

# Nuclear Fizzle



## **How *Jury Grievance Reports* Whitewash Corporate Misconduct and Dehumanize Victims**

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"Fighting to protect the right to jury trial and an independent judiciary for all Americans."

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# Nuclear Fizzle: How *Jury Grievance Reports* Whitewash Corporate Misconduct and Dehumanize Victims

## INTRODUCTION AND SUMMARY

The civil jury system is one of the most popular and important democratic institutions in America. No matter one's political persuasion, civil juries have always been considered "an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary," as the late conservative U.S. Supreme Court Chief Justice William Rehnquist once wrote.<sup>1</sup>

Jurors, who are members of the community randomly chosen to sit in judgment of others, deliberate carefully, render verdicts that "are generally moderate and comparable to judge's" and then fade anonymously back into the community.<sup>2</sup> They are neither partisan nor advocates of particular interests, representing a much-needed counterweight to organized moneyed interests that dominate the political branches of our government. But since the advent of the "tort reform" movement in the 1980s, protectors of the civil jury system have struggled to keep the system insulated from political attacks and reprisals by special corporate interests.

This study is a comprehensive and meticulously researched effort to respond to recent jury attacks by two corporate groups that represent the interests of corporate defendants — the U.S. Chamber of Commerce ("Chamber")<sup>3</sup> and the American Tort Reform Association (ATRA).<sup>4</sup> In two recent reports, these lobby groups criticize jury verdicts rendered against their corporate members, with misleading or demeaning characterizations based on disproven information and in ways that suit very specific political goals.<sup>5</sup> The reports themselves are not identical but the authors are linked<sup>6</sup> and the language used to attack verdicts is similar. According to these groups, large verdicts are "nuclear."

"Nuclear verdicts" is public relations terminology that the insurance industry began using in 2019 to justify its rate hikes in a few commercial lines.<sup>7</sup> It's essentially the same trope corporate groups have periodically used since the 1980s and 1990s to criticize what it used to call the "out of control" or "runaway" jury.<sup>8</sup>

What's always been true about large verdicts is that, irrespective of the facts that led to them, most are never paid. Indeed, verdicts are almost always appealed and often substantially reduced by trial judges or appellate courts, which is how our judicial system was set up to work. And if a loss is insured, any payout is often dramatically reduced by the insurance policy limits.<sup>9</sup>

As researchers put it, “[J]ury verdicts that attract popular attention are not at all representative and often are slashed dramatically by judicial oversight or through other means,” “the larger the verdict, the more likely and larger the haircut” and generally injured people are undercompensated.<sup>10</sup>

Yet through reports like those published by the Chamber and ATRA, which whitewash corporate misconduct, dehumanize victims and only reference post-verdict activity when politically useful to them, the public is given the false impression that an undeserving person received a windfall, an innocent corporation was financially ruined, or the system failed and needs to be changed. We believe it is critical to counter such false narratives about the civil jury system.

The Chamber and ATRA reports make many broad allegations about “nuclear verdicts,” throwing around many statistics but providing no back-up data or anything that can be fact-checked. However, they cite 45 actual verdicts, which can be checked. The groups buried most case names in endnotes (as the Chamber does) or hyperlinks (as ATRA does), but we found all of them. We wanted to know what the jury heard and why they reached the verdict they did. Each is described below.

Some general points about what we discovered are as follows:

- **Erasing Evidence Heard by Juries.** Of the 45 cases described in these reports, in no situation did these groups provide an accurate description of the evidence relied upon by the jury. That evidence would involve often egregious corporate misconduct and devastating human casualties. Sometimes the groups portrayed misconduct as a minor incident when it was actually catastrophic.<sup>11</sup> Other times, plaintiffs/victims are described in terms meant to belittle them or their experience.<sup>12</sup>
- **Relitigating Cases They Lost.** To the extent the groups provide any actual case descriptions, they include evidence that was disproven in court,<sup>13</sup> an entire defense that the jury did not believe<sup>14</sup> or extraneous issues that have nothing to do with evidence presented (but line up with other political goals),<sup>15</sup> When a verdict is upheld on appeal, the views of a lone dissenter may be highlighted while the majority opinion is ignored.<sup>16</sup>
- **Inconsistencies Reveal a Transparent Political Agenda.** Cases may be cited more than once in the same report to represent opposite contentions. While this may seem nonsensical, it actually illustrates the transparent political nature of these reports. For example, sometimes verdicts involving the same corporate misconduct and harm are criticized because they were allowed to stand<sup>17</sup> while others are criticized because they were overturned.<sup>18</sup> An original verdict size may be cited to point out its too-high “nuclear” nature,<sup>19</sup> with no mention of the verdict’s reduction since that better fits with their contention that a law must be changed.<sup>20</sup> Yet in another paragraph, the fact that the verdict was reduced is the entire point of the example, and evidence that we must change an entirely *different* law.<sup>21</sup> As the saying goes, you can’t win for losing.

## THE STATE OF THE CIVIL JURY IN AMERICA

Although corporate special interest groups like the Chamber and ATRA have been attacking the civil jury system for decades, thus far the system has largely withstood the worst of the assaults. In the United States, the jury’s roots are deep.<sup>22</sup> Yet there is no question that the civil jury system is limping along.

This report does not focus on data but rather on the shameful treatment and mockery of people — those who go to court and the jurors who hear their cases. However, there are a few quick facts and numbers about the civil jury today that are important to keep in mind.

- With all the complaining these groups do about juries, the fact is that juries resolve a tiny percentage of tort cases. In 2020, rates ranged from 0.0 to 1.59 percent of state tort cases.<sup>23</sup> In 2021, the range was 0.0 to 1.79 percent.<sup>24</sup> This rate has remained incredibly low for the past decade.<sup>25</sup> Civil jury researchers have even written that the civil jury has already been “nearly eradicated” in this country.<sup>26</sup> There are a number of reasons for this, including pressures to reach settlements, “tort reforms” like damages caps, which take power and authority away from juries, and the spread of forced arbitration clauses found in many contracts today.<sup>27</sup> Such clauses prevent disputes from being resolved in court and force them into private rigged systems.
- The term “nuclear verdict” has zero empirical basis. The groups who use the term simply declared its existence by arbitrarily defining verdicts of \$10 million or more as “nuclear.”<sup>28</sup> Given the horrific nature of these cases, the type and degree of misconduct and injuries and economic and medical inflation, it may be no surprise that such verdicts are increasing. But is it even true?

In describing its methodology, the Chamber uses every opportunity to skew its data in one direction — high. First, to be clear, there exists no nationwide scientific database of jury verdicts. The Chamber’s verdict database is largely pulled from self- or media-reported cases, which skew high.<sup>29</sup> To slant the numbers even higher, the Chamber consistently calculates “means” or averages (downplaying “medians,” which are substantially lower<sup>30</sup>), which is inappropriate to determine jury trends because “means” are skewed by outliers.<sup>31</sup> And to skew the numbers even higher, these calculations do not take into account “0” dollar verdicts where juries award nothing and the case is resolved in favor of the defendant.<sup>32</sup> Historical data show that defendants win half the time.<sup>33</sup>

- These groups may argue that an increasing number of large verdicts may reverberate through the system and lead to higher verdicts overall. Yet when the trucking industry examined the far more typical case of verdicts “less than \$1 million,” it found that those cases have been decreasing since 2010, with an “insurance industry professional” telling them that there has been “a recent decline in the incident per truck rate.”<sup>34</sup> As one publication explained, “[V]erdicts and settlements of any kind are rare. Additionally, the price tag of the average verdict under \$1 million is trending downward.”<sup>35</sup>
- Insurance industry data clearly fail to back up the false and alarmist characterizations of the civil justice system presented by the Chamber and ATRA. Indeed, the insurance industry’s own data show that adjusted paid claims in commercial lines have been steady for two decades and then dropped during and following the pandemic. Yet premiums steadily rose as business policyholders have been price-gouged without restraint.<sup>36</sup>

## HOW CORPORATIONS CAN REDUCE LAWSUITS AND VERDICT SIZE

Deterrence is a well-known function of the tort system. It is accepted by legal scholars<sup>37</sup> and conservative economic theorists alike, who have written that the tort system's economic function is deterrence of non-cost-justified accidents.<sup>38</sup> In other words, the tort system creates economic incentives for "allocation of resources to safety."<sup>39</sup>

On the other hand, ATRA and the Chamber relentlessly mock juries for possibly considering this function in determining how much harm a defendant's misconduct has caused. They cynically call some awards "send-a-message" verdicts yet present no evidence that this important function was even on the minds of jurors.<sup>40</sup> But when it comes to the verdict in a case like *Madere v. Schnitzer Southeast, LLC*,<sup>41</sup> one can understand how it might have been precisely on their minds.

Five family members, including two children, were horrifically killed in a truck crash after a company put a driver on the road with a long history of unsafe driving that included four serious prior wrecks and numerous violations.<sup>42</sup> The company had already settled a lawsuit after this driver's near fatal crash three years earlier, then kept him driving while taking no corrective training or safety steps.<sup>43</sup> The original \$280 million verdict (later cut due to state damages caps) shows that sometimes lawsuits, which are extremely rare following truck crashes (less than 2% of trucking insurance claims turn into lawsuits<sup>44</sup>), and large jury verdicts, which are rarer still, are necessary to get a bad company's attention and sometimes to alert an entire industry.

For any corporation seeking to reduce verdict size, the trucking industry and its attorneys have offered some important insights, which they have gathered following horrific truck crashes like the one that killed Judy Madere, her twin sister, her daughter and her two young grandchildren: Large verdicts are entirely of the industry's own making. A recent report on large verdicts from the industry's research arm, the American Transportation Research Institute (ATRI), made the obvious point: "[C]rash avoidance is everything and that strictly adhering to safety and operational policies is essential to staying out of court and/or reducing award sizes."<sup>45</sup>

This theme was repeated throughout ATRI's report. For example,<sup>46</sup>

Multiple interviewees prefaced remarks with variations of "the only way to prevent nuclear verdicts is to prevent the crash from happening in the first place." ...Interviewees generally concurred that the more safety activities motor carriers engaged in to prevent crashes the lower the likelihood that a nuclear verdict would result. *It was also commonly noted that motor carriers typically do not allocate enough resources toward safety and crash prevention [emphasis added].*

Similar observations came from leading trucking journalist Deborah Lockridge, who published an article following a large 2021 trucking verdict,<sup>47</sup> noting that the way to avoid such verdicts is by "defusing" what she called "Nuclear-Verdict Detonators." That's a gimmicky way of identifying preventable safety problems, calling on companies to address safety issues "long before there's a crash."<sup>48</sup> In other words, rather than denigrating jurors, perhaps it makes better sense to stop the harm in the first place.

Finally, we will concede that there once was a nuclear jury verdict. It was a \$10.5 million jury award upheld by the U.S. Supreme Court for the family of Karen Silkwood.<sup>49</sup> She was a labor organizer at the Kerr-McGee nuclear processing plant in Oklahoma who was intentionally

contaminated by lethal plutonium. The Court held that a local jury verdict against the nuclear licensee was not preempted by the Atomic Energy Act. That was in 1984. To our knowledge there hasn't been a "nuclear" jury verdict since.

Today's "nuclear verdict" rhetoric is nonsense. As the following cases show, when juries award large damages, it is because they hear evidence of atrocious corporate misconduct and human wreckage, weigh the evidence and arguments and then do the right thing.





## ASBESTOS AND TALC

### ASBESTOS

#### CHAMBER JURY GRIEVANCE

The Chamber targets two asbestos verdicts: one, a combination of five cases totaling \$190 million in New York,<sup>50</sup> where for years the Chamber has been pursuing an inappropriate campaign to influence and interfere with the New York County's Asbestos Litigation (NYCAL) unit<sup>51</sup>; the other, a California verdict for \$43 million. (That case is mentioned in an endnote only.)

#### ATRA JURY GRIEVANCE

ATRA complains about two verdicts: one for \$22 million<sup>52</sup> and another for \$20 million.<sup>53</sup>

#### THE CASES

*Serna v. A.O. Smith Water Products Co., Vincent v. A.O. Smith Water Product Co., Assenzio v. A.O. Smith Water Products Co., Brunck v. A.O. Smith Water Products Co., Levy v. A.O. Smith Water Products Co. (combined cases); Warren v. Algoma Hardwoods Inc.; Weist v. Kraft Heinz Company; Trokey v. Ford Motor Company*

## SUMMARY OF BLATANT CORPORATE MISCONDUCT

Asbestos is a lethal toxin still not banned in the United States.<sup>54</sup> Millions of Americans have been poisoned by asbestos, with many contracting either asbestosis — an incurable and suffocating lung disease — or mesothelioma, which causes a painful asphyxiation death within four to 18 months of diagnosis.<sup>55</sup> These diseases have “long latency periods (10-40 years)....”<sup>56</sup>

Beginning in the early 1900s, the asbestos and insurance industries began a deliberate campaign to suppress knowledge about asbestos hazards and asbestos disease. Elements of this cover-up included, and still include, settling cases confidentially and developing legal devices to cheat victims.<sup>57</sup> By the 1980s, when this massive cover-up was unearthed through painstaking litigation brought by trial lawyers, the actions of these industries had amounted to what author Paul Brodeur called “corporate malfeasance and inhumanity to man which is unparalleled in the annals of the private-enterprise system.”<sup>58</sup>

According to the Agency for Toxic Substances and Disease Registry, “In the United States, an estimated 27 million workers were exposed to aerosolized asbestos fibers between 1940 and 1979.”<sup>59</sup> While direct worker exposure has been declining, more than 2,000 people still contract lethal mesothelioma each year, with particular occupations, such as auto mechanics, most at risk.<sup>60</sup> Family members of exposed workers are also at risk of death, with domestic secondary non-occupational exposure considered a well-recognized cause of mesothelioma.<sup>61</sup>

In 1994, the U.S. Congress passed special legislation just for the asbestos industry,<sup>62</sup> which allows companies with asbestos liabilities to set up trusts to compensate victims and families, and at the same time reorganize under the bankruptcy laws so they can operate profitably. It is remarkable that Congress allowed these companies to stay healthy and profitable given their past conduct, which some equate to mass murder.<sup>63</sup> Today it is this bankruptcy trust system that resolves the vast majority of asbestos claims, not litigation. Because trusts are extremely underfunded, most sick and dying victims who are forced to access compensation through trusts receive pennies on the dollar.<sup>64</sup> However, solvent companies can still be sued.

The Chamber and ATRA have focused enormous resources over the years to stop or substantially delay these lawsuits, knowing that victims were dying.<sup>65</sup> Some of the bills they push require the posting of private information about victims’ lives on public websites, making them vulnerable to crooks and identity thieves.<sup>66</sup> In other words, their strategy is not to help victims but to torment them.

## CASE DESCRIPTIONS: HUMAN CASUALTIES

*Serna v. A.O. Smith Water Products Co., Vincent v. A.O. Smith Water Product Co., Assenzio v. A.O. Smith Water Products Co., Brunck v. A.O. Smith Water Products Co., Levy v. A.O. Smith Water Products Co.* (combined cases)

Burnham Corp. made boilers and knowingly used asbestos-laden insulation made by Cleaver-Brooks. Neither company warned workers of this lethal hazard.<sup>67</sup> Those workers included Cesar Serna, a laborer; Raymond Vincent, a steamfitter; Paul Levy, a pipe fitter at New York’s Brooklyn Navy Yard; Santo Assenzio, a plumber; and Robert Brunck, also a plumber who handled pipes with insulation containing asbestos. All five got terminal mesothelioma. Some tried to improve their health with painful treatments or chemotherapy, but nothing worked.

They or their families brought suit. In July 2013, the jury handed down the following awards: Cesar (\$30 million for past pain and suffering and \$30 million for future pain and suffering), Raymond

(\$20 million to his estate for past pain and suffering), Paul (\$15 million for past pain and suffering, \$35 million for future pain and suffering and \$10 million to his wife for loss of consortium), Santo (\$20 million to his estate for past pain and suffering, \$10 million to his wife for loss of consortium) and Robert (\$20 million to his estate for past pain and suffering).<sup>68</sup> This totaled \$190 million.

At trial, witnesses proved — and a judge agreed it had been proven — that “Burnham knew of the dangers of asbestos; it had a history of selling boilers for over one hundred years; it specified the use of asbestos insulation on the exterior and interior of its boilers and sold such insulation; it failed to perform any testing with respect to exposure to asbestos, and it failed to warn about dangers of asbestos.”<sup>69</sup> Despite this evidence, the judge pressured victims to agree to reduced awards totaling \$29.9 million, in other words, 15.7 percent of the original \$190 million.<sup>70</sup>

#### *Warren v. Algoma Hardwoods, Inc.*

Craig Warren worked in residential and commercial carpentry in the late 1970s and then became a general contractor in the 1980s. He worked with several asbestos-containing products, including Algoma Hardwoods doors, from 1977 to 1980.<sup>71</sup> Craig was never told this.<sup>72</sup> As a result, he would come home from work with asbestos unknowingly on his clothes and exposed his wife, Deanne.

