacked in 1979. In addition, discovery evidence convinced the FBI to re-open the criminal case against the Klansmen. Nine Klansmen were ultimately convicted of criminal charges related to the 1979 assault. **Sources:** Southern Poverty Law Center, “Brown v. Invisible Empire, Knights of the Ku Klux Klan,” <https://www.splcenter.org/seeking-justice/case-docket/brown-v-invisible-empire-knights-ku-klux-klan> (viewed December 5, 2016); “Klansmen To Get Race Relations Course,” *New York Times News Service*, July 25, 1989, [http://articles.chicagotribune.com/1989-07-25/news/8902200053\\_1\\_ku-klux-klan-klan-members-marchers](http://articles.chicagotribune.com/1989-07-25/news/8902200053_1_ku-klux-klan-klan-members-marchers)

### **United Klans of America lynched African-American**

**FACTS:** On March 20, 1981, 19-year-old Michael Donald was abducted, beaten, stabbed and hanged by James “Tiger” Knowles and Henry Hayes. Knowles and Hayes killed Donald after attending a United Klans of America (UKA) meeting two days earlier that focused on the trial of a black man who allegedly shot and killed a white policeman. Faced with the possibility that the predominantly black jury might find the man innocent, Bennie Jack Hayes, the highest-ranking UKA officer in southern Alabama and Henry Hayes’





father, said that if a black man could get away with murdering a white man, the same should be true if the roles were reversed. In 1984, Knowles and Hayes were found guilty of Donald's murder. The Southern Poverty Law Center then brought a civil suit on behalf of the victim's mother, Beulah Mae Donald, against the Klansmen involved in the lynching as well as the UKA, seeking to hold the organization accountable for the actions of its members. At trial, former Klan members testified about the Klan's violent history, with one witness stating that UKA President Robert Shelton had bragged about his role in the 1961 attack on Freedom Riders at a Birmingham bus station. UKA newsletters also revealed that the organization targeted blacks. The jury awarded \$7 million. **Sources:** Southern Poverty Law Center, "Donald v. United Klans of America," <https://www.splcenter.org/seeking-justice/case-docket/donald-v-united-klans-america> (viewed December 5, 2016); "Battling The Corporate Clan," *Public Justice* (July 1987); *Donald v. United Klans of America, Inc.*, No. 84-0725-AH Civ. (S.D. Ala., complaint filed August 19, 1985), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/case/beulahvunklan\\_complaint.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/case/beulahvunklan_complaint.pdf)

**EFFECT:** "The verdict marked the end of the United Klans, the same group that had beaten the Freedom Riders in 1961, murdered civil rights worker Viola Liuzzo in 1965, and bombed Birmingham's 16th Street Baptist Church in 1963." In addition, "[t]he group was forced to turn over its headquarters to Beulah Mae Donald, and two additional Klansmen were convicted of criminal charges." **Sources:** Southern Poverty Law Center, "Donald v. United Klans of America," <https://www.splcenter.org/seeking-justice/case-docket/donald-v-united-klans-america> (viewed December 5, 2016). *See also*, Manuel, Marlon, "Neo-Nazis next target of lawyer who broke Klan," *Cox News Service*, March 4, 1999; "Battling The Corporate Clan," *Public Justice* (July 1987).

## **Ku Klux Klan members threatened Vietnamese fishermen and destroyed their property**

**FACTS:** On March 15, 1981, fishermen associated with the Ku Klux Klan (KKK) went on a "boat ride" in Galveston Bay, Texas in an attempt to destroy the fishing businesses of Vietnamese immigrants. A boat equipped with a small cannon and a figure hung in effigy transported the KKK fishermen, who wore Klan robes and hoods and were visibly armed. During the "ride," the armed Klansmen burned the immigrants' boats and threatened their lives, at one point stopping at the dock of a Vietnamese fisherman and gesturing to his house. The Southern Poverty Law Center filed suit against Louis Beam, Grand Dragon of the Texas KKK, and the KKK, among others, alleging several violations, including assault and intentional infliction of emotional distress. **Source:** *Vietnamese Fishermen's Assn. v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981).