In 2019, Deanne, who did not work outside the home, was diagnosed with mesothelioma at age 61. Her disease created something like a “vice” around her lungs, and “as the disease advances, the vice [will] tighten” (keeping oxygen from reaching her lungs). She “will ultimately succumb to a protracted and painful asphyxiation.”<sup>73</sup> Her remaining years — reduced from 21.5 to 2.5 years — have been occupied with debilitating chemotherapy, despondency and constant fear of death.<sup>74</sup>

In February 2020, Craig and Deanne sued Algoma Hardwoods. The parties stipulated that Deanne's economic damages totaled \$1.5 million, leaving the jury to determine non-economic damages only.<sup>75</sup> A jury reached a more than \$43.7 million verdict in favor of Craig and Deanne.<sup>76</sup> After the trial judge factored in the jury's liability findings against non-party defendants, set-offs and a reduction in Craig's loss of consortium award, that amount was ultimately reduced to around \$17.2 million in August 2022.<sup>77</sup> As of November 2022, the case was still on appeal.<sup>78</sup>

#### *Weist v. Kraft Heinz Company*

Robert Weist worked as an insulator for Metal Masters where he was required to work with asbestos materials at a Kraft Heinz processing plant.<sup>79</sup> Asbestos dust permeated his clothes. He carried it home, where it would become airborne again. That's how his wife, Kathy, was poisoned with asbestos.<sup>80</sup>

Kathy was diagnosed with malignant mesothelioma and died.<sup>81</sup> The following year, Robert filed claims against Metal Masters and Kraft Heinz<sup>82</sup> for the secondary asbestos exposure that caused his wife's death.<sup>83</sup> Numerous experts, including a pulmonologist and toxicologist, supported his claim,<sup>84</sup> and in September 2021, a jury awarded wrongful death, survival and loss of consortium damages totaling \$22 million, including \$10 million in punitives against Kraft Heinz.<sup>85</sup> It is unclear if any of this verdict has been paid. As of March 2023, the case had yet to be resolved.<sup>86</sup>

## *Trokey v. Ford Motor Company*

Asbestos in automotive brakes and clutches can be a significant threat to the health of mechanics.<sup>87</sup> Ford's brakes contained asbestos even though it was "widely reported that automobile mechanics were getting sick from asbestos exposure and that their household members were also contracting diseases from exposure to asbestos on work clothing."<sup>88</sup> In 1968, "Ford authorized and paid for a study into asbestos brakes,"<sup>89</sup> which "found automobile work resulted in asbestos concentrations of 2.55 fibers per square inch."<sup>90</sup> Yet Ford chose not to warn workers or the public about potential exposures.<sup>91</sup>

William Trokey, who worked on Ford brakes during the 1960s "while working at a service station in St. Louis,"<sup>92</sup> was diagnosed with mesothelioma. At that time, Ford knew about but failed to warn William and others about the dangers of asbestos in its brakes.<sup>93</sup> In March 2022, the jury handed down its verdict — \$10 million to Trokey and \$10 million to his wife<sup>94</sup> — which the trial court upheld.<sup>95</sup> William died afterwards.<sup>96</sup> As of March 2023, Ford was still appealing.<sup>97</sup> His family has, so far, received none of this verdict.

## TALC

### CHAMBER JURY GRIEVANCE

There was a "\$417 million award in a talc case that was later overturned."<sup>98</sup>

### ATRA JURY GRIEVANCE

There was a "\$4.69 billion verdict" to numerous women in a combined case and a verdict "reduced to \$2.12 billion," as well as "a \$110 million" verdict and a "\$72 million" verdict that "were thrown out on appeal."<sup>99</sup>

### THE CASES

*Echeverria v. Johnson & Johnson; Ingham v. Johnson & Johnson; Stemp v. Johnson & Johnson; Fox v. Johnson & Johnson*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

In terms of asbestos-related corporate malfeasance, close behind the asbestos industry is pharmaceutical giant Johnson & Johnson ("J&J"), a company with a net worth of \$415.98 billion.<sup>100</sup> Beginning in at least the 1930s, J&J exposed customers of its talc powders, including its baby power, to asbestos. In the 1950s and again in the 1970s, J&J secretly tried to remove asbestos from its talc-based products but could not.<sup>101</sup> Instead, it told the public, including through its website and other means, that its talc products did not contain asbestos.<sup>102</sup>

Asbestos can enter the body when talc powder is inhaled or applied to the genital area. At least since the early 1970s, J&J knew about studies linking talc to ovarian cancer.<sup>103</sup> A woman's ovarian cancer diagnosis means a life of chemotherapy, hysterectomies and countless other surgeries, other medical and emotional harm and very often death.<sup>104</sup> Numerous epidemiological studies have shown that genital talc use in women carries an elevated risk for ovarian cancer. In 1993, the United States national toxicology program published a study which found talc to be a carcinogen.<sup>105</sup> In response to that report, J&J and talc supplier Imerys Talc

America “helped to form the Talc Interested Party Task Force, to defend talc by performing research and releasing information about talc safety to the public. These studies were biased, and performed with the sole purpose of creating confusion and defending [their] profits and financial interest.”<sup>106</sup>

J&J considered its asbestos-containing talc powders its “company trust-mark,” “golden egg” and “sacred cow.”<sup>107</sup> J&J’s Baby Powder was sold continuously in the United States from 1894 until May 2020.<sup>108</sup> When baby powder sales began to decrease, J&J marketed the talc powders to women, especially young, minority and overweight women.<sup>109</sup> As a result, asbestos fibers and talc particles in the “millions and billions”<sup>110</sup> can now be found in the ovarian tissues of countless women who regularly used these talc powders.

Similar to asbestos, not until relatively recently were trial lawyers able to uncover evidence — with the help of investigative news outlets<sup>111</sup> — of J&J’s massive cover-up, file lawsuits and present this evidence to juries. In fighting plaintiffs/victims in these cases, J&J has escaped some responsibility for its wrongdoing not because juries excuse their behavior but because of the difficulty of connecting a latent disease like cancer to the actions of a specific company. Some victims have lost their cases for this reason.<sup>112</sup> Others have lost on a legal technicality concerning in which state a victim may sue following a 2017 U.S. Supreme Court decision on “personal jurisdiction.”<sup>113</sup> As of April 2023, “out of 41 trials, 32 have ended in a win by J&J, a mistrial or plaintiff verdicts that were reversed on appeal.”<sup>114</sup>

However, victims have won nine talc trials,<sup>115</sup> although J&J continues to appeal some of these verdicts. Congress has not chosen to bail out J&J by affording it special protections under the bankruptcy code as they did with the asbestos industry. Yet that hasn’t stopped J&J from trying to abuse the bankruptcy system to evade responsibility to tens of thousands of its victims.<sup>116</sup> Whether it is ultimately allowed to get away with this bankruptcy abuse remains to be seen.

Corporate groups have relentlessly complained about the brave women who have pursued their claims in court, requiring them to publicly reveal extremely private details about themselves. Their bravery has allowed a few juries the opportunity to hear the full record of wrongdoing by J&J and, on a case-by-case basis, to either accept or reject the opinion of medical experts regarding the connection between J&J’s misconduct and the cancers of these women. But large jury verdicts or not, these cases have ended up on the receiving end of disrespect and derision from ATRA and the Chamber.

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

### *Echeverria v. Johnson & Johnson*

Eva Echeverria was a daily user of Johnson & Johnson’s Baby Powder for decades and got ovarian cancer.<sup>117</sup> A year before she died in 2017, Eva and six other women sued J&J and its subsidiary, Johnson & Johnson Consumer Inc (JJCI) — which manufactured, marketed and sold the baby powder — in a Los Angeles court. Eva was the first to head to trial (among hundreds) in California.<sup>118</sup> Based on the record of evidence presented, a jury handed down a \$417 million verdict, which included punitive damages of \$340 million and \$7 million against J&J and JJCI, respectively, for their egregious misconduct.<sup>119</sup> However, in July 2019, a California appeals court affirmed a lower court order vacating the entire verdict and ordered a new trial against JJCI only, finding that “substantial evidence supported the jury’s finding that JJCI breached its duty to warn of the risks of ovarian cancer from genital talc use” and “[s]ubstantial evidence supported the jury’s finding that talcum powder was a substantial factor in causing Echeverria’s cancer.”<sup>120</sup> The California Supreme Court let that decision stand.<sup>121</sup>

### *Ingham v. Johnson & Johnson*

From June 2014 to December 2017, Gail Lucille Ingham, 73, and more than 20 other women diagnosed with ovarian cancer and regular users of J&J talc powders, sued J&J and JJCI. They also sued talc supplier Imerys Talc America, but that company settled for an undisclosed amount before trial.<sup>122</sup> In July 2018, the jury handed down a \$4.69 billion verdict, which included \$25 million to each victim and \$4.14 billion in punitive damages (\$3.15 billion against J&J and \$990 million against JJCI). On appeal, some claims were dismissed, resulting in a reduced award of \$2.12 billion.<sup>123</sup> As explained by the Missouri appeals court, punitive damages were warranted since it was “proved with convincing clarity that Defendants engaged in outrageous conduct because of an evil motive or reckless indifference.”<sup>124</sup> The Missouri Supreme Court and ultimately the U.S. Supreme Court denied review, letting the appellate decision stand.<sup>125</sup>

### *Stemp v. Johnson & Johnson*

From January of 1970 through August 2012, Lois Stemp used J&J baby powder and Shower to Shower products on her genital area on a daily basis.<sup>126</sup> In August 2012, at age 57, she was diagnosed with ovarian cancer.<sup>127</sup> In February 2017, Lois sued J&J, JJCI and Imerys.<sup>128</sup> In May 2017, the jury reached a verdict of over \$110.4 million, which included \$66 million, \$39 million and \$50,000 in punitive damages against J&J, JJCI and Imerys, respectively.<sup>129</sup> In October 2019, a Missouri appeals court overturned the judgment on a legal technicality, explaining that the lower court lacked jurisdiction to hear Lois's suit under a recent U.S. Supreme Court decision.<sup>130</sup>

### *Fox v. Johnson & Johnson*

For more than 35 years, Jacqueline Fox used Johnson & Johnson's Baby Powder and Shower to Shower products daily.<sup>131</sup> In March 2013, at age 59, she was diagnosed with ovarian cancer. Jacqueline underwent a complete hysterectomy and several months of chemotherapy. In June 2014,<sup>132</sup> she filed a lawsuit against J&J, JJCI, and Imerys. Jacqueline died during trial. In February 2016, the jury found J&J and JJCI liable and awarded her estate \$72 million in damages, \$62 million of which were punitives. In October 2017, an appeals court reversed the verdict on a legal technicality similar to the *Stemp* case, stating that, under a recent U.S. Supreme Court decision, the lower court lacked jurisdiction.<sup>133</sup>



## AUTOMOBILES, BOATS AND TRUCKS

### AUTOMOBILES

#### **ROLLOVER ROOF CRUSH**

##### **CHAMBER JURY GRIEVANCE**

A jury “reached a \$1.7 billion punitive damage award against an automaker in a pickup truck rollover case, after awarding \$24 million in compensatory damages.”<sup>134</sup>

##### **ATRA JURY GRIEVANCE**

There was a “massive \$1.7 billion nuclear verdict that can charitably be called concerning.”<sup>135</sup> (ATRA then presented the automaker’s complaints about its losing case.)

##### **THE CASE**

*Hill v. Ford Motor Company*

##### **SUMMARY OF BLATANT CORPORATE MISCONDUCT**

Rollover crashes are extremely deadly. While accounting for “only about 3 percent of all serious crashes, they account for about 30 percent of people killed while riding in a passenger vehicle.” What’s more, “a collapsing roof can kill or injure people no matter how well they are otherwise restrained.”<sup>136</sup>

Car companies are supposed to build vehicles with roofs that don’t crush in rollover accidents. Unfortunately, when designing and manufacturing its 1999 to 2016 Super Duty trucks, Ford



knowingly failed to do so. A specific design with “a roof with five times the strength of the roof of these Super Duty trucks” was “nixed...to cut costs.”<sup>137</sup> By 2014, Ford already knew of at least 79 rollover crashes “where roof crush killed, paralyzed, or seriously injured the occupants.”<sup>138</sup> Even more troubling, Ford “could have fixed the roofs and made them stronger for \$100 per truck”<sup>139</sup> but they didn't, leaving millions of these trucks on the road.<sup>140</sup>

## **CASE DESCRIPTION: HUMAN CASUALTIES**

### *Hill v. Ford Motor Company*

On April 3, 2014, farmers Melvin Hill, 74, and his wife, Voncile, 62, took a ride down a 2-lane rural state road in Americus, Georgia in their 2002 Super Duty truck.<sup>141</sup> While Melvin and Voncile were on the road, “the truck's right front tire catastrophically failed leading to a rollover accident.”<sup>142</sup> They should have survived. But they both died because the roof crushed in.<sup>143</sup> Autopsy reports revealed that Voncile “lived a few seconds”<sup>144</sup> and Melvin “lived two to three minutes after the roof crushed the passenger space.”<sup>145</sup>

Their children's claims against Pep Boys — for “put[ting] the wrong size tire on the truck, leading to the blowout”<sup>146</sup> — settled before trial.<sup>147</sup> But they continued their suit against Ford. They did not want to settle “after learning about deaths and injuries linked to other lawsuits that had previously been settled. ‘Companies love to settle cases because it keeps the plaintiff from having a voice,’ [one of their sons] said in the attorney-provided statement. ‘Someone had to stand up and say, ‘No, it needs to stop.’”<sup>148</sup>

The first trial against Ford was declared a mistrial after Ford “continually and deliberately injected questions and comments, elicited testimony, and placed documents before the jury, concerning matters” that the court had ruled inadmissible.<sup>149</sup> Because of Ford's “willful misconduct, and in order to ensure an orderly and fair trial, upon retrial of this case,”<sup>150</sup> the judge sanctioned Ford, holding that the following matters were established<sup>151</sup>: the roof was defective and weak, killing Melvin and Voncile; Ford should have warned the public about this defect; and by continuing to sell these trucks and refusing to fix them, Ford had “a willful, and reckless, and a wonton disregard for life.” Upon retrial of the case, the only issue for jury determination was damages.<sup>152</sup>

In August 2022, the jury attributed 70 percent fault to Ford and 30 percent fault to Pep Boys, returning a verdict of over \$24 million in compensatory damages.<sup>153</sup> The jury also imposed \$1.7 billion in punitive damages against Ford. (Under Georgia law, there is no punitive damages cap in products liability cases, but 75 percent of any punitive damages goes to the state, not the victim.<sup>154</sup>)

In December 2022, Ford challenged the sanctions and jury awards and sought a new trial; Melvin and Voncile's children asked the judge “to modify a protective order from 2017 to make certain documents about Ford's processes public, arguing that the information has been disclosed during open court proceedings. However, Ford wants to keep this information from the public and has sought to keep the documents under seal.”<sup>155</sup> A decision is pending.<sup>156</sup>



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## DEFECTIVE SEAT BELTS

### ATRA JURY GRIEVANCE

There was a “\$113.5 million verdict (including \$100 million in punitive damage) in a wrongful death case....”<sup>157</sup> (Note: *This was not a jury trial. A judge made this decision.*)

### THE CASE

*Andrews v. Autoliv, Inc.*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

The occupant restraint system in the Mazda 3, including the seatbelt and airbags, were made by Autoliv. They were defective. As the company was aware, during frontal impact wrecks the seatbelt would spool out and thus do nothing to protect the occupant. This was happening in crashes yet Autoliv took no steps to warn motorists about the risk of serious injury or death caused by its defective seat belt.<sup>158</sup>

### CASE DESCRIPTION: HUMAN CASUALTY

*Andrews v. Autoliv, Inc.*

In 2013, when 38-year-old Micah Andrews was traveling home in Georgia to his wife and daughter in his 2005 Mazda, he swerved, likely to avoid a large turtle in the roadway. The car went down a steep embankment and hit some trees. But the electronic front sensor, “which was meant to actuate the air bag, failed to send a signal, and the air bag failed to deploy. His seat belt spooled out 20 inches, allowing Micah’s face to hit the steering wheel hub...with such force his skull was fractured. He died at the scene.”<sup>159</sup>

In September 2014, Micah's widow filed claims against Mazda, Bosch (the air bag sensor manufacturer) and Autoliv.<sup>160</sup> Bosch was dismissed from the case and Mazda settled in June 2016, leaving Autoliv as the sole defendant.

After a bench trial, in January 2022, the judge “determined that the seat belt was defective and was a proximate cause of Andrews’ injuries and death,”<sup>161</sup> handing down \$1 million “in general damages for the predeath fright, shock, terror, and pain and suffering that Micah Andrews endured,”<sup>162</sup> \$12.5 million “for the full value of Micah Andrews’s life”<sup>163</sup> and \$100 million in punitive damages, “finding that Autoliv exhibited an entire want of care and a conscious indifference to the consequences of its actions, as well as reckless and wanton misconduct.”<sup>164</sup> As of April 2023, Autoliv was appealing the decision.<sup>165</sup> Presumably, Micah’s widow has yet to receive anything in this case.

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## DEFECTIVE SEATS

### ATRA JURY GRIEVANCE

After a jury “awarded \$242 million in damages, including \$144 million in punitive damages against Toyota,” the award was cut to \$194.4 million and upheld on appeal.<sup>166</sup>

## THE CASE

*Reavis v. Toyota Motor Sales, U.S.A., Inc.*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

Severe rear-end collisions occur “every 6 minutes and 48 seconds.”<sup>167</sup> Toyota designed its whiplash-injury lessening (WIL) seats to yield or bend backwards in a rear-end collision.<sup>168</sup> In these collisions, the “front seats will slide backwards intruding into the rear passenger compartment.”<sup>169</sup> In these situations, front seat occupants could slip out of their seatbelts and ramp (move up) over the top of their front seatbacks, making violent contact with rear seat occupants, who are often children. For decades, Toyota knew of this ramping risk with their WIL seats but chose not to warn motorists, let alone “create a safe design to reduce or eliminate the risk.”<sup>170</sup> What’s more, Toyota Motors withheld or misrepresented information to federal regulators about this troubling problem.<sup>171</sup>

### CASE DESCRIPTION: HUMAN CASUALTIES

*Reavis v. Toyota Motor Sales, U.S.A., Inc.*

On September 25, 2016, Ben and Kristi Reavis were driving home from church in Texas in their 2002 Lexus ES300.<sup>172</sup> Their two children, three-year-old Owen and five-year-old Emily, were buckled in their car seats in the backseat behind their parents. Ben was driving when their car was rear-ended by a negligent Honda SUV going between 45 and 48 mph. The front seats bent backwards as designed by Toyota (owner of the Lexus brand), and Ben and Kristi slipped out of their seatbelts and ramped up over their front seatbacks making violent, head-to-head contact with Owen and Emily in the back seat.

Within milliseconds, the children were severely and permanently brain damaged, “caused by the head-to-head contact with their parents.”<sup>173</sup> There was “no treatment or medication to fix the brain damage,” which was called “diffuse shearing in the brain, that is, the injury affected the entire brain.”<sup>174</sup> Both Owen and Emily lived but are severely disabled, with physical, cognitive and behavioral deficits.

In November 2016, Ben and Kristi filed suit against Toyota and the SUV driver.<sup>175</sup> The driver settled during jury deliberations.<sup>176</sup> On August 17, 2018, the jury found Toyota (Motor and Sales) 95 percent responsible for the harm to the children and handed down “a combined verdict of more than \$242 million, including roughly \$144 million in punitive damages against Toyota.”<sup>177</sup> Weeks later, the trial court “rendered judgment on the jury verdict for actual damages, after settlement credits, in the amounts of \$98.7 million against Toyota Motor and \$4.96 million against Toyota Sales, and punitive damages, after applying statutory caps, in the amounts of \$95.2 million against Toyota Motor and \$14.4 million against Toyota Sales.”<sup>178</sup> A Texas appeals court upheld the \$194.4 million in damages against Toyota Motor,<sup>179</sup> noting all the above evidence that the jury heard and writing that “Toyota Motor is a multi-billion dollar international company with operating income of \$20 billion a year,” which failed to accept responsibility, “while the Reavises are individuals trying to raise a family.” The parties ultimately settled for an undisclosed amount, presumably less than the jury verdict.<sup>180</sup>

# BOATS

## ATRA JURY GRIEVANCE

A “verdict included \$80 million in pain and suffering plus \$120 million in punitive damages to the parents of a boy who died in a boating accident.”<sup>181</sup>

## THE CASE

*Batchelder v. Malibu Boats, LLC*

## SUMMARY OF BLATANT CORPORATE MISCONDUCT

Bow swamping, when water spills over the bow of a boat, is a well-known ski boat industry hazard. It can cause a bow occupant to be washed overboard, which can put them into the path of a spinning propeller. This is true for anyone, but especially for a child placed in the bow.

Malibu Boats decided to modify a ski boat design to include seating in the bow so it could market this feature in order to keep up with its competitors. However, unlike its competitors — who used engineers and carefully modified the weight distribution and design of their boats to accommodate the additional weight in the bow — Malibu did no such thing. In fact, “despite publicly claiming that its boats were expertly engineered, it had no engineers on its design staff.”<sup>182</sup> Instead, the company’s design VP “cut a hole in the closed forward deck of the bow of the boat, installed seats, and then when that ‘worked’ it became the Malibu Response LX...”<sup>183</sup> The company did this despite a “realization and collective recognition of the potential hazard.”<sup>184</sup> It then marketed its bow seating area as not just suitable for children, but as intended for them,<sup>185</sup> even referring “to the new and isolated bow seating area as ‘playpen’ seating (because it was intended for children) or the ‘hot tub’ area because it was known to take on water.”<sup>186</sup> In response to customers who reported problems caused by this defect, Malibu employees mocked them and “suggested that ‘fatties’ were in the boat and that they should try the ‘Atkins diet.’”<sup>187</sup>

After “a bow swamping lawsuit resulted in a multimillion-dollar verdict against another manufacturer and competitor in 2011, Malibu decided to put bow swamping warnings on its new boats.” However, Malibu chose not to warn customers who had bought identical models of older boats.<sup>188</sup> The “warning stickers cost approximately \$0.62 each.”<sup>189</sup>

## CASE DESCRIPTION: HUMAN CASUALTY

*Batchelder v. Malibu Boats, LLC*

On July 17, 2014, 7-year-old Ryan Batchelder was with his family at a reunion at Lake Burton, Georgia. They rented a 2000 Malibu Response LX ski boat for the event. Ryan was riding in the “playpen” bow. Water then came over the front of the boat and Ryan, who was wearing a life jacket, was washed out of the boat on the left/port side, where the driver could not see him.

The boat started to fill with water. Unaware that Ryan had fallen into the water, the boat was put in reverse to keep it from sinking. “The rotating propeller sucked Ryan underneath the boat.”<sup>190</sup> First to make contact with the propeller was his left foot, then his left leg “until it reached roughly his hip, at which point it latched onto his life jacket and wrapped his body

around the drive shaft of the propeller," which "caused Ryan's abdomen to be exposed, which resulted in the propeller opening up his abdomen and exposing it to the lake water."<sup>191</sup>

Per the medical examiner who performed the autopsy, "Ryan probably lived for 60-180 seconds before dying due to an inextricable combination of blood loss and drowning, during which time he could have felt pain. The evidence shows that the last minutes of Ryan's life were spent with him having been horrifically mutilated, a propeller lodged in his abdomen, bleeding out, and unable to breathe while his older brother, cousins, and uncle screamed for him above the water."<sup>192</sup> The Department of Natural Resources officer who responded to the scene "was unable to separate Ryan's body from the propeller, so he had to cut Ryan's body apart with trauma shears in order to do so."<sup>193</sup>

In May 2016, Ryan's parents sued Malibu Boats. In August 2021, the jury found the company responsible for \$20 million in compensatory damages (\$18.75 million of which was for Ryan's pain and suffering) and \$120 million in punitive damages. In July 2022, the trial court fully upheld the verdict.<sup>194</sup> As of August 2022, Malibu had appealed the decision.<sup>195</sup> It is unknown if or how much of this verdict has been paid to Ryan's family.

## TRUCKS

### **PUTTING DANGEROUS, RECKLESS OR FATIGUED TRUCK DRIVERS ON THE ROAD**

#### **CHAMBER JURY GRIEVANCE**

The Chamber quarrels with five verdicts in this category of horrific truck crashes: \$411.7 million,<sup>196</sup> \$1 billion,<sup>197</sup> \$280 million,<sup>198</sup> \$260 million<sup>199</sup> and \$730 million.<sup>200</sup>

#### **ATRA JURY GRIEVANCE**

ATRA has problems with the first two verdicts mentioned above — \$411.7 million and \$1 billion.<sup>201</sup>

#### **THE CASES**

*Washington v. Top Auto Express, Inc.; Dzion v. AJD Business Services, Inc.; Madere v. Schnitzer Southeast, LLC; McPherson v. Jefferson Trucking, LLC; Ramsey v. Landstar Ranger, Inc.*

#### **SUMMARY OF BLATANT CORPORATE MISCONDUCT**

Crashes involving large trucks (*i.e.*, those weighing more than 10,000 pounds) are far too frequent, horrific and growing.<sup>202</sup> According to preliminary figures released by the National Highway Traffic Safety Administration (NHTSA), in 2022, more than 5,800 people were killed in crashes involving large trucks,<sup>203</sup> the largest number in almost four decades.<sup>204</sup> A large majority of those injured in large truck crashes are occupants of other vehicles.<sup>205</sup> In fact, "[n]inety-seven percent of vehicle occupants killed in two-vehicle crashes involving a passenger vehicle and a large truck in 2021 were occupants of the passenger vehicles."<sup>206</sup> This is hardly surprising since "[l]arge trucks often weigh 20-30 times as much as passenger vehicles."<sup>207</sup>

The advent of e-commerce and demands for quick home deliveries altered the trucking industry in obvious ways, like increasing the need for more long- and short-haul trucks on the road.<sup>208</sup> However, of all the ways the industry has changed in recent years, improved safety isn't one of them. In fact, these new demands have created new and more serious dangers, with new pressures on drivers to speed or drive when they are fatigued, as well as the hiring of drivers with dangerous safety histories.<sup>209</sup> This is the fault of the trucking industry. As one trucking industry report put it,<sup>210</sup> motor carriers typically do not allocate enough resources toward safety and crash prevention.<sup>211</sup>

In addition, the trucking industry lobbies federal regulators to weaken safety regulations and fails to remedy urgent problems in a timely manner or do anything at all. These problems include: underride crashes, which are violent "collisions in which a car slides under the body of a truck — such as a tractor-trailer or single-unit truck — due to the height difference between the vehicles"<sup>212</sup>; failure to implement automatic emergency braking systems<sup>213</sup> and speed limiters on heavy trucks<sup>214</sup>; failure to fix blind spots and other visibility problems<sup>215</sup>; and allowing the proliferation of dangerous "chameleon carriers," which are trucking companies that try to hide their identity and evade federal penalties and fines, as well as legal liability.<sup>216</sup>

In other words, when it comes to deaths, injuries, claims and lawsuits, the trucking industry has no one but itself to blame.

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

### *Washington v. Top Auto Express, Inc.*

On July 24, 2018, former career Army sergeant Duane Washington, 42, was riding home on his motorcycle on I-10 near Tallahassee, Florida when he encountered a 45-plus vehicle pile-up caused by a Top Auto Express tractor-trailer, which was speeding despite bad weather.<sup>217</sup> Duane tried to drive his bike into the emergency lane but ended up colliding with a stopped truck that didn't have its lights on.

He was thrown from his bike and suffered unimaginable injuries: His "pelvis was torn away from his spine bilaterally and had to be patched together with metal rods, plates and wires; he sustained severe colon and urethral damage, resulting in permanent bladder and bowel incontinence; experienced a loss of sexual function with paralysis; had a colostomy bag installed during his six month hospital stay; suffered atrophy of his right leg, required a special arm crutch to walk as well as 24 hour care."<sup>218</sup>

According to reports, despite the fact that Duane's immediate medical expenses alone already totaled close to \$750,000, the company refused to settle the case for \$1 million.<sup>219</sup> Top Auto's attorneys withdrew from litigation months before trial citing "irreconcilable differences, including issues related to client cooperation"<sup>220</sup>; the company decided to proceed without legal representation, "did not put up any witnesses and did not submit any exhibits, according to court records. It also was hit with a default liability judgment in August [2020] after a judge said it 'abandoned' its defense."<sup>221</sup> In October 2020, after a damages-only trial, the jury handed down a \$411.7 million verdict.<sup>222</sup> It's unclear if Duane has received a dime.

### *Dzion v. AJD Business Services, Inc.*

On the night of September 4, 2017, AJD semi driver Russel Rogatenko, going about 85 miles per hour (15 mph above the speed limit) and distracted by his cell phone, crashed into an RV towing a car.<sup>223</sup> Turns out Rogatenko had been hired without a background check or even a

commercial license to drive a truck.<sup>224</sup> When he was hired, he already had numerous moving violations, including “running weigh stations, logbook violations, rear-end crashes, distracted driving, following too closely, and a speeding violation for traveling 95 mph on I-95....”<sup>225</sup>

When Rogatenko’s truck hit it, the towed car burst into flames and the AJD truck flipped over, blocking traffic for hours.<sup>226</sup> Eighteen-year-old Connor Dzion, a University of North Florida freshman, was in that line of stopped cars when a Kahkashan Carrier Inc. (KCI) tractor-trailer barreled into his car, crushing it and killing Connor.<sup>227</sup> That driver, Yadwinder Sangha, “was traveling on cruise control at 70 miles an hour,”<sup>228</sup> “didn’t hit his brakes until one second before impact, despite passing signs set up by Florida law enforcement alerting to a crash ahead”<sup>229</sup> (he had trouble reading English) and “‘was on his 25th hour of a road trip that took him from Quebec all the way down the Eastern Seaboard, all the way to Palm Beach.’”<sup>230</sup>

The judge was clear in his instructions to the jury that both Rogatenko and Sangha were negligent and contributed to Connor’s death.<sup>231</sup> In August 2021, the jury handed down \$86 million in compensatory damages against KCI and \$916 million in damages against AJD<sup>232</sup> — \$16 million for emotional distress and \$900 million of which were punitive “based on its finding that the New York-based company’s wrongful conduct was motivated by ‘unreasonable financial gain’ and was known by the company’s management.”<sup>233</sup>

Yet the likelihood of this verdict being paid is nearly nil. AJD’s insurer paid only its \$1 million policy limit. And according to one report, “AJD apparently is no longer in existence and failed to participate in the proceedings for at least the last two years,” so “the reality of trying to collect is that ‘there is nothing there.’”<sup>234</sup>

#### *Madere v. Schnitzer Southeast, LLC*

On a clear July morning in 2016, 58-year-old grandmother Judy Madere, her twin sister Trudy, her daughter Carrie and Carrie’s children — seven-year-old Trinity and four-year-old Jaxson — were traveling in Carrie’s SUV on Alabama’s U.S. 80, returning to Louisiana after visiting relatives.<sup>235</sup> A large Schnitzer Steel Industries truck pulling scrap metal was traveling on the opposite side of the road when it crossed the center line and smashed head-on, at highway speed, into the SUV. Never breaking as the driver was apparently asleep,<sup>236</sup> the truck hit the car with the force of half a million pounds.<sup>237</sup> Trudy, Carrie and the children were all instantly killed. Judy lived for only a short time, struggling for life in that car surrounded by her dead daughter, grandchildren and twin sister.

The fatigued truck driver, Kenneth Cathey, was charged with five counts of criminally negligent homicide. Turns out Schnitzer had asked him to drive despite his long record of unsafe driving for the company,<sup>238</sup> including prior crashes (which is one of the strongest predictors for future crashes<sup>239</sup>). In fact, in the previous three years, Cathey had four serious wrecks, not to mention numerous traffic and Federal Motor Carrier Safety Regulation violations.<sup>240</sup> The company had already settled a lawsuit after Cathey’s near fatal crash three years earlier, while keeping him driving and taking no corrective training or safety steps in violation of its own company rules and safety regulations.<sup>241</sup> In other words, for Schnitzer, the settlement was a mere cost of doing business. Nothing was remedied.

While the trucking company responsible for hiring Kenneth Cathey, Schnitzer Southeast, admitted liability, publicly-traded Schnitzer Steel Industries — which operated as a joint venture with Schnitzer Southeast and controlled it<sup>242</sup> — denied responsibility. This forced remaining family members to sue. On August 23, 2019, a Georgia jury rendered its verdict: \$280 million, which included \$30 million for Judy’s pain and suffering and \$100 million in punitive damages.<sup>243</sup> Yet

Georgia lawmakers had already largely stripped juries of their power to award punitive damages in cases like this when they capped them at \$250,000, a fact rarely if ever mentioned in coverage of the case. So the punitive damages were reduced to \$250,000.<sup>244</sup> It is unclear whether any of this verdict has been paid.

*McPherson v. Jefferson Trucking, LLC*

On February 13, 2016, a Jefferson Trucking employee suddenly pulled his tractor-trailer out of a private driveway, blocking all four lanes of travel on Highway 271 in Upshur County, Texas while attempting to back into the driveway once more.<sup>245</sup> At that moment, 21-year-old Riley McPherson was driving his van on the highway. He slammed into the side of the semi and was killed.

At the time of the accident, the tractor-trailer driver had been behind the wheel for 17 hours, far exceeding the maximum number of hours allowed under federal law.<sup>246</sup> Riley's parents sued. Two and a half years later, a jury rendered a verdict: \$80 million for past and future loss of companionship and \$60 million for past and future mental anguish to Riley's father, \$60 million for past and future loss of companionship and \$60 million for past and future mental anguish to his mother.<sup>247</sup> This verdict was not paid. The trucking company agreed to settle the case while on appeal.<sup>248</sup>

*Ramsey v. Landstar Ranger, Inc.*

On February 21, 2016, Landstar Ranger was trying to haul a 197,000-pound submarine propeller across a narrow bridge in Titus County, Texas using an oversize-cargo truck for this 16' wide load.<sup>249</sup> Leading the truck was an escort vehicle owned by 2A Pilot Cars. When 73-year-old Toni Combest rounded a blind curve before entering the narrow bridge, the tractor and load was almost completely within her lane going 65 mph. The load hit her, ripped off the top of her car and killed her.

There were numerous basic public safety steps that the culpable companies and drivers failed to take that all contributed to Toni's entirely preventable, violent death. Those included: maintaining a proper lookout; driving at a safe speed; communicating within the convoy about oncoming traffic; figuring out a plan in advance to deal with expected hazards like narrow bridges; asking local authorities for help; or actually having the front pilot car function as it was put there to do.<sup>250</sup>

A week before trial, Landstar, along with the tractor-trailer owner/driver and his passenger, voluntarily settled the case for \$50 million<sup>251</sup> — an amount that is five times the industry's own definition of "nuclear." This fact was typically omitted in any industry description of the case.

The driver of the trailing pilot car also settled, leaving the driver of the lead vehicle and her company 2A Pilot Cars as the sole defendants.<sup>252</sup>

In November 2021, the jury handed down \$480 million in compensatory damages and \$250 million in punitive damages.<sup>253</sup> However, it is unclear whether any of these amounts has been paid. Landstar and its insurer filed a claim against the lead vehicle driver, seeking a declaration that they owed no duty to defend or indemnify the driver or her company.<sup>254</sup> After a notice of voluntary dismissal in June 2022, that case was officially dismissed in July 2022.

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## **IRRESPONSIBLE DRIVER TRAINING**

### **CHAMBER JURY GRIEVANCE**

One truck crash “led to a nearly \$90 million verdict against a trucking company in a case in which an out-of-control pickup truck crossed a highway median and spun into the path of an oncoming truck that was driving below the speed limit during a winter storm.”<sup>255</sup>

### **THE CASE**

*Blake v. Werner Enterprises, Inc.*

### **SUMMARY OF BLATANT CORPORATE MISCONDUCT**

Werner Enterprises is one of the largest trucking companies in the United States, employing approximately 10,000 drivers and operating over 7,400 trucks. Its driver turnover rate is around 80%. Of the 8,000 drivers it hires each year, half start out with no commercial driving experience.<sup>256</sup> So Werner puts potential new drivers into Werner's truck driving schools, where they are supposed to learn state and federal rules for driving in hazardous conditions. Instead, they sometimes learn to ignore these rules.