**EFFECT:** "The federal court issued an injunction that stopped the terror campaign on July 15, 1981. The case also spurred a ruling that ended the Klan's paramilitary training activities."

**Sources:** Southern Poverty Law Center, "A Look Back: SPLC Case Brought Justice to Vietnamese Fishermen Terrorized by Klan," July 15, 2011, <https://www.splcenter.org/news/2011/07/15/look-back-splc-case-brought-justice-vietnamese->



[fishermen-terrorized-klan](#). See also, Morlin, Bill, “Dee’s Center Has Compiled Extensive Resume; Forced KKK To Turn Its Headquarters Over To Lynching Victim’s Mother,” *Spokesman-Review*, January 26, 1999; *Vietnamese Fishermen’s Assn. v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981).

## NOTES

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<sup>1</sup> See, e.g., Charles W. Wolfram, “The Constitutional History of the Seventh Amendment,” 57 *Minn. L. Rev.* 639 (1973), <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2293&context=facpub>

<sup>2</sup> National Center for State Courts, *The Landscape of Civil Litigation in State Courts* (November 2015), <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>

<sup>3</sup> See Center for Justice & Democracy, *Briefing Book: Tort Litigation By The Numbers*, January 11, 2016, <https://centerjd.org/content/cjd-releases-new-briefing-book-tort-litigation-numbers>

<sup>4</sup> See, e.g., Joe Palazzolo, “Reversing the Decline of the Civil Jury Trial,” *Wall Street Journal*, July 28, 2015, <http://blogs.wsj.com/law/2015/07/28/reversing-the-decline-of-the-civil-jury-trial>; Patricia Lee Refo, American Bar Association Litigation Section Chair, “Opening Statement: The Vanishing Trial,” *Litigation Online* (Winter 2004), [http://www.americanbar.org/content/dam/aba/publishing/litigation\\_journal/04winter\\_openingstatement\\_authcheck\\_dam.pdf](http://www.americanbar.org/content/dam/aba/publishing/litigation_journal/04winter_openingstatement_authcheck_dam.pdf)

<sup>5</sup> Testimony of Neil Vidmar, Russell M. Robinson, II Professor of Law, Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, “Hearing on Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 21 (citations omitted), <http://www.help.senate.gov/imo/media/doc/vidmar.pdf>

<sup>6</sup> *First Class Relief: How Class Actions Benefit Those Who Are Injured, Defrauded and Violated* (October 2014); <https://centerjd.org/content/first-class-relief-how-class-actions-benefit-those-who-are-injured-defrauded-and-violated>

<sup>7</sup> See *Hot Coffee*, <http://www.hotcoffeethemovie.com>

<sup>8</sup> National Center for State Courts, *The Landscape of Civil Litigation in State Courts* (November 2015), <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>

<sup>9</sup> Valerie P. Hans and Neil Vidmar, “The Verdict on Juries,” 91 *Judicature* 226, 227 (March-April 2008), <http://scholarship.law.cornell.edu/facpub/297>

<sup>10</sup> Robert Jablon and Andrew Dalton, “\$14M to beaten Giants fan returns security focus,” *Associated Press*, July 9, 2014, <http://www.sandiegouniontribune.com/sdut-14m-to-beaten-giants-fan-returns-security-focus-2014jul09-story.html>

<sup>11</sup> Letter from Thomas G. Girardi to Joanne Doroshow, dated May 25, 2016 (on file with CJ&D).

<sup>12</sup> Matt O’Connor and William Grady, “Victim of hate crime wins \$1.75 million,” *Chicago Tribune*, April 28, 1992, [http://articles.chicagotribune.com/1992-04-28/news/9202070713\\_1\\_compensatory-damages-mary-lampkin-school-bus-driver](http://articles.chicagotribune.com/1992-04-28/news/9202070713_1_compensatory-damages-mary-lampkin-school-bus-driver)

<sup>13</sup> James Rainey, “Torrance Police To Pay \$82,500 In Punitive Damages,” *Los Angeles Times*, September 14, 1989, [http://articles.latimes.com/1989-09-14/local/me-320\\_1\\_torrance-police-department](http://articles.latimes.com/1989-09-14/local/me-320_1_torrance-police-department)