For example, when roads are extremely hazardous, like during ice storms, federal regulations require truck drivers to exercise “extreme caution” and to stop driving if conditions are sufficiently hazardous.<sup>257</sup> Even more specific is the federally-mandated<sup>258</sup> Texas CDL Manual, which says that in hazardous conditions, drivers should slow to “a crawl” (considered to be 10-15 mph or slower) or stop driving.<sup>259</sup> These rules are meant to protect passenger cars, which as every motorist knows can lose control on icy roads. If a crash happens with an 80,000-pound truck, it is the passenger car that will be crushed, not the big truck. Yet Werner taught its students that these rules were optional, and that it's perfectly fine to drive an 18-wheeler at highway speed over icy roads, so long as the driver is comfortable with that.<sup>260</sup>

### **CASE DESCRIPTION: HUMAN CASUALTIES**

*Blake v. Werner Enterprises, Inc.*

Shiraz A. Ali was a Werner student driver on December 30, 2014. With “less than one week's worth of driving experience and no winter-driving experience,”<sup>261</sup> Ali was assigned by Werner to drive through an ice storm on a Texas highway. Ali traveled 52 miles through this ice storm at highway speed, passing at least three other crashes as he drove and failing to significantly slow down, let alone pull off the road as other big trucks had done.<sup>262</sup>

Jennifer Blake and her three children, Nathan, Brianna and Zackery, were passengers in a pickup driven by a friend on the same Texas highway.<sup>263</sup> The driver lost control of the vehicle due to the icy road conditions, crossed the median and was struck by Ali's 18-wheeler which was going 45 mph. (Ali's trainer driver was asleep in the back of the truck.) Seven-year-old Zackery was killed. Twelve-year-old Brianna “survived the crash but was left in a ‘minimally conscious vegetative’ state.”<sup>264</sup> Fifteen-year-old Nathan and his mother Jennifer suffered a host of severe and permanent injuries. Had Ali simply followed federal and state rules and slowed down to a crawl — 15 mph — the crash would never have happened.<sup>265</sup>



The jury's verdict included \$3.3 million to Zackery's estate, \$5 million to Nathan, over \$68 million to Brianna and more than \$13 million to Jennifer.<sup>266</sup> In May 2023, a Texas appeals court upheld the judgment in a 119-page decision,<sup>267</sup> stating in part:

The jury heard evidence that was legally and factually sufficient to support the jury's finding that Werner breached its duty of care under the circumstances. Specifically, the jury heard that (1) Werner actively denied Ali access to devices which would have conveyed relevant information concerning the weather and road conditions into which he was driving during a Winter Storm Warning while traveling at approximately 50 miles per hour on a JIT delivery; (2) Ali received the second lowest score possible on his driving exam; and (3) Ali was nonetheless entrusted with a JIT run through a Winter Storm Warning without access to relevant information or a supervisor who was awake. The jury also heard that (1) Werner's director of safety was unfamiliar with Werner's practice of pairing student drivers with trainers on JIT deliveries; (2) it is "really important for the driver to monitor the outside air temperature . . . because we know once it drops below 32, that's the condition that creates freezing water and therefore, freezing rain and black ice"; and (3) despite this importance, Ali was actively and knowingly prevented from monitoring the outside air temperature. Crediting this evidence in favor of the verdict, reasonable and fair-minded jurors could have concluded that Werner breached its duty to exercise ordinary care with respect to the Blakes....

[W]e conclude that there is legally and factually sufficient evidence to support the jury's finding that Werner was negligent in training and supervising Ali...[and] that there is sufficient evidence to support the jury's finding that Werner's negligent training and supervision proximately caused the collision.

According to reports, Werner plans to appeal,<sup>268</sup> meaning that no compensation has yet been paid to this family.



## MEDICAL NEGLIGENCE

### CHAMBER JURY GRIEVANCE

There are "several" medical malpractice cases "exceeding \$100 million." (Only one case is cited).<sup>269</sup>

### ATRA JURY GRIEVANCE

There was one \$75 million verdict,<sup>270</sup> a \$19.7 million verdict for a failure to "diagnose a lesion"<sup>271</sup> and a \$77 million verdict "in a wrongful death case."<sup>272</sup>

### THE CASES

*Redish v. Adler; Buckelew v. Womack; Melendez v. Mo.; Carusillo III v. Metro Atlanta Recovery Residences, Inc.*

### SUMMARY OF CORPORATE AND PROFESSIONAL MISCONDUCT

Medical negligence is pervasive in this country. Statistics show that medical errors, most of which are preventable, are the third leading cause of death in America.<sup>273</sup> Hundreds of thousands are seriously injured each year. This intolerable situation is perhaps all the more shocking because medical facilities know how to fix much of this problem.<sup>274</sup> Yet they don't. Even problems like the sexual abuse of patients goes largely unpunished.<sup>275</sup>

Despite the amount of preventable medical negligence nationwide, very few injured patients file suit, particularly those with low severity injuries.<sup>276</sup> And when patients do go to court, juries resolve an extremely low percentage of these cases.<sup>277</sup>

What's more, when there are jury verdicts in favor of the patient, they are almost never paid in full because of the role insurance coverage plays in these cases. Researchers have found that "payments rarely exceed primary carriers' policy limits, even when jury verdicts establish that the legal value of plaintiffs' claims is far higher."<sup>278</sup>

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

### *Redish v. Adler*

In 2011, Keimoneia Redish, a 40-year-old mother of five, went to the emergency room at St. Barnabas Hospital in the Bronx, NY during a life-threatening asthma attack.<sup>279</sup> While there, she was subject to a cascading number of preventable medical errors by doctors and nurses.<sup>280</sup> She was pumped with excessive fluids, which caused her brain to swell and led to seizures. She eventually needed a heart-lung machine but this hospital didn't have one. They could have transferred her to a hospital that did. They didn't. All of these errors led to Keimoneia's permanent brain damage.<sup>281</sup>

Keimoneia filed medical malpractice claims against the hospital and doctors who negligently treated her.<sup>282</sup> In April 2019, a jury found in her favor, handing down a verdict of about \$100.3 million that included \$90 million for past and future pain and suffering.<sup>283</sup> The trial judge reduced the pain and suffering amount to \$30 million. In June 2021, an appeals court held that the "jury verdict was supported by legally sufficient evidence and was not against the weight of the evidence" but ordered a new trial on pain and suffering damages unless Keimoneia agreed to a reduced award of \$10 million — a tiny fraction of the jury award.<sup>284</sup> While information is not available about what happened next, Keimoneia clearly ended up with far less than what the jury awarded.

### *Buckelew v. Womack*

A blood clot or stroke is one of the first things any treating medical facility should consider when a patient collapses and becomes unconscious during chiropractic treatment. This is what happened to 32-year-old Jonathan Buckelew, a married and physically active IT worker, who collapsed while undergoing a cervical spine adjustment by his chiropractor.<sup>285</sup> He was sent to the emergency room at North Fulton Regional Hospital in Roswell, GA. However, his doctor failed to recognize the obvious signs and symptoms of the stroke that Jonathan was experiencing, and the radiologist failed to detect a blood clot, which could have been removed. In fact, during the critical 12-hour treatment window that can prevent catastrophic consequences of a blood clot and stroke — as well as during the entire first night while Jonathan was in intensive care as his condition deteriorated — doctors failed to properly diagnose and treat him.

The next morning, tests showed the stroke and blood clot, which had blocked circulation to both hemispheres of his brain. By then, Jonathan had extreme brain damage, ultimately suffering a devastating condition known as "locked-in syndrome," which "paralyzes the entire body and leaves an individual with only the ability to blink, while keeping cognition intact."<sup>286</sup> He remained in intensive care for the next six months, after which he was sent to a long-term acute-care facility, where he was treated for another six months before returning home. He now must "receive round-the-clock nursing care with assistance from his parents."<sup>287</sup>

The chiropractor settled with Jonathan prior to trial. But the family proceeded with a claim against the clearly negligent hospital.<sup>288</sup> In October 2022, the jury reached its verdict: \$75 million in compensatory damages, \$46 million of which were for past and future pain and suffering. The trial court entered the verdict as final judgment the following month.<sup>289</sup> It is unclear if or how much of this verdict has been paid.

#### *Melendez v. Mo*

A condition known as dural arteriovenous fistula means that the veins and arteries near the brain and spine are abnormal. There are specific symptoms for this dangerous condition. A spinal cord lesion or injury needs immediate attention or serious damage will result. In 2012, when Diana Melendez, a lab technician in her 50s, first went to her primary care physician at Penn Medicine with these symptoms, the doctor failed to order the tests that would have detected the fistula. Yet Diana's symptoms kept getting worse.<sup>290</sup> Over the next few years, she kept seeing him with "a range of complaints involving back pain and neurological issues."<sup>291</sup> Yet for years, the doctor "did nothing to assess the patient's back or spine, ordered no imaging, did not refer her to a neurologist and did not perform reflex testing,"<sup>292</sup> which can indicate if there is spinal cord injury. Finally in 2017, she received her diagnosis. By that time, "her spinal cord had already undergone permanent damage that left her with leg spasms, incontinence and trouble walking"<sup>293</sup> and neurological deficits. She is permanently disabled, dependent on care to assist her in basic activities of daily living.

In August 2018, Melendez sued her doctor.<sup>294</sup> In September 2022, the jury rendered a verdict of nearly \$18.5 million, which included over \$10 million in pain and suffering damages. The doctor is challenging the decision.<sup>295</sup> It appears that, so far, Diana has received nothing.

#### *Carusillo III v. Metro Atlanta Recovery Residences, Inc.*

Nicholas Carusillo struggled with mental illness, bipolar disorder and addiction for years. When he experienced a psychotic episode in July 2017, he was eventually sent to the psychiatric ward where doctors adjusted his medications and stabilized him.<sup>296</sup> He was then sent to Metro Atlanta Recovery Residences (MARR) to deal with his substance abuse, with prescriptions for Seroquel and lithium to keep his mental illness and bipolar disorder stabilized. But MARR significantly cut his Seroquel dosage and took him off the lithium entirely. Everyone in Nicholas's life, from his parents to his therapist, asked and begged the facility not to do this but all were ignored.

Not surprisingly, Nicholas started "misbehaving and acting erratically,"<sup>297</sup> so he was kicked out of MARR. Incredibly, they then took him to a sober house,<sup>298</sup> which, of course, was completely unable to handle his mental illness. So he was kicked out of there as well and dropped off at a local Alcoholics Anonymous meeting. "At 4 a.m. on Sept. 22, Nicholas took off his clothes and laid down in a fetal position in the middle of Interstate 85. He was killed when he was struck by three vehicles."<sup>299</sup>

In March 2019, Nicholas's parents filed a lawsuit against MARR, including a malpractice claim against its medical director, primary counselor and another counselor who was involved in kicking Nicholas out of MARR.<sup>300</sup> The case against the primary counselor resolved before trial.<sup>301</sup>

In August 2022, the jury found in favor of Nicholas's parents, reaching an over \$77.5 million verdict that included \$10 million for his conscious pain and suffering and \$1 million in punitive damages. But the punitive damages were cut to \$250,000 — the amount of Georgia's statutory cap on punitive damages.<sup>302</sup> Judgment was entered for about \$60.5 million against MARR and \$16.2 million against the medical director.<sup>303</sup>

Nicholas's mother told the *Associated Press*, "This verdict, for us, is validation. It wasn't his fault. He was caught up in a bad system.... I'm hopeful that the size of this verdict makes a lot of people pay attention, from insurance companies to facilities to parents to loved ones to people seeking treatment."<sup>304</sup> As of March 2023, the case was on appeal,<sup>305</sup> meaning it's very likely the verdict hasn't been paid.



## PREMISES

### CONSTRUCTION

#### CHAMBER JURY GRIEVANCE

A jury “returned a \$102 million verdict, including \$85.75 million for pain and suffering, to a construction worker injured after he fell from a booth that was hit by a forklift driven by another worker.”<sup>306</sup>

#### THE CASE

*Perez v. Live Nation Worldwide, Inc.*

#### SUMMARY OF BLATANT CORPORATE MISCONDUCT

Construction work is inherently dangerous and continues to rank as one of the most hazardous industries in the United States.<sup>307</sup> Construction workers often perform their jobs around heavy machinery and at treacherous heights. According to a 2014 report by the New York Committee for Occupational Safety and Health, “Many construction deaths and nonfatal injuries could have been prevented had proper safety precautions been taken.”<sup>308</sup>

New York’s so-called “scaffold law” was enacted over a century ago following a large number of deaths and injuries at construction sites. Lawmakers determined that, since workers have little or no control over safety equipment provided to them, owners and contractors must be legally responsible for limiting construction site hazards and protecting workers.<sup>309</sup> And they insisted on a strict liability legal standard for contractors and owners when it comes to construction sites “with

an elevation or gravity related risk occurring on that project."<sup>310</sup> If a contractor or owner does not provide required protections and a worker is injured or dies as a result, the law holds contractors and owners liable.

But under this New York law, an accident alone does not establish liability. A defendant cannot be held liable unless they have violated a required safety standard.<sup>311</sup> They cannot be held liable if an accident was solely caused by the worker's negligence. In other words, New York has carefully developed its law over decades, balancing the interests of owners, contractors, workers and public safety, while providing proper remedies for those who have been hurt.

## **CASE DESCRIPTION: HUMAN CASUALTY**

*Perez v. Live Nation Worldwide, Inc.*

Mark Perez was an active, independent and adventurous 30-year-old with a longtime girlfriend, working to establish a successful career in graphic design. On June 26, 2013, he was doing some work with Best Buy, setting up a two-level booth at Jones Beach Theater in Wantagh, New York when a Live Nation employee drove a forklift into the structure, causing Mark to plummet to the ground many feet below. His brain, spine, lung and other injuries were so serious that he had to be airlifted to a trauma center.<sup>312</sup> Mark's severe traumatic brain injuries<sup>313</sup> mean he will be dependent on caregivers for the rest of his life given his "cognitive, emotional, and psychological impairments," "post-traumatic epilepsy" and other "extraordinary physical and psychological challenges that he faces on a daily basis." His brain function will continue to deteriorate. Mark's girlfriend, like most of his friends, left him. He cannot work.

A judge found Live Nation at fault for "failing to provide adequate safety equipment necessary to protect him from gravity-related dangers as required by law."<sup>314</sup> In 2019, a jury awarded Mark about \$102 million to cover his care and lost quality of life.<sup>315</sup> The trial judge reduced this to \$54 million.<sup>316</sup> In September 2021, Live Nation agreed to settle the case for \$55 million.<sup>317</sup>

## **CRIMES**

### **CHAMBER JURY GRIEVANCE**

There was a "\$35 million verdict against Six Flags for an attack by assailants at a bus stop outside of the amusement park,"<sup>318</sup> "a \$69.6 million verdict against Kroger for a shooting in the supermarket's parking lot"<sup>319</sup> and "a \$43 million verdict against CVS stemming from a robbery attempt in the drug store's lot."<sup>320</sup> There were also New York verdicts "stemming from claims alleging that businesses failed to provide adequate security on their premises."<sup>321</sup> (Only one case is cited.)

### **ATRA JURY GRIEVANCE**

A jury "ordered a health clinic to pay a former patient \$7.6 million over allegations that it failed to prevent sexual abuse in the facility, plus \$50 million in punitive damages," which was reduced to \$250,000 because of a state cap.<sup>322</sup>



## THE CASES

*Martin v. Six Flags Over Georgia II, L.P.*; *Taylor v. Kroger Co.*; *Carmichael v. Georgia CVS Pharmacy, LLC*; *Hedges v. Planned Sec. Serv., Inc.*; *Taylor v. Devereux Foundation*

## SUMMARY OF CORPORATE MISCONDUCT AND CRIMINAL DETERRENCE

The criminal justice system doesn't hold perpetrators or culpable third parties directly accountable to victims — but civil cases do. Indeed, compensating victims of brutal crimes for their losses has always been a central function of the civil justice system. Third parties whose conduct contributes to the occurrence of a crime, like negligent parking lot owners, can be held directly accountable to crime victims through the civil justice system. While district attorneys may decline to prosecute these parties, crime victims can, and often do, sue them for damages. This can be one of the most important ways to deter future crimes.

Many crime victims face financial burdens, like medical and mental health care bills, but also experience trauma, pain, suffering and lost quality of life. This is particularly true for sexual assault survivors.<sup>323</sup> Civil litigation against the perpetrators and responsible third parties may be the only way they are able to achieve some form of compensation and justice.

## CASE DESCRIPTIONS: HUMAN CASUALTIES

*Martin v. Six Flags Over Georgia II, L.P.*

Six Flags in Austell, Georgia had a problem which many people knew about — numerous employees were gang members. During the park's daily security briefings, gang-related issues were reported, on average, at least once a week.<sup>324</sup> The 9pm closing time was most dangerous, "when Six Flags's customers were funneled into parking lots and nearby bus stops" which were considered "hot spots."<sup>325</sup> Often criminal attacks that began inside the park "spilled over" to areas surrounding the park. After one such incident, "Six Flags asked police not to release any information that would undermine its efforts to promote the park as having a 'safe, family atmosphere.'"<sup>326</sup>

Local Cobb County police asked Six Flags to provide security in the area surrounding the Cobb County Transit (CCT) bus stop, where people waited for buses to get home after leaving the park.<sup>327</sup> Six Flags "invited its customers to use [these] bus stops...and considered the stops good for business."<sup>328</sup> But to save money, Six Flags refused to "provide security in these 'hot spots.'"<sup>329</sup>

Joshua Martin, a 19-year-old aspiring artist who planned to attend the Art Institute of Atlanta, had gone to the amusement park with his brother and a friend to celebrate the friend's acceptance to college. When they left shortly before 9pm, the three walked past the CCT bus stop to a nearby hotel to use the restroom. This caused them to miss the 9pm bus, so they waited for the next bus, "walking down Six Flags Parkway toward the park and sat on a rail near the park entrance."<sup>330</sup>

That's when they saw a large group leaving the park and heard one of the group saying that "some guy's going to get messed up."<sup>331</sup> With that, Joshua, his brother and his friend moved toward the bus stop, close to Six Flag's entrance but technically over the property line.<sup>332</sup> The gang was following them close behind. And with no provocation, one of them approached Joshua and began beating him with brass knuckles. One witness estimated that ultimately nine people participated in the beating.<sup>333</sup> Joshua was in a coma for seven days and left with severe, permanent brain damage.<sup>334</sup>



Six Flags was fully aware of these dangers including on that very day. As trial testimony showed,

- “[O]n the day of Martin’s brutal attack, several of his assailants, including at least one Six Flags employee, accosted and threatened two families inside the park. ...The families reported the incident to Six Flags security and gave a physical description of the gang members, but Six Flags inexplicably allowed the gang members to remain in the park.”<sup>335</sup>
- “A Six Flags security officer testified at trial that this response was contrary to Six Flags’ policy, under which the assailants should have been ejected from the park.”<sup>336</sup>

In November 2013, the jury reached its verdict for Joshua: \$32.2 million in damages against the park and \$2.8 million against the four attackers. In a June 2018 decision, the Georgia Supreme Court said, “[T]he victim’s stepping over the property line does not and cannot insulate Six Flags from responsibility for an attack that began within its premises and that was the foreseeable result of the breach of its duty of care.”<sup>337</sup> The Court did, however, remand the case to the trial court to determine apportionment of damages. Joshua and Six Flags ultimately agreed to settle for an undisclosed amount.<sup>338</sup>

#### *Taylor v. Kroger Co.*

The Kroger store on Moreland Avenue in DeKalb County, Georgia was considered to be in one of the worst crime areas of any Kroger store in the Atlanta area. Its loss prevention staff “ranked this store 10 on a scale of 1 to 10 in identifying the need for security” and “assigned the store one of the highest scores in Kroger’s Atlanta Division on its internal security index scale.” Yet Kroger would not install sufficient parking lot lighting or increase security as other nearby stores had done.

On the early evening of January 15, 2015, Navy veteran Laquan Tremell Taylor, 26, decided to go to Kroger for some shopping and to use the Western Union.<sup>339</sup> When he exited his car in the parking lot and began walking toward the store, he was approached by two men who demanded his keys and wallet. One of these individuals was a “known loiterer” there and had robbed a Kroger employee at a coin laundromat across the street while brandishing a gun. The employee had reported the incident to Kroger. Kroger took no action.

Laquan complied with the car-jacking attempt, turning over what was asked of him. Nonetheless, they shot Laquan in the back 10 or 11 times and then drove off in his vehicle as Laquan lay on the pavement, paralyzed from the waist down.<sup>340</sup> He now faces life as a paraplegic, a life that has included over a dozen surgeries, pain, rehab and all the medical and other difficulties resulting from his physical condition.

The assailants were arrested, convicted and ultimately sentenced to 15 years in prison. Laquan sued Kroger because of its obvious security failures, which led to this foreseeable and devastating crime.

Kroger offered to settle the case with Laquan for an insulting \$1 million; at that point he had more than \$4 million in medical expenses.<sup>341</sup> So the case went to a jury. In April 2019, the jury reached a \$69.66 million verdict against Kroger, of which \$60 million was for “pain and suffering, mental suffering, physical injury, inconvenience, and physical impairment in the past and into the future.”<sup>342</sup> The trial court reduced the amount to just over \$61.44 million. In February 2021, Taylor and Kroger reached a confidential settlement — presumably for a smaller amount.<sup>343</sup>

### *Carmichael v. Georgia CVS Pharmacy, LLC*

The CVS on Moreland Avenue in Atlanta was located in a high-crime area. The employees felt unsafe working there.<sup>344</sup> Security guards at the store were removed in 2010. Repeated requests from employees to return them were denied even though “at least three violent crimes”<sup>345</sup> then occurred at the store, including gun-related robberies and assaults.

On the evening of December 20, 2012, James Carmichael decided to stop at this CVS to pick up some toiletries. While there, James called an acquaintance to meet him to exchange an iPad. He assumed this national chain drugstore would be a safe place to meet — but he was wrong.<sup>346</sup> After the acquaintance left, “an unknown man jumped into Carmichael’s car, put a ‘big’ gun to Carmichael’s head, threatened to kill him, and said, ‘Give me your money.’”<sup>347</sup> James “‘took everything out’ and pleaded for his life. He then grabbed his own pistol and attempted to shoot, but the gun jammed. The perpetrator then fired several rounds into Carmichael’s stomach, back, and shoulder. After the perpetrator fled, Carmichael ran into the store for help before collapsing. He was comatose for about a month afterward,”<sup>348</sup> underwent multiple surgeries and suffered “permanent nerve damage, hearing loss, speech deficiencies, and chronic pain.”<sup>349</sup>

In October 2014,<sup>350</sup> James brought a case against CVS because of its obvious security failures leading to this foreseeable and devastating crime. In March 2019, the jury found CVS liable and handed down a \$42.75 million verdict.<sup>351</sup> It was upheld on appeal in November 2021, with a Georgia appellate court stating<sup>352</sup> that the crime was foreseeable to CVS and that the three prior violent crimes put CVS on notice that something like this could happen.

In February 2023, the case was heard by Georgia’s Supreme Court; a decision is pending.<sup>353</sup> In other words, James has not yet received a dime, and still may receive nothing.

### *Hedges v. Planned Sec. Serv., Inc.*

The East River Plaza shopping center in New York City had a well-known safety and security problem — kids were throwing dangerous things like rocks and glass off low railings and elevated structures, and even hurling shopping carts down escalators. The property owners and security company knew all about this. They could have taken simple steps to make the situation safer for customers, such as raising the railings or increasing security, but they did nothing.<sup>354</sup>

On the afternoon of October 30, 2011, Marion Hedges and her 14-year-old son went to Costco at East River Plaza to buy Halloween candy for underprivileged children. Two adolescent boys threw a metal shopping cart over a railing by the Target store, hitting Marion 79 feet below. The cart struck her head nearly killing her (CPR brought her back to life). Her injuries were severe, incapacitating and largely permanent,<sup>355</sup> including “a very complex brain injury that has severely diminished her ability to function, both cognitively and physically.”<sup>356</sup>

Target settled the case with Marion and her family for an undisclosed amount in 2016.<sup>357</sup> The case continued against other property owners and the security company. After an extensive trial, a jury awarded Marion \$40.7 million, including \$29 million for future pain and suffering.<sup>358</sup> But the trial court judge cut the \$29 million part of the award in half while an appeals court cut that amount even further, to \$10 million.<sup>359</sup> It upheld the rest of the award to cover her lifetime of care and costs,<sup>360</sup> however, as did New York’s highest court.<sup>361</sup>

### *Taylor v. Devereux Foundation*

Devereux Advanced Behavioral Health had a history of staff members sexually assaulting patients at its facilities, as well as failing to properly train staff and violating rules about appropriate male/female staffing ratios.<sup>362</sup> In 2011, Tia McGee, 15, was sent to one of Devereux's centers to treat her for sexual behavior disorder "after experiencing multiple sexual traumas."<sup>363</sup> She was assigned to a girls' cottage, but one day, a female staffer departed her shift early and left a male staffer "alone in the cottage with the girls."<sup>364</sup> During this time, he "had inappropriate sexual conversations with [Tia]"<sup>365</sup> and "had sex with her twice."<sup>366</sup>

The staffer was arrested, convicted of child molestation, statutory rape and sexual assault against a person in custody and ultimately sentenced to 20 years in prison. After the assault, Devereux failed to help Tia "recover from her trauma and did not implement its own recommendations to improve Devereux's hiring and training procedures developed in response to the crime." Devereux admitted to a breach of duty of care, and a jury trial proceeded on the issue of damages only.<sup>367</sup> In November 2019, the jury found Devereux accountable for \$5 million in compensatory damages and \$50 million in punitive damages.

After the punitive damages verdict, Devereux sought to cap the amount at \$250,000 per state law; Tia's representative argued that the statute was unconstitutional. Though Tia died in August 2020, the case continued.<sup>368</sup> In February 2022, the trial court upheld the compensatory award but reduced the punitive damages to \$250,000 pursuant to the cap.<sup>369</sup> In March 2023, the Georgia Supreme Court upheld the constitutionality of the cap and affirmed the trial court's ruling on punitive damages.<sup>370</sup>

## PUBLIC AUTHORITIES

Since these cases are against public authorities, separate summaries of overall corporate wrongdoing are not detailed. Rather, public wrongdoing is explained within each individual case description.

### AIRPORTS

#### CHAMBER JURY GRIEVANCE

There was a "\$148 million [verdict] against the City of Chicago" where a "woman was injured when a bus shelter collapsed on her during a storm."<sup>371</sup>

#### CASE DESCRIPTION: HUMAN CASUALTY

##### *Darden v. City of Chicago*

Travelers arriving at large airports know that sometimes parking lots, rental cars and other terminals are too far to walk to. So the airport provides transportation like buses, and often, pedestrian shelters where people can sit and wait. The last thing anyone thinks while standing under such a shelter is that it might be missing bolts, or was being held together with rusted or broken parts, or that no one from the airport was bothering to repair or even inspect it.

Yet that was the case at Chicago's O'Hare International Airport in August 2015, when Tierney Darden, a 24-year-old dancer and college student, was standing with her mother and 19-year-

old sister outside Terminal 2 waiting for transportation after a shopping trip to Minneapolis for bridesmaid dresses.<sup>372</sup> A strong storm passed through the area. They took cover behind a nearby pedestrian shelter when the 760-pound structure, unsecured with at least “seven anchors either removed or decayed,”<sup>373</sup> fell on them. Tierney “was pinned to the ground for about five minutes until a group of men were able to lift the shelter off her.”<sup>374</sup> Her spine was severed, leaving her paralyzed from the waist down and forcing her to live with constant and severe neuropathic pain (also leading to severe depression) and in need of lifelong care and treatment to deal with a host of deteriorating medical conditions. Even with the best care, her life expectancy was cut to 56 years.

The city admitted wrongdoing.<sup>375</sup> Tierney's case proceeded on the issue of damages only. At trial,<sup>376</sup> she “described her pain as torture and discussed the hardships of being a paraplegic and how she will never be able to dance again, which was her lifelong dream.”<sup>377</sup>

In August 2017, after a 10-day trial, the jury reached its decision: \$985,411 for past medical costs, \$32 million for future medical costs, over \$2.2 million for future lost earnings capability, \$10 million for past pain and suffering, \$30 million for future pain and suffering, \$500,000 for shortened life expectancy, \$6 million for emotional distress, \$5 million for past loss of a normal life, \$2.5 million for disfigurement, \$56 million for future loss of a normal life and \$3 million for increased risk of harm.<sup>378</sup> One of the jurors said, “[W]e went over everything and we broke everything down for the rest of her life, because she can't work. So all that money, she's depending on that money for the rest of her life.”<sup>379</sup>

The case ultimately settled for a fraction of that amount — \$115 million — with one of the city's insurance companies paying out the entire settlement.<sup>380</sup>

It wasn't until this tragedy happened to Tierney that anyone understood the problems at O'Hare, hopefully saving many other lives. One local news station sent an investigator to examine shelters at other O'Hare terminals. What it found was “alarming”<sup>381</sup>:

One shelter was missing 22 bolts that are supposed to connect it to the ground and eight more screws in various spots that connect to the structure itself. Also, an entire mounting plate was missing.

“These nuts and bolts are everything to these shelters,” says Darden family attorney Jeff Kroll. “If there was any kind of proper inspection going on by the Department of Aviation, if there was any kind of proper maintenance protocol, this would have never happened.”

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## HOUSING

### CHAMBER JURY GRIEVANCE

There was a \$125 million verdict “against an apartment complex accused of causing a tenant's death due to substandard living conditions.”<sup>382</sup>

## **CASE DESCRIPTION: HUMAN CASUALTY**

*Thornton v. Ralston GA, LLC*

The low-income and disabled residents at The Ralston, a 269-unit, Section 8 assisted apartment building in Columbus, Georgia, lived in “squalid conditions,” with “nonfunctional heating and air conditioning” and under threat of eviction if they complained.<sup>383</sup> During the summer of 2017, the broken air-conditioning system had not worked for weeks, if not months or longer. The building owner and its regional manager, whose office was the only room in The Ralston where the air conditioner worked, were notified of this many times. Residents even signed a petition about it.<sup>384</sup>

On July 6, 2017, 62-year-old Charles Hart was found dead in his bed at The Ralston.<sup>385</sup> According to the coroner, his skin was hot to the touch. The room temperature was 98.6 degrees.

In September 2017, Charles’s daughter sued the building owner and manager. She attempted to settle the case for \$10 million before trial; the defendants came back with a low-ball offer of \$50,000, raising the amount to \$1.5 million two weeks before trial and \$5 million as the jury deliberated.<sup>386</sup>

The jury found in favor of Charles’s estate, reaching a \$125 million verdict that included \$15 million for pain and suffering prior to his death and \$50 million in punitive damages.<sup>387</sup> “The verdict included a separate finding that the defendants acted ‘with specific intent to cause harm,’ a necessary finding for punitive damages in excess of Georgia’s statutory cap of \$250,000.”<sup>388</sup> The case ultimately settled for an undisclosed amount — presumably less than the jury verdict.<sup>389</sup>

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## **SCHOOLS**

### **ATRA JURY GRIEVANCE**

There was a jury verdict in the amount of \$59 million when “a high school laboratory experiment went wrong, severely burning a student.”<sup>390</sup>

## **CASE DESCRIPTION: HUMAN CASUALTY**

*Yanes v. City of New York*

The Rainbow Experiment is a high school chemistry experiment where mineral salts are mixed with highly flammable methanol to show how the combinations produce different colored flames.<sup>391</sup> It is so highly dangerous that the U.S. Chemical Safety Board warned schools, including the New York City Department of Education, that the experiment “posed the risk of significant injuries, including burns, to demonstrators and spectators.”<sup>392</sup> But on January 2, 2014, the science teacher of 10th grader Alonzo Yanes — who was never told by the school of the extreme dangers of this experiment<sup>393</sup> — went ahead and performed it, failing to comply with a number of safety rules or provide basic protections for students.<sup>394</sup>

During the experiment, a giant fireball erupted and engulfed 16-year-old Alonzo, who was seated only two or three feet away.<sup>395</sup> He “screamed while he was on fire for approximately a minute,”<sup>396</sup> “squirming on the floor and yelling for help, until a fire blanket was retrieved from the classroom next door by another teacher and [his science teacher] stood, staring in shock.”<sup>397</sup>

As Alonzo described it: He “felt ‘the fire eat away at [his] skin and eat away at [his] flesh. It was charring [him] the same way that a piece of meat chars in a frying pan. [He] remember[ed] hearing the sounds of sizzling all around [his] ears.’”<sup>398</sup> He explained that “‘[i]t felt like an eternity;’ that he ‘was hopelessly burning alive and [he] couldn’t put [himself] out. And the pain was so unbearable.’”<sup>399</sup>

After the flames went out, Alonzo continued to experience excruciating pain. He was taken by ambulance to the hospital, where he arrived in critical condition requiring life-saving care that included 38 pounds of fluid being poured into his body. It is a miracle that he survived.

During months of recovery, he underwent roughly 120 medical procedures. Initially, “doctors placed cadaver grafts, skin taken from recently deceased people, onto [his] head and neck as a temporary measure before permanent skin grafts cut from other parts of his own body could be utilized.”<sup>400</sup> Alonzo “described the idea of having cadaver skin affixed to his body as not only painful, but also ‘horrifying.’ ... I looked like Frankenstein or something.’ Once the temporary cadaver grafts were in place, doctors needed to cut into [his] healthy skin to take that skin and graft it onto the areas that were burned.”<sup>401</sup> After the skin grafts, he was “forced to remain immobile with his arms outstretched in a crucifix position for five (5) days at a time, which caused his muscles to atrophy.”<sup>402</sup> He lost his sweat glands. He lost his ears. He lost his friends. His “injuries are so gruesome” that “he refuses to wear his glasses when he is going from place to place so that he cannot see people gawking at his disfigurements.”<sup>403</sup> His physical problems will “double or triple” as he ages due to skin atrophy.<sup>404</sup> His life expectancy was shortened to age 54.

His parents brought suit against the teacher and the school system, who “did not call a single medical expert or damages witness.”<sup>405</sup> In July 2019, the jury reached its decision, handing down over \$29.5 million for Alonzo’s past pain and suffering and more than \$29.5 million for his future pain and suffering. The trial judge upheld the award, writing in August 2020,<sup>406</sup>

The jury took into account all of the additional injuries sustained by Mr. Yanes, such as lung damage and more severe burns, which did not otherwise have to occur except for defendants’ multiple acts of negligence...that caused the accident. In its award, the jury also accounted for the horrific nature of Mr. Yanes’ injuries that will torment him, both emotionally and physically, every moment over the remainder of his life.

However, in November 2021, a unanimous appeals court cut the amounts to \$12 million for past pain and suffering and \$17 million for future pain and suffering, with almost the entire opinion detailing Alonzo’s injuries and suffering and only one sentence dedicated to explaining the reduction in damages.<sup>407</sup> After that decision, Alonzo’s attorney told the *New York Law Journal* that they would accept the \$29 million amount.<sup>408</sup>

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## **TRANSPORTATION**

### **CHAMBER JURY GRIEVANCE**

There was a \$25 million verdict “to a disabled woman who tripped when getting off a bus.”<sup>409</sup>

## **CASE DESCRIPTION: HUMAN CASUALTY**

### *Johnson v. Metropolitan Atlanta Rapid Transit Authority*

Atlanta's Metropolitan Atlanta Rapid Transit Authority (MARTA) has mobility buses designed for passengers with disabilities. It used to have 26-foot mobility buses with handrails on all three steps to prevent falls. However, it switched to cheaper, less safe 21-foot buses, which lacked handrails on the bus's first angled step.<sup>410</sup>

On January 24, 2016, 66-year-old disabled retiree Jaccolah Johnson was riding a 21-foot mobility bus to her home in Atlanta.<sup>411</sup> According to MARTA's training manuals and industry standards, when a passenger like Jaccolah is ready to exit the bus, the driver is supposed to get out of their seat and "shadow" her, even if the passenger says they do not need assistance.<sup>412</sup> Yet this driver was verbally trained that she did not have to do this. So as Jaccolah was ready to exit, carrying a number of bags, the driver remained in her seat.