<sup>14</sup> Steven Brill, “America’s Most Admired Lawbreaker,” *Huffington Post/Highline* (2015), <http://highline.huffingtonpost.com/miracleindustry/americas-most-admired-lawbreaker>

<sup>15</sup> Alex Berenson, “Lilly Considers \$1 Billion Fine to Settle Case,” *New York Times*, January 31, 2008, <http://www.nytimes.com/2008/01/31/business/31drug.html>

<sup>16</sup> Alex Berenson, “Eli Lilly Said to Play Down Risk of Top Pill,” *New York Times*, December 17, 2006, <http://www.nytimes.com/2006/12/17/business/17drug.html>

<sup>17</sup> Jim Morris, “Toxic Secrecy,” *Houston Chronicle*, June 28, 1998.

<sup>18</sup> Steven Lubet, “After The Firestone Debacle, Ya Gotta Love Lawyers,” *Chicago Tribune*, October 6, 2000, [http://articles.chicagotribune.com/2000-10-06/news/0010060362\\_1\\_mountaineer-suvs-ford-and-firestone-firestone-tires](http://articles.chicagotribune.com/2000-10-06/news/0010060362_1_mountaineer-suvs-ford-and-firestone-firestone-tires)

<sup>19</sup> Bill Vlasic, “A Fatally Flawed Switch, and a Burdened G.M. Engineer,” *New York Times*, November 13, 2014, <http://www.nytimes.com/2014/11/14/business/a-fatally-flawed-switch-and-a-burdened-engineer.html>

<sup>20</sup> Max Blau, “No Accident: Inside GM’s deadly ignition switch scandal,” *Atlanta Magazine* (January 2016), <http://www.atlantamagazine.com/great-reads/no-accident-inside-gms-deadly-ignition-switch-scandal>

<sup>21</sup> David Shepardson and Melissa Burden, “Latest GM recalls bring total to nearly 30M vehicles,” *Detroit News*, October 3, 2014, <http://www.detroitnews.com/story/business/autos/general-motors/2014/10/03/general-motors-recall/16677677>