Somewhat predictably, Jaccolah fell down the angled step, which lacked a handrail, lost her balance and "hit the back of her head on the street's curb."<sup>413</sup> As a result, she suffered irreversible brain damage and was left in a persistent vegetative state, requiring her to live in a nursing home that provided her with 24-hour care where she needed complete assistance.

In March 2017, Jaccolah's daughter sued MARTA and offered to settle the case for \$5 million in July 2018.<sup>414</sup> MARTA said no, so the case went to jury trial. Testimony from MARTA employee witnesses revealed that there was a portion of a video showing Jaccolah boarding the bus but a segment was now inexplicably missing, prompting the trial court to tell the jury that "they could therefore consider the footage to have been detrimental to MARTA's case."<sup>415</sup>

In November 2018, the jury reached its verdict, attributing 75 percent liability to MARTA and 25 percent liability to Jaccolah, resulting in \$18.75 million in damages against MARTA. Jaccolah died in January 2019, and the case continued through her daughter.<sup>416</sup> In July 2021, a Georgia appeals court ordered a new trial, stating that the jury instruction against MARTA for evidence spoliation was extreme.<sup>417</sup> In December 2021, the Georgia Supreme Court denied review, leaving the appeals court decision in place.<sup>418</sup> In other words, this jury verdict was never paid, and it is unclear if Jaccolah's family has received a dime.



## PRODUCTS

### ACTOS

#### CHAMBER JURY GRIEVANCE

In an endnote,<sup>419</sup> it's mentioned that "a jury awarded \$9 billion in punitive damages and about \$1.5 million in compensatory damages" in a case involving the drug Actos. The trial court "reduced the award to \$37 million" and the case was later resolved "in a global settlement."

#### THE CASE

*Allen v. Takeda Pharmaceutical Co.*

#### SUMMARY OF BLATANT CORPORATE MISCONDUCT

Takeda Pharmaceuticals was the manufacturer and seller of the diabetes drug Actos. Eli Lilly was the company's U.S. marketing partner. For years, Takeda knew Actos increased the risk of bladder cancer. However, it hid this information and even destroyed documents to cover it up.<sup>420</sup> It wasn't until 2011 that the FDA learned of this risk.<sup>421</sup> As a result, the agency required the company "to update the drug's warning section to include that it 'may be associated with a 40 percent increased risk of bladder cancer.'"<sup>422</sup> The next year, Dr. Helen Ge, a former Takeda safety consultant, accused the company of "hiding Actos side effects information from the FDA."<sup>423</sup>



## **CASE DESCRIPTION: HUMAN CASUALTY**

*Allen v. Takeda Pharmaceuticals Co.*

In June 2006, Terrence Allen, 56, was prescribed and began taking Actos for his diabetes.<sup>424</sup> In January 2011, he was diagnosed with bladder cancer, which required surgery, a three-year course of treatments to keep the cancer from coming back and regular cystoscopies to determine if the tumor in his bladder experienced any re-growth. He suffered pain, nausea and loss of appetite and remained at risk for the cancer's return.

In May 2013, Terrence and his wife sued Takeda and Eli Lilly for failing to warn about the drug's bladder cancer risk.<sup>425</sup> Had Allen been "warned of the possible side effects, he would not have consented to taking the drug."<sup>426</sup>

The jury "received a spoliation instruction as there was proof Takeda executives destroyed documents in 2011...to protect its Actos cash cow. The court's instruction allowed the jury to infer the destruction of the files buttressed Allen's claim the drug's risk were hidden. In her order imposing sanctions, [the judge] wrote the breadth of the document destruction was 'disturbing.'"<sup>427</sup>

In April 2014, the jury found both companies liable for more than \$1.4 million in compensatory damages, with Takeda and Eli Lilly also responsible for \$6 billion and \$3 billion in punitive damages, respectively. The trial judge reduced the punitive damages amounts to about \$27.6 million against Takeda and about \$9.2 million against Lilly, stating that "evidence during the trial showed that the companies 'disregarded, denied, obfuscated and concealed' for more than a decade that Actos could increase patients' risk for bladder cancer"<sup>428</sup> and the reduced punitive damages were still "large enough to accomplish the jury's clear aim: to send a message to the defendants that their wrongdoing must stop...."<sup>429</sup>

At the time of the decision, the *Allen* case was one of 8,000 pending in multidistrict litigation<sup>430</sup>; it ended up being the first and only bellwether trial against Takeda and Eli Lilly.<sup>431</sup> "In 2015, Takeda announced it would settle the vast majority of Actos cases, then estimated to be about 9,000. In 2015, \$2.37 billion was transferred into a settlement fund."<sup>432</sup> The fund closed in April 2018.<sup>433</sup>

## **ANDROGEL**

### **CHAMBER JURY GRIEVANCE**

Trial court judges tossed verdicts in two cases "alleging that men experienced heart attacks from using the testosterone-boosting drug AndroGel,"<sup>434</sup> one totaling \$150 million, the other \$140.1 million.

### **THE CASES**

*Mitchell v. AbbVie, Inc.; Konrad v. AbbVie, Inc.*

### **SUMMARY OF BLATANT CORPORATE MISCONDUCT**

AndroGel, a prescription gel men apply daily to their upper arms and chest, went on the market in 2000.<sup>435</sup> It was approved by the FDA to treat hypogonadism, a testosterone deficiency due to

genetic problems, illness or trauma.<sup>436</sup> However, AbbVie<sup>437</sup> — part of pharmaceutical giant Abbott Laboratories — “was seeking a much larger market” for AndroGel, specifically one that included men experiencing “symptoms of aging,” for which the drug was not approved.<sup>438</sup> So the company began an aggressive marketing campaign to physicians, promoting this off-label use to men to do things like increase their sex drive or lower their body fat as they aged.<sup>439</sup> For example, in trying to “ride [the] coattails of Viagra,”<sup>440</sup> it encouraged doctors “to screen patients seeking Viagra for low testosterone.”<sup>441</sup>

But what AbbVie didn't tell doctors or patients was that the drug increased risks for heart attack, blood clots and strokes. Within a few years of approval, the company began receiving adverse-event reports about heart attacks connected to AndroGel's use.<sup>442</sup> In addition, multiple credible studies appeared linking testosterone drugs and serious cardiovascular problems.<sup>443</sup>

Yet AbbVie did nothing to change its warning labels<sup>444</sup> and continued to market it aggressively for unapproved uses.<sup>445</sup> Unsurprisingly by 2012, AndroGel reached blockbuster status, with roughly 3 million prescriptions written in the U.S., followed by similar numbers the following year,<sup>446</sup> with U.S. net sales surpassing \$1.15 billion in 2012 and totaling approximately \$1.035 billion in 2013.<sup>447</sup>

It wasn't until September 2014 — after more scientific studies had linked testosterone therapy to increased risks of heart attacks and other cardiovascular dangers,<sup>448</sup> plus Canada's prescription medication regulatory agency had “issued a safety alert to patients and health care providers about the cardiovascular risks associated with testosterone therapy”<sup>449</sup> — that the FDA finally “convened an advisory committee to consider the adverse cardiovascular outcomes associated with testosterone replacement therapy.”<sup>450</sup> As a result, in 2015, the FDA required AbbVie to add a warning about cardiovascular risk to AndroGel's label,<sup>451</sup> too little too late for the millions of men who had already suffered severe, potentially deadly harm from the drug.

Many injured men sued AbbVie, among other manufacturers of testosterone replacement drugs. The lawsuits, which required these men to publicly reveal intimate details about their libido and body issues, allowed juries to examine evidence of corporate malfeasance and the way it ruined many lives. These cases have led to disclosure of harm to a much wider public. In exchange for winning their claims with significant jury verdicts, their cases have been disparaged by the Chamber.

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

*Mitchell v. AbbVie, Inc.*

From 2008 to 2012, Jesse Mitchell took AndroGel to treat low testosterone.<sup>452</sup> His doctor “had been visited by AbbVie sales representatives on over 100 occasions and had received promotional materials touting [testosterone replacement therapy's] safety and its effectiveness in treating age-related hypogonadism.”<sup>453</sup> Jesse was never warned of the risk that AndroGel could cause him to suffer a heart attack.

At age 49, he had a massive heart attack<sup>454</sup> and “was rushed to a hospital, where he was found to have a faint pulse and had to be resuscitated. He underwent surgery in which coronary stents were implanted.”<sup>455</sup> In the ensuing months, he had limited mobility. He was also put on cardiac medication, “which he will be treated with indefinitely.”<sup>456</sup>

In November 2014, Jesse sued AbbVie and its predecessor, Abbott Laboratories.<sup>457</sup> His case “was selected as one of the first bellwether cases of about 6,000 claims”<sup>458</sup> involving AndroGel. After a

13-day trial, in July 2017, the jury found in favor of Jesse on his fraudulent misrepresentation claim, awarding no compensatory damages and \$150 million in punitive damages,<sup>459</sup> prompting the judge to order a new trial on the issue of fraudulent misrepresentation and related damages only.<sup>460</sup>

After a second trial in March 2018, the jury found in favor of Jesse again, handing down \$200,000 in compensatory damages and \$3 million in punitive damages.<sup>461</sup> According to news reports, in December 2018, AbbVie and Abbott reached a confidential global settlement that resolved over 4,000 cases involving AndroGel, including Jesse's.<sup>462</sup>

*Konrad v. AbbVie, Inc.*

In May 2010, 49-year-old Jeffrey Konrad, who lived in Tennessee, was prescribed AndroGel to deal with his "fatigue and a low sex drive."<sup>463</sup> Two months later, he suffered a heart attack,<sup>464</sup> "underwent heart catheterization and placement of a stent in the mid-left anterior descending coronary artery."<sup>465</sup> He was slow to fully recover.<sup>466</sup>

In January 2015, Jeffrey sued AbbVie and its predecessor, Abbott Laboratories, "in the Illinois federal court overseeing multidistrict litigation involving approximately 7,200 cases against manufacturers of various prescription testosterone replacement products."<sup>467</sup>

In October 2017, the jury — which heard the evidence of AbbVie's blatant corporate misconduct discussed above as well as additional information about the cause of Jeffrey's illness — found for AbbVie on the strict liability claim<sup>468</sup> but for Jeffrey on his negligence, intentional misrepresentation and misrepresentation by concealment claims, awarding him \$40,000 for medical expenses, \$100,000 for pain and suffering and \$140 million in punitive damages.<sup>469</sup> In July 2018, the trial judge overturned the verdict and ordered a retrial, ruling that the jury's finding for AbbVie on strict liability was inconsistent with finding for Jeffrey on his negligence claim.<sup>470</sup> According to news reports, in December 2018, AbbVie and Abbott reached a confidential global settlement that resolved over 4,000 cases involving AndroGel, including Jeffrey's.<sup>471</sup>

## CABLE PROTECTOR

### ATRA JURY GRIEVANCE

A jury awarded \$18.1 million in a "trip-and-fall case."<sup>472</sup>

### THE CASE

*Burnley v. Loews Hotel*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

Each year millions of people end up in emergency departments "for injuries resulting from consumer products. Most of the injuries involve everyday products often assumed to be safe."<sup>473</sup> For example, floors and flooring materials "contribute directly to more than 2 million fall injuries each year."<sup>474</sup>

Anyone who has attended a hotel conference is aware of possible hazards caused by loose AV wires and cables and expects to see cable protectors to keep wires hidden so people don't trip.

However, Checkers Industrial Products, which owned the Firefly cable protector product line, placed a product on the market that was defective. Specifically, it contained “a gap or opening in the plastic components,”<sup>475</sup> which turned a product that was supposed to keep people from tripping into a dangerous trip hazard.

## **CASE DESCRIPTION: HUMAN CASUALTY**

*Burnley v. Loews Hotel*

In 2014, a conference at the Loews Hotel in Philadelphia used Firefly cable protectors to safeguard conference-goers from tripping. Dana Burnley, a 41-year-old pharmaceutical compliance specialist, was attending the work-related conference and stepped into the defective gap on the Firefly cable protector. She fell while caught, causing leg fractures that required two surgeries and long-term effects including painful and permanent nerve damage, which prevents her from working. She will require more surgeries and is permanently disabled.<sup>476</sup>

In August 2022, the jury found Firefly’s owner Checkers liable and ordered the company to pay over \$18 million, which included \$3 million in loss of consortium damages to Burnley’s husband. As of March 2023, the case was on appeal.<sup>477</sup> In other words, Dana has received nothing to date.

## **COMBAT EARPLUGS**

### **CHAMBER JURY GRIEVANCE**

In a case “alleging that 3M’s Combat Arms Earplugs did not sufficiently protect soldiers from hearing loss...internet ads” caused a jury to award an “unprecedented \$50 million compensatory damage award” where, according to 3M’s failed legal position, the “plaintiff had only mild and treatable hearing loss.”<sup>478</sup>

### **THE CASE**

*Vilsmeyer v. 3M Company*

### **SUMMARY OF BLATANT CORPORATE MISCONDUCT**

Hearing loss for soldiers in combat has always been a problem, caused by “high intensity and/or impulse noise.”<sup>479</sup> Soldiers in Iraq and Afghanistan were experiencing hearing loss in increasing numbers “as a result of being in proximity to the detonation of explosive devices.”<sup>480</sup> From 2003 to 2015, the multinational conglomerate 3M and its subsidiary Aearo Technologies told the U.S. military it had made an earplug — the Combat Arms CAEv2 earplug — that would protect soldiers’ hearing. These earplugs then became “standard issue for soldiers in Afghanistan and Iraq.”<sup>481</sup> The earplugs were defective. Specifically, the stem was “too wide, too thick, too short, and too stiff” and “not safe for anyone.”<sup>482</sup>

In 2016, a whistleblower filed a lawsuit against 3M for selling “dangerously defective” earplugs.<sup>483</sup> Following this, the company agreed to pay \$9.1 million to the U.S. Justice Department to resolve allegations “that it knowingly sold the dual-ended Combat Arms Earplugs, Version 2 (CAEv2) to the United States military without disclosing defects that hampered the effectiveness of the hearing protection device.”<sup>484</sup> Yet 3M refused to admit that it did anything wrong.<sup>485</sup>

Hundreds of thousands of veterans who used the CAEv2 now have hearing loss and other life-altering hearing problems and are suing 3M.<sup>486</sup> Because 3M has still denied responsibility, it's fighting these veterans in court. It's also engaging in a bankruptcy abuse tactic to try avoid accountability to its victims, placing Aearo Technologies into Chapter 11 bankruptcy and throwing all earplugs claims into bankruptcy court while 3M sits on \$47 billion in assets.<sup>487</sup>

## **CASE DESCRIPTION: HUMAN CASUALTY**

### *Vilsmeyer v. 3M Company*

Luke Vilsmeyer, a “retired Green Beret Master Sergeant with 21 years of service with the U.S. Army,”<sup>488</sup> suffered permanent hearing loss and tinnitus after using CAEv2 earplugs in combat training settings for more than a decade.<sup>489</sup> In April 2020, Luke was one of over 280,000 former and active military members who filed cases claiming the CAEv2 earplugs were defective and damaged their hearing.<sup>490</sup> His was one of the first “bellwether trials.”

The jury learned that Luke's tinnitus was “quite severe,”<sup>491</sup> “constant”<sup>492</sup> and “permanent,”<sup>493</sup> “akin to ‘someone blowing a whistle’ into his ears 24 hours per day.”<sup>494</sup> “He testified that it makes him (a former Green Beret) feel ‘weak’ and powerless”<sup>495</sup> and “that he gets so frustrated and dispirited by the constant ringing that he wants to ‘rip [his ears] off’ as he would prefer to ‘[n]ot hear anything at all.’”<sup>496</sup> The neurotology expert testified that “on the broad spectrum for tinnitus — minor, mild, moderate, or severe — Luke is ‘at the maximum level of being bothered by it.’ In fact, ‘he’s at the ultra severe end.’”<sup>497</sup> He will be suffering with this for the rest of his life, likely another 50 years — his expected lifespan.<sup>498</sup>

In March 2022, the jury found in favor of Luke, reaching a \$50 million compensatory damages verdict (\$1 million per year of his injuries) on his products liability and negligence claims.<sup>499</sup> The trial court rejected 3M's bid for a new trial or reduced damages in October 2022, explaining that “the jury's award was supported by substantial evidence and not improperly affected by matters outside the evidence....”<sup>500</sup>

As of May 2023, 3M continues to appeal this case, so Luke has received nothing.<sup>501</sup>

## **PELVIC MESH**

### **CHAMBER JURY GRIEVANCE**

In Philadelphia, there were “seven nuclear verdicts against pelvic mesh manufacturers between 2015 and 2019.” Only three are cited: “\$120 million, \$80 million, and \$57.1 million.”<sup>502</sup>

### **ATRA JURY GRIEVANCE**

“Businesses...remain on edge after earlier trials of pelvic mesh...cases resulted in a series of massive verdicts, including amounts as high as \$120 million....”<sup>503</sup>

### **THE CASES**

*McFarland v. Ethicon, Inc.; Mesigian v. Ethicon, Inc.; Ebaugh v. Ethicon, Inc.*

## SUMMARY OF BLATANT CORPORATE MISCONDUCT

Surgical mesh implants, most of which are made of plastic, were developed for use in hernia operations.<sup>504</sup> But beginning in the late 1990s, doctors used them often to surgically treat women suffering childbirth-related pelvic organ prolapse (POP) or stress urinary incontinence (SUI) — bladder leakage from coughing, sneezing, exercising or other physical activities.<sup>505</sup> Once that occurred, mesh makers began marketing mesh products for those specific procedures.<sup>506</sup> In 2010 alone, approximately 250,000 mesh procedures had been performed to correct SUI.<sup>507</sup> The FDA allowed this with virtually no clinical evidence showing the mesh to be safe and effective for such use.<sup>508</sup>

Indeed, for many women receiving this treatment, severe and almost unspeakable complications resulted, the risk of which mesh companies knew about for years but failed to tell doctors or patients. These complications included devastating pain and a lifetime of completely intolerable agony during sexual intercourse, mesh erosion through the vagina requiring surgery and a host of infections, bleeding and constant urinary problems.<sup>509</sup> It would be one thing if the mesh could be easily removed. But often, surgery to remove the mesh is either impossible or very complex (“trying to remove gum from hair”<sup>510</sup>) and “even often more painful than the initial mesh procedure.”<sup>511</sup>

Evidence uncovered in litigation showed that companies possessed significant information that the mesh was defective when used for this purpose and went to great lengths to cover this up.<sup>512</sup> For example, “[w]hen it emerged from initial data that the success rates for a new device looked to be ‘way below’ those seen for previous products, Ethicon’s director of sales...suggested in an email ‘stop[ping] for a while such publications that could compromise the future.’”<sup>513</sup> In one verdict targeted by the Chamber (see *Ebaugh v. Ethicon, Inc.* below), court documents illustrated the company’s callous attitude regarding the devastating nature of mesh injuries for women, with some male executives “bantering about a suggestion that sex with an earlier patient with mesh complications must be ‘like screwing a wire brush.’”<sup>514</sup>

In 2012, Johnson & Johnson (J&J) pulled from the market four — but not all — mesh products: Gynecare TVT Secur system, the Gynecare Proxima, the Gynecare Prolift and the Gynecare Prolift+M.<sup>515</sup> In 2019, the FDA ordered all manufacturers to stop selling surgical mesh products for POP<sup>516</sup> but allowed certain types of mesh treatments to continue for SUI.<sup>517</sup> Also that year, J&J agreed to pay \$117 million to 41 states and the District of Columbia for deceptively marketing transvaginal pelvic mesh implants.<sup>518</sup> In 2020, the company paid more than double that to California.<sup>519</sup>

Over 100,000 women have sued mesh manufacturers for the permanent harm caused by pelvic mesh. The companies have agreed to settle most cases.<sup>520</sup> But a few brave women pursued their claims in court, requiring them to publicly reveal excruciatingly private details about themselves. Their bravery has allowed juries to examine evidence of horrendous corporate malfeasance, which has ruined the lives of untold numbers of women. These cases have also led to disclosure of harm to a much wider public. In exchange for winning their claims with significant jury verdicts, their cases have ended up on the receiving end of disdain and mockery from ATRA and the Chamber.

## CASE DESCRIPTIONS: HUMAN CASUALTIES

### *McFarland v. Ethicon, Inc.*

Ethicon's TVT-Obturator (TVT-O) was a typical pelvic mesh, containing unsafe polypropylene mesh material that should never have been used as a permanent implant in the female vaginal floor.<sup>521</sup> It was put on the market without clinical testing, relying on tests performed on French cadavers.<sup>522</sup> Ethicon failed to report problems it knew about to the FDA.<sup>523</sup>

In April 2008, Susan McFarland, 58, was surgically implanted with a TVT-O pelvic mesh device to treat her SUI.<sup>524</sup> The product sawed through the soft tissue in her pelvis and became exposed in her vagina. She had a number of surgeries but remains at risk for future erosions and complications from the TVT-O, which will require more surgeries and procedures.<sup>525</sup> The device has caused lasting harm, including "vaginal pain, dyspareunia [painful intercourse], frequent and persistent urinary tract infections, incontinence, urinary frequency"<sup>526</sup> and other complications. She says she "no longer feels like a wife or a woman."<sup>527</sup>

In July 2013, Susan and her husband sued Ethicon and J&J.<sup>528</sup> In April 2019, the jury handed down a \$120 million verdict, \$100 million of which was punitive damages. The trial court upheld the amount.<sup>529</sup> In May 2019, Ethicon filed an appeal. As of July 12, 2020, Ethicon was still appealing the case. It is unclear if any compensation has yet been paid to Susan.

### *Mesigian v. Ethicon, Inc.*

Ethicon's Prolift mesh was incredibly problematic. The "synthetic mesh used in the Prolift contained defective properties, including the mesh's tendency to fold, shrink and erode; to cause bridging fibrosis, scar plating and excessive scarring; to stiffen following implantation; and to cause a chronic inflammatory response and chronic infections."<sup>530</sup> As with other mesh products, the company didn't warn doctors or patients about the product's many risks.<sup>531</sup>

In September 2008, Patricia Mesigian, 64, was surgically implanted with a Prolift vaginal mesh device to treat her SUI.<sup>532</sup> J&J's Ethicon had marketed the mesh without warning doctors or patients about the product's risk of "significant, recurrent and life-altering mesh erosion; that chronic, lifelong pain resulting from the mesh would be difficult for surgeons to treat; that there would be a need for revision surgeries; and that removal of the mesh would be difficult, if not impossible"<sup>533</sup>; and a host of other risks mentioned above.

Just months after receiving the implant, the mesh had sawed into Patricia's vagina. The exposed piece of mesh was removed but four years later she was bleeding again. This time, the "mesh had become exposed in her vagina in two places," resulting in four surgeries between 2013 and 2017 and "two treatments in which she was chemically burned in an attempt to remove scar tissue that had built up around the mesh."<sup>534</sup> The device continued to cause vaginal bleeding and terrible pain, including during sex.

In February 2014, Mesigian and her husband sued Ethicon and J&J.<sup>535</sup> In May 2019, a Philadelphia jury returned an \$80 million verdict, including \$50 million in punitive damages. The companies appealed, with the case ultimately closed in November 2020.<sup>536</sup> It is unclear whether Patricia received any compensation.



*Ebaugh v. Ethicon, Inc.*

In May 2007, Ella Ebaugh was implanted with a “TVT-Secur mesh device to treat SUI symptoms and ultimately received a second implant of TVT in the summer after her condition did not improve. After reporting to her doctor in 2011 that she was having sudden urges to urinate and significant pelvic pain, it was discovered that the mesh had eroded into her urethra. Ella ultimately received three separate surgeries over the course of five years to try to remove the mesh.”<sup>537</sup> The mother of five “is in constant pain and always has to be near a bathroom. She has constant urgency which requires her to hurry to a bathroom out of fear of urinating on herself. She sleeps on two towels and has a commode beside her bed. She has monthly urinary tract infections in which the pain is akin to childbirth, and it is immensely painful to have sex.”<sup>538</sup>

Because there is no way to safely remove the mesh, Ella “is at risk for continued complications for the rest of her life.”<sup>539</sup> This prompted her to pursue a civil case against Ethicon and J&J. After a four-week trial, the jury handed down a \$57.1 million verdict, \$50 million of which were punitive damages, in September 2017.<sup>540</sup> Ethicon and J&J filed an appeal, which they withdrew in 2020.<sup>541</sup> There is no information regarding if or how much of this verdict was ever paid.

## RISPERDAL

### CHAMBER VERDICT GRIEVANCE

There are cases “against a pharmaceutical manufacturer that failed to warn that boys using the antipsychotic drug Risperdal could develop breasts. One of those cases resulted in an \$8 billion punitive damage verdict in October 2019 (which was later slashed by the trial court judge to \$6.8 million).” This was “a more than 99.9% reduction.” Another case “resulted in a \$70 million noneconomic damage verdict in 2016, which was upheld on appeal.”<sup>542</sup>

### ATRA VERDICT GRIEVANCE

Businesses “remain on edge after earlier trials of...Risperdal product liability cases resulted in a series of massive verdicts, including amounts as high as...\$8 billion.”<sup>543</sup> (No mention of the “more than 99.9% reduction.”)

### THE CASES

*Murray v. Janssen Pharmaceuticals, Inc.; Yount v. Janssen Pharmaceuticals, Inc.*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

Risperdal was J&J subsidiary Janssen Pharmaceutical's antipsychotic drug, approved by the FDA to treat adults with schizophrenia. But from 1999 through 2005, Janssen marketed Risperdal as a way to treat children with behavioral problems like hyperactivity or obsessive-compulsive disorder. Janssen knew during this period that the drug “was not approved for use in children for any purpose.”<sup>544</sup> It specifically knew that Risperdal posed the risk of stimulating female breast growth in boys (gynecomastia). But it used its sales representatives to push the drug with child psychiatrists and child-focused mental health facilities.<sup>545</sup> In 2013, J&J paid the federal government more than \$2.2 billion for civil and criminal health care fraud involved with this off-label promotion of Risperdal, among other drugs.<sup>546</sup>



Janssen knew at least as far back as 2002 of Risperdal's link to gynecomastia.<sup>547</sup> However, it wasn't until October 2006 that Janssen changed the Risperdal label to acknowledge the connection between the drug and excessive breast development in males.<sup>548</sup> By then, thousands of boys had suffered the consequences: permanent disfigurement, bullying, embarrassment and social isolation, which would profoundly impact their lives.<sup>549</sup>

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

### *Murray v. Janssen Pharmaceuticals, Inc.*

In 2003, Nicholas Murray, 13, began taking Risperdal for off-label use, to treat “sleep problems, autism spectrum disorder and attention-deficit hyperactivity disorder.”<sup>550</sup> By then Janssen already knew about the risk of gynecomastia. Around 2007, Nicholas began developing enlarged breasts.<sup>551</sup> His mother thought this was due to weight gain, a drug side-effect. In 2008, with Risperdal no longer effective and with concern about his weight gain, Nicholas was taken off the drug. However, despite discontinuing Risperdal and losing weight, he continued to have enlarged breast tissue.<sup>552</sup> What's more, “the only treatment available for gynecomastia is a mastectomy, but due to Nicholas' mental condition, it is not a viable option; otherwise, it is a permanent condition....”<sup>553</sup>

In April 2013, Nicholas, who lived in Maryland, sued Janssen and J&J in Pennsylvania as part of the mass tort consisting of many male victims who developed gynecomastia from Risperdal use.<sup>554</sup> In November 2015, the jury awarded Nicholas \$1.75 million for past and future pain and suffering. However, despite the case being tried in Philadelphia, the court applied Maryland — not Pennsylvania — law and severely capped the non-economic damages. The verdict was cut to \$680,000.<sup>555</sup>

The question of whether punitive damages would be allowed in the case was then litigated, and eventually courts said that punitive damages could apply. So in September 2019, the case proceeded exclusively on the issue of punitive damages, featuring evidence summarized above, including the fact “that Janssen actively worked to cover up clinical studies showing a potential gynecomastia rate of as high as 12% in children using Risperdal.”<sup>556</sup> After more than three weeks of trial, the jury reached a verdict in October 2019, handing down \$8 billion in punitive damages.<sup>557</sup>

In January 2020, the trial court reduced the amount to \$6.8 million. The parties ultimately reached an undisclosed settlement, presumably for an amount less than that. According to *Reuters*, in September 2021, J&J settled “‘substantially all’ of the roughly 9,000 cases” by men “who claimed its anti-psychotic drug Risperdal caused them to develop excessive breast tissue....”<sup>558</sup> Nicholas's case was one of them.

### *Yount v. Janssen Pharmaceuticals, Inc.*

Beginning in August 2003, 4-year-old Andrew Yount “was prescribed Risperdal to treat schizophrenia. He took the drug intermittently for about 10 years. In December 2003, he showed symptoms of gynecomastia and was later diagnosed with the condition,”<sup>559</sup> which left him disfigured with breasts eventually reaching a C to D cup bra-size.<sup>560</sup>

In April 2013, Andrew and his family sued Janssen and J&J, presenting evidence that the company deliberately concealed information about the gynecomastia risk and failed to warn of the danger.<sup>561</sup> By then, Andrew was 16 and had been “routinely bullied and teased by peers

and is too humiliated to ever remove his shirt in recreational or social situations where it would be customary for boys to do so when enjoying ordinary pleasures of youth."<sup>562</sup>

In July 2013, the jury handed down a verdict of \$70 million in non-economic damages,<sup>563</sup> which was upheld on appeal.<sup>564</sup> The Pennsylvania Supreme Court denied review<sup>565</sup> as did the U.S. Supreme Court,<sup>566</sup> letting the verdict stand.<sup>567</sup>

## ROUNDUP

### CHAMBER JURY GRIEVANCE

There are "massive verdicts alleging that manufacturers failed to warn that weed-killer products containing glyphosate could cause cancer," citing one "\$2 billion glyphosate verdict that was later reduced to \$87 million."<sup>568</sup>

### THE CASE

*Pilliod v. Monsanto Company*

### SUMMARY OF BLATANT CORPORATE MISCONDUCT

In 1974, Monsanto began selling Roundup, a weedkiller whose main active ingredient is glyphosate,<sup>569</sup> which is so toxic that it "kills most plants it comes into contact with."<sup>570</sup> The product became a worldwide success; "[o]ver the four decades after its launch, use of Roundup increased a hundredfold."<sup>571</sup> For its fiscal year 2015, Monsanto reported \$4.8 billion in revenue from Roundup sales to farmers, homeowners, gardeners, groundskeepers and others.<sup>572</sup>

That same year, the world's leading cancer experts at the International Agency for Research on Cancer (IARC), the cancer research arm of the United Nations World Health Organization, released a report connecting glyphosate to "blood cancers such as non-Hodgkin's lymphoma."<sup>573</sup> IARC's analysis also "highlighted studies that found that farm workers' glyphosate exposure increases their risk of multiple myeloma by 70 to 100 percent."<sup>574</sup>

But Monsanto knew as far back as the 1980s that Roundup and glyphosate were likely carcinogenic to humans.<sup>575</sup> Not only did the company tell no one, it actively tried to conceal the link through concerted efforts like ghostwriting studies exonerating the product, signed by "experts" but "actually written by Monsanto scientists."<sup>576</sup> In 2008, when a senior company toxicologist was sent an epidemiological study clearly showing this link, she responded, "We have been aware of this paper for awhile [SIC] and knew it would only be a matter of time before the activists pick it up. I have some epi experts reviewing it.' The focus of [the toxicologist's] email was 'how do we combat this?'"<sup>577</sup>

In 2018, by the time Roundup was purchased by German pharmaceutical and biotech giant Bayer, thousands of sick and dying Roundup customers had sued.<sup>578</sup> As of May 2022, the company had agreed to settle "over 100,000 Roundup lawsuits, paying out about \$11 billion."<sup>579</sup> Victims have also won favorable decisions from a number of federal appellate courts.<sup>580</sup> Some victims have chosen not to settle their case and instead bring forward much of this information in public trials.

## CASE DESCRIPTION: HUMAN CASUALTIES

### *Pilliod v. Monsanto Company*

Alva and Alberta Pilliod had four residential properties, and for years starting in 1982 they both used Roundup to kill weeds, often several gallons per week.<sup>581</sup> They worked in their yard together, so occasionally if one was spraying Roundup, the other would breathe in mist.<sup>582</sup> Alberta said they watched Roundup commercials on TV, in which people were depicted spraying Roundup in shorts and without gloves, assuring them that it was perfectly safe to use. They read the label, which said nothing about wearing a mask or gloves, or warning about the risk of cancer.<sup>583</sup>

In June 2011, Alva was diagnosed with large B-cell lymphoma, which manifested in his bones and caused great pain to the point where he could barely move. In April 2015, Alberta was also diagnosed with large B-cell lymphoma, which manifested in her central nervous system. A biopsy required drilling into her skull. She is “generally dizzy, she has double vision, hearing loss and some memory loss, and she falls frequently.”<sup>584</sup> The cancer was so debilitating that she stopped working, traveling and other physical activities she used to do.

In June 2017, Alva and Alberta sued Monsanto.<sup>585</sup> At trial, multiple highly-credentialed experts testified that Roundup caused their non-Hodgkin’s lymphoma and presented evidence of Monsanto’s cover-up.<sup>586</sup> After a seven-week trial, the jury found for the Pilliods, awarding Alberta “about \$200,000 in past economic loss (an amount to which the parties had stipulated), about \$3 million in future economic loss, \$8 million in past noneconomic loss, \$26 million in future noneconomic loss, and \$1 billion in punitive damages. The jury awarded Alva about \$47,000 in past economic loss (also stipulated), \$8 million in past noneconomic loss, \$10 million in future noneconomic loss, and \$1 billion in punitive damages.”<sup>587</sup>

However, the trial court significantly reduced the damages amounts, “resulting in a total award to Alberta of about \$56 million (including about \$45 million in punitive damages) and a total award to Alva of about \$31 million (including about \$25 million in punitive damages).”<sup>588</sup> A California appeals court upheld the awards, rejecting all of Monsanto’s arguments.<sup>589</sup> In affirming the punitive damages, Justice Marla Miller wrote,

Summed up, the evidence shows Monsanto’s intransigent unwillingness to inform the public about the carcinogenic dangers of a product it made abundantly available at hardware stores and garden shops across the country. Monsanto knew that studies supporting the safety of Roundup were invalid when the Pilliods began spraying Roundup in their yards, wearing no gloves or protective gear, spurred on by television commercials showing people spraying Roundup wearing shorts, and undeterred by any label or product information to suggest warning or caution. At the same time, Monsanto made ongoing efforts, in the words of the trial judge, to “impede, discourage or distort scientific inquiry and the resulting science about glyphosate” in conscious disregard of public health.

The California Supreme Court denied Monsanto’s request for review as did the U.S. Supreme Court, letting the \$87 million award stand.<sup>590</sup>

# TOBACCO

## CHAMBER JURY GRIEVANCE

In endnotes, the Chamber complains about two tobacco cases. First, it incongruously whines about a court decision prohibiting smoking class actions, which has led to individual jury verdicts. (The Chamber is normally a staunch opponent of class actions.<sup>591</sup>) Second, it lists one individual verdict for “\$16.9 million in compensatory damages and \$23.6 billion in punitive damages,” which was reduced and reversed. The victim then lost entirely upon retrial.