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- <sup>22</sup> Drew Harwell, “Why General Motors’ \$900 million fine for a deadly defect is just a slap on the wrist,” *Washington Post*, September 17, 2015, <https://www.washingtonpost.com/news/business/wp/2015/09/17/why-general-motors-900-million-fine-for-a-deadly-defect-is-just-a-slap-on-the-wrist/>
- <sup>23</sup> Barry Meier and Hilary Stout, “Victims of G.M. Deadly Defect Fall Through Legal Cracks,” *New York Times*, December 29, 2014, <http://www.nytimes.com/2014/12/30/business/victims-of-gm-deadly-defect-fall-through-legal-cracks.html>
- <sup>24</sup> Testimony of Elihu Inselbuch, U.S. House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, February 4, 2015, <https://judiciary.house.gov/wp-content/uploads/2016/02/Inselbuch-FACT-Act-Testimony-February-2015.pdf>
- <sup>25</sup> Paul Brodeur, *Outrageous Misconduct; The Asbestos Industry on Trial*. New York: Pantheon Books, 1985 at 22.
- <sup>26</sup> Environmental Working Group, *Asbestos: Think Again: America’s Asbestos Epidemic*, March 4, 2004, <http://www.ewg.org/research/asbestos-think-again/americas-asbestos-epidemic>
- <sup>27</sup> Statement of David Ozonoff, M.D., M.P.H., Professor, Boston University School of Public Health, in Robert Proctor, *Cancer Wars: How Politics Shapes What We Know and Don’t Know About Cancer*. New York: Basic Books, 1995, note 117. See also, Dan Fagin, Marianne Lavelle and the Center for Public Integrity, *Toxic Deception: How the Chemical Industry Manipulates Science, Bends the Law, and Endangers Your Health*. Secaucus, NJ: Birch Lane Press, 1996 at 68-69.
- <sup>28</sup> “Daughter Of BP Victims Fights And Wins,” *CBS News*, January 9, 2007, <http://www.cbsnews.com/news/daughter-of-bp-victims-fights-and-wins>
- <sup>29</sup> BP Texas City explosion settlement terms, [http://www.texascityexplosion.com/site/terms\\_of\\_settlement](http://www.texascityexplosion.com/site/terms_of_settlement)
- <sup>30</sup> Nathan Weber, “Product Liability: The Corporate Response,” Research Report #893, The Conference Board (1987).
- <sup>31</sup> *Wyeth v. Levine*, 129 S.Ct. 1187 (2009).
- <sup>32</sup> The trial judge found SEPTA guilty of contempt of court and obstruction of justice for withholding documents during discovery and fined the agency \$1 million. After SEPTA agreed to fix all its escalators, as well as examine its accident-investigation and claims-handling procedures, the sanction was reduced to \$100,000. Claudia N. Ginanni, “Panel Finds Failures in SEPTA’s Investigation, Claims Handling,” *Legal Intelligencer*, April 28, 2000; “SEPTA fined \$1 million for contempt of court,” *Associated Press*, December 20, 1999.
- <sup>33</sup> Although Esenjay failed to honor the agreement after the company was sold, the new owner ultimately reinstated the agreement after a second lawsuit. Bob Van Voris, “Trend Shows Lawyers Swapping Damages for Safety Changes,” *Legal Intelligencer*, September 17, 1999; “Company and Injured Worker to Discuss Safety Plan,” *PR Newswire*, April 20, 1998.
- <sup>34</sup> The Kransco-CPSC safety alert warned adults and teenagers not to use the Slip ‘N Slide because of the threat of serious injury. “WHAM-O Backyard Water Slides Are Dangerous For Adults And Teenagers,” CPSC Release #93-076, May 27, 1993.
- <sup>35</sup> In 1993, a jury awarded \$3.3 million in compensatory damages and \$3.3 million in punitive damages. *Hunt v. Kubota Corp.*, No. CJ-91-268, 1993 WL 457015 (Garfield County Dist. Ct., Okla., verdict April 27, 1993). That same year, Kubota settled two other wrongful death cases caused by the absence of a rollover protection system. One settled for \$10 million. *Spivey v. Kubota Tractor Corp.*, No. CV-92-010, 1993 Nat. Jury Verdict Review LEXIS 570 (Greene County Cir. Ct., verdict February 1993). The other settled for \$4.5 million. Michael McNutt, “Family Awarded \$6.6 Million in Death; Tractor Firm Loses Roll-Bar Argument,” *Daily Oklahoman*, April 29, 1993, <http://newsok.com/article/2428962>
- <sup>36</sup> Maxwell J. Mehlman and Dale A. Nance, *Medical Injustice: The Case Against Health Courts* (2007) at 48, citing David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It’s the Incentives, Stupid,” 59 *Vand. L. Rev.* 1085, 1131 (2006).
- <sup>37</sup> David A. Hyman and Charles Silver, “The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem or Part of the Solution?” 90 *Cornell L. Rev.* 893, 917 (2005).
- <sup>38</sup> Joanna C. Schwartz, “A Dose of Reality for Medical Malpractice Reform,” 88 *NYU L. Rev.* 1224, 1231-32 (October 2013), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2104964](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2104964)
- <sup>39</sup> *Id.* at 1230.
- <sup>40</sup> Maxwell J. Mehlman and Dale A. Nance, *Medical Injustice: The Case Against Health Courts* (2007) at 47, citing Paul C. Weiler, Joseph P. Newhouse and Howard H. Hiatt, *A Measure Of Malpractice: Medical Injury*,

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*Malpractice Litigation, and Patient Compensation*. Cambridge, MA: Harvard University Press, 1993 at 133.

<sup>41</sup> George J. Annas, J.D., M.P.H., “The Patient’s Right to Safety – Improving the Quality of Care through Litigation against Hospitals,” *New England Journal of Medicine*, May 11, 2006.

<sup>42</sup> Bernard S. Black and Zenon Zabinski, “The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform,” Northwestern University Law & Economics Research Paper No. 13-09 (July 2014), <http://ssrn.com/abstract=2161362>

<sup>43</sup> No formal complaint was filed – the victim’s attorney wrote the district offering to settle. *Doe v. Poway Unified School District*, Confidential Report for Attorneys, No. 9833 (settlement, September 1997).