## THE CASES

*Engle v. Liggett Group, Inc.; Robinson v. R.J. Reynolds Tobacco Co.*

## SUMMARY OF BLATANT CORPORATE MISCONDUCT

The tobacco industry is responsible for one of the biggest U.S. public health disasters in modern times, which continues to harm and kill millions of Americans.<sup>592</sup> Most smokers begin smoking in their teens and quickly become addicted. As one expert put it, “From a scientific standpoint, nicotine is just as hard, or harder, to quit than heroin.”<sup>593</sup> The tobacco industry for decades fought meaningful regulation of tobacco products.<sup>594</sup>

Accountability for Big Tobacco only happened in recent years for one reason: lawsuits. Information uncovered in cases brought both by state Attorneys General (AGs) and smokers showed how Big Tobacco promoted addiction through manipulation of nicotine levels, engaged in a secret campaign to hook teens (even pre-teens) and lied to government officials and the public.<sup>595</sup> For example, R.J. Reynolds “concealed information that could have saved lives,” “conspired with other tobacco companies to conceal the deadly chemicals, such as arsenic, formaldehyde and others, that were added to cigarettes that make them more addictive and moreover deadly” and “could have made better, safer cigarettes that still contain nicotine and still generate a decent profit margin without the deadly chemicals.”<sup>596</sup> Juries began responding to this kind of evidence by holding the tobacco industry accountable for killing over 400,000 Americans each year.

Because the industry was able to cover up its misconduct for so long, it is only fairly recently that tobacco companies started losing cases. For example, in 1983, a breakthrough case by a smoker against the tobacco industry, known as the *Cipollone* case, was filed in federal district court in New Jersey. Antonio Cipollone had sued on behalf of his wife, Rose, a heavy smoker since the age of 16 who ultimately died of lung cancer in 1984 at age 58. Cipollone had sued Liggett, Philip Morris and Lorillard Inc., claiming that the risks of smoking outweighed their utility and therefore made cigarettes “unreasonably unsafe” and defective.<sup>597</sup> The case not only forced the release of previously secret documents, but also it resulted in the first-ever jury award against the tobacco industry for damages — \$400,000. (The 1988 verdict, however, was reversed on appeal in 1992 and for years stood as the lone jury verdict against the industry.<sup>598</sup>)

However, since then, tens of thousands of previously secret documents were made public as a result of the state AG suits. As former Minnesota AG Hubert H. Humphrey put it, these documents proved “[t]his outlaw industry marketed to kids to hook them on nicotine, manipulated nicotine to keep smokers hooked, and then used corporate welfare to stifle products that helped smokers break their addictions.”<sup>599</sup>

What's more, the state AG documents revealed that at the start of the "tort reform" movement in the 1980s and 1990s, the tobacco industry funneled money to "tort reform" groups on behalf of Big Tobacco.<sup>600</sup> The point was to pass state laws to keep cigarette companies from ever being sued in court. They had success in some states. In 1987, for example, New Jersey enacted what was considered at the time model product liability law for tobacco companies and other manufacturers of dangerous products.<sup>601</sup> The law wiped out future claims similar to Cipollone's.<sup>602</sup> Only later when the lobbying reports were filed was it disclosed that the tobacco industry had been spending heavily — more than \$940,000 — to get this bill passed in New Jersey.<sup>603</sup>

By 1989, limiting tort and products liability lawsuits had become one of the tobacco industry and "tort reform" movement's strategic priorities.<sup>604</sup> Among the organizations supporting this effort was ATRA. At one point, Big Tobacco was spending millions of dollars a year (and in at least one year \$15 million) supporting ATRA, state groups and other activities to weaken tort laws in many states. In 1995, Big Tobacco allocated \$5.5 million for ATRA, more than half of ATRA's budget that year.<sup>605</sup> The U.S. Chamber of Commerce has similarly stood beside Big Tobacco, being extremely vocal in its attacks on tobacco litigation. (In one report, we are oddly attacked as well.<sup>606</sup>)

Many states have resisted these lobbying efforts. Litigation has gone forward in some states. And ATRA and the Chamber have never stopped complaining about this litigation.

## **CASE DESCRIPTIONS: HUMAN CASUALTIES**

### *Engle v. Liggett Group, Inc.*

A class action was filed "on behalf of 700,000 Florida smokers" against tobacco companies for concealing "the damaging effects of smoking." A trial court ruled for the victims and awarded \$145 billion in punitive damages against the major U.S. tobacco companies.

This verdict was set aside on appeal and the class was decertified (even though the same court earlier approved certification).<sup>607</sup> This decision was upheld by the Florida Supreme Court. "The Court let the jury's finding of fraud stand, but required Florida smokers to assert their claims individually, giving them one year to file new lawsuits. Importantly, however, the decision allowed the smokers' claims already proven to be carried over to their individual cases, thus preserving most of the gains that had been made in the twelve years of Engle litigation. Claimants still bear the burden of proving that they smoked Defendant's cigarettes, that the smoking caused their individual illnesses, and (if they allege fraud) that they personally relied on Defendant's fraudulent claims."<sup>608</sup>

### *Robinson v. R.J. Reynolds Tobacco Co.*

Michael Johnson began smoking when he was 13. He "was addicted to cigarettes and could not stop smoking despite his attempts."<sup>609</sup> In 1996, at age 36, he was diagnosed with lung cancer and died from it later that year.<sup>610</sup> In February 2014, Michael's wife sued R.J. Reynolds for her husband's addiction to nicotine in cigarettes, which caused his cancer and death.<sup>611</sup> At trial, medical experts were able to connect his lethal lung cancer to his smoking.<sup>612</sup>

In July 2014, the jury handed down its verdict: over \$16.8 million in compensatory damages to Michael's wife and son and more than \$23.6 million in punitive damages. The trial court reduced the punitive amount to around \$16.8 million. In February 2017, the case was reversed on appeal

due to actions by the victim's counsel.<sup>613</sup> A new jury trial was conducted in June 2019; the defense prevailed.<sup>614</sup> Not a dime was paid to Michael Johnson's family.

## NOTES

<sup>1</sup> *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979) (Rehnquist, J., dissenting).

<sup>2</sup> JD Supra, "The Civil Jury Trial: Treat the Crisis as an Opportunity," September 20, 2021, <https://www.jdsupra.com/legalnews/the-civil-jury-trial-treat-the-crisis-9710089/>. See also, Richard L. Jolly, Valerie P. Hans and Robert S. Peck, *The Civil Jury: Reviving an American Institution*, U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), <https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI-The-Civil-Jury-Reviving-an-American-Institution.pdf> ("Research on civil jury decision-making supports the strength of the jury as a fact-finder. ...[S]everal studies have found that the complexity of evidence in the case is unrelated to the agreement rates between juries and legal experts; a relationship would have been expected if jury incompetence led juries to choose a different verdict. ...Jury damage awards reflect the community's assessment of the value of an injury, considering the context and circumstances of the injury and the identities and behavior of the parties. The need to examine each case's specific facts, and the ability to handle uncertainty and the intangibility of some injuries, make the representative jury a societally appropriate decision-maker on damages. Such a jury can draw on its collective experiences with injuries and their financial consequences as they engage in the necessary fact-finding.")

<sup>3</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022), [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). The Chamber's report is published by its "tort reform" branch, the Institute for Legal Reform (ILR). ILR was created in 1998 to pursue the Chamber's national anti-civil jury "tort reform" agenda in order to protect its large corporate members. See, e.g., Theodore Eisenberg, "U.S. Chamber of Commerce Liability Survey: Inaccurate, Unfair, and Bad for Business," 6 *J. Empir. Leg. Stud.* 969 (December 2009), <http://scholarship.law.cornell.edu/facpub/373>. Both the Chamber and ILR are funded primarily by large corporate donors. See, e.g., Public Citizen, "The Gilded Chamber 2.0," September 26, 2016, [http://chamberofcommercewatch.org/wp-content/uploads/2016/09/Gilded\\_Chamber.pdf](http://chamberofcommercewatch.org/wp-content/uploads/2016/09/Gilded_Chamber.pdf)

<sup>4</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022), [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf). ATRA is a Washington, DC-based group formed in 1986 to represent hundreds of U.S. and foreign corporations in their bid to overhaul civil liability laws. See, e.g., Carl Deal and Joanne Doroshow, *The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights*, Center for Justice & Democracy (2000), <https://centerjd.org/content/cala-files-secret-campaign-big-tobacco-and-other-major-industries-take-away-your-rights>. Every year since 2002, ATRA has released a "hellhole" report attacking judges and juries who issue decisions that protect consumers, workers and communities. It has been widely criticized. See, e.g., St. Louis Public Radio legal roundtable discussion of ATRA's *Judicial Hellholes*, January 24, 2017, <https://www.youtube.com/watch?v=ohzfZZx-HYY>; Elizabeth G. Thornburg, "Judicial Hellholes, Lawsuit Climates, and Bad Social Science: Lessons from West Virginia," 110 *W.Va. L. Rev.* 1 (2008), <http://ssrn.com/abstract=1123808> ("[T]he point of the hellhole campaign is not to create an accurate snapshot of reality. The point of the hellhole campaign is to motivate legislators and judges to make law that will favor repeat corporate defendants and their insurers, and to spur voters to vote for those judges and legislators who will do so. ...As well-founded, honest commentaries on judicial systems, [ATRA's hellhole reports] are a major failure."); Adam Liptak, "The Worst Courts for Businesses? It's a Matter of Opinion," *New York Times*, December 24, 2007, <https://www.nytimes.com/2007/12/24/us/24bar.html> ("It is, for starters, a collection of anecdotes based largely on newspaper accounts. It has no apparent methodology.") See also, Joanne Doroshow and Amy Widman, "The Racial Implications of Tort Reform," 25 *Wash. U. J. L. & Pol'y* 161 (January 2007), [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1206&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1206&context=law_journal_law_policy)

<sup>5</sup> See, e.g., Elizabeth G. Thornburg, "Judicial Hellholes, Lawsuit Climates, and Bad Social Science: Lessons from West Virginia," 110 *W.Va. L. Rev.* 1 (2008), <http://ssrn.com/abstract=1123808>

<sup>6</sup> The authors of the Chamber report are from the law firm Shook, Hardy & Bacon, which has long represented the American Tort Reform Association. See, e.g., Shook, Hardy & Bacon, "Cary Silverman," <https://www.shb.com/professionals/s/silverman-cary> (viewed June 1, 2023); Missouri Chamber, "Missouri lawmakers consider critical legal reform legislation," March 24, 2023, <https://mochamber.com/news-archive/missouri-lawmakers-consider-critical-legal-reform-legislation/>

<sup>7</sup> See, e.g., Joanne Doroshow and Douglas Heller, *Inventing Social Inflation 2023*, Consumer Federation of America and Center for Justice and Democracy (2023), <https://centerjd.org/content/inventing-social-inflation-2023>; American



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Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>; J. Robert Hunter, Joanne Doroshov and Douglas Heller, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, Consumer Federation of America and Center for Justice and Democracy (March 2020), <https://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>

<sup>8</sup> See, e.g., Nancy S. Marder, "Juries and Damages: A Commentary," 48 *DePaul L. Rev.* 427 (1998), <https://via.library.depaul.edu/law-review/vol48/iss2/14>. See also, James H. Gordon and Michael E. Bonner, Ansa Assuncao LLP, "The Self-Fulfilling Prophecy of Social Inflation," *Lexology*, February 5, 2020, <https://www.lexology.com/library/detail.aspx?g=f87055ad-b2df-4837-8d94-df5d3772775d> ("[N]uclear verdicts are nothing new. For example, in 2002, a Los Angeles jury awarded Betty Bullock, a 50-year smoker, \$28 billion against a tobacco company. That same year, a Missouri jury awarded more than \$2.25 billion to a plaintiff, Georgia Hayes, in her suit against a pharmacist who diluted cancer drugs. There have been massive and well-publicized jury verdicts for decades.") See also, Center for Justice and Democracy, "FAQ About the McDonald's Coffee Case and the Use of Fabricated Anecdotes," [https://centerjd.org/system/files/FAQMcDonaldsEtc\\_0.pdf](https://centerjd.org/system/files/FAQMcDonaldsEtc_0.pdf)

<sup>9</sup> See, e.g., Center for Justice and Democracy, "The Myth of Nuclear Verdicts," June 21, 2021, <https://centerjd.org/content/fact-sheet-myth-nuclear-verdicts> ("There is a large gap between what juries award and what insurers actually pay, which is far less.")

<sup>10</sup> David A. Hyman and Charles Silver, "Five Myths of Medical Malpractice," 143 *CHEST* 222 (January 2013), [https://journal.chestnet.org/article/S0012-3692\(13\)60034-3/fulltext](https://journal.chestnet.org/article/S0012-3692(13)60034-3/fulltext)

<sup>11</sup> See, e.g., *Yanes v. City of New York*, *infra* p. 34. This incident involved a horrific chemistry explosion, which led to gruesome and lifelong burn injuries to a child. The episode is described by ATRA as "a high school laboratory experiment [that] went wrong." American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 32, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>12</sup> See *Weist v. Kraft Heinz Company*, *infra* p. 8. ATRA described a woman who suffered a painful death from mesothelioma after repeated secondary asbestos exposure in the home as a "wife...allegedly exposed to asbestos while doing the family's laundry." American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 48, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>13</sup> See *Madere v. Schnitzer Southeast, LLC*, *infra* p. 19. The Chamber's description of this case is as follows: "[I]n August 2019, a Muscogee County [GA] jury returned a \$280 million verdict against a trucking company in just 45 minutes. The plaintiffs claimed the driver, who swerved across the center lane, fell asleep at the wheel, while his employer claimed the driver swerved to avoid a dog on the road. Whatever the cause, the amount of wrongful death damages awarded can only be viewed as extraordinary: \$150 million for economic damages, \$30 million for pain and suffering, and \$100 million in punitive damages." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 21-2, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). The Chamber omits mention of a single victim let alone five victims, including two children, or their gruesome deaths. There is no mention of the driver's unsafe driving history, or the company's decision to keep putting him on the road despite several earlier crashes and numerous violations, or its settling of an earlier near fatal case with no change in safety practices. On the other hand, the Chamber somehow found it important to mention the company's "dog" defense, which was disproven in court.

<sup>14</sup> For example, ATRA's description of two cases that automaker Ford lost were essentially presentations of Ford's entire defense in each case, both of which were rejected in court. See *Hill v. Ford Motor Company*, *infra* p. 13 and *Trokey v. Ford Motor Company*, *infra* p. 9; American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 4-7, 55, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>15</sup> See *Vilsmeyer v. 3M Company*, *infra* p. 41. The Chamber's description of this case was particularly insulting. The case concerned a defective combat earplug, which led to hearing loss and hearing problems for combat vets. The Chamber positioned this case in its section about lawyer advertising, insisted on repeating the defense's losing argument and then blamed "lawsuit ads" for the verdict. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 28-30, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>16</sup> See *Reavis v. Toyota Motor Sales, U.S.A., Inc.*, *infra* p. 15. American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 65, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>17</sup> See, e.g., U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 37, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf); American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 54, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf) (Complaints about *Ingham v. Johnson & Johnson*, where both the Missouri Supreme Court and the U.S. Supreme Court allowed a verdict — already cut in half — to stand.)

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<sup>18</sup> See, e.g., U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 16-7, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf); American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 54, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf) (Complaints about *Echeverria v. Johnson & Johnson*, *Stemp v. Johnson & Johnson* and *Fox v. Johnson & Johnson*, later struck down for various reasons.)

<sup>19</sup> See *Perez v. Live Nation Worldwide, Inc.*, *infra* p. 27. The Chamber complains about the size of a "\$102 million verdict." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>20</sup> This case was brought under New York's "scaffold law" (also known as Labor Law § 240 and § 241), which both groups want to weaken. This law requires "all contractors and owners and their agents...to give proper protection" to construction workers who work at heights. N.Y. Lab. Law § 240, <https://www.nysenate.gov/legislation/laws/LAB/240>. It was enacted because lawmakers were concerned with the "unsafe conditions" and "widespread accounts of deaths and injuries in the construction trades." *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003). In 2003, New York's highest court, the Court of Appeals, reiterated, "The objective was — and still is — to force owners and contractors to provide a safe workplace...." See *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003).

<sup>21</sup> See *Perez v. Live Nation Worldwide, Inc.*, *infra* p. 27. This same case is cited for the proposition that courts should control what damages plaintiff lawyers may ask for, because, as this case shows, "these awards are often significantly reduced on appeal." Nowhere is there any mention of the fact that the parties settled for an undisclosed amount. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17-18, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). Corporate groups have long tried to control what juries do by limiting relevant information that juries hear, such as the fact that a state law caps damages. That also includes preventing plaintiff lawyers from asking juries to award a specific amount in damages, which they call "anchors," something they want to ban. The false inference is that jurors are idiots and unable to assess damages by listening to evidence from both sides of a case. Actual case evidence of "anchoring" presented by these groups consists of a few anecdotal examples where a jury awarded what a plaintiff asked for. Of course, this proves nothing. It is certainly as likely that defense counsel presented no credible evidence to the contrary, or at a minimum, were unable to communicate properly with the jury — a problem that some corporate groups have publicly acknowledged. See, e.g., a report released by the American Transportation Research Institute (ATRI), which represents big trucking companies, where they publicly announced to the world that their attorneys are not very good. In a survey of plaintiff and defense counsel described by ATRI, "73.3 percent said that plaintiff attorneys were doing better, 20.0 percent said both, 6.7 percent said neither, with no one saying defense attorneys did better." American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

<sup>22</sup> The American colonists fought the Revolutionary War in significant part over England's repeated attempts to restrict jury trials. The U.S. Constitution was nearly defeated over its failure to guarantee the right to civil jury trial. (The Seventh Amendment eventually resolved the problem.) The right to jury trial has been secured not only by the U.S. Constitution but by every state as well.

<sup>23</sup> Seventeen states reported publishable data for total tort dispositions and jury trials in 2020. Their rates were as follows: Alaska (0.0 percent), Georgia (0.89 percent), Hawaii (0.42 percent), Indiana (0.4 percent), Michigan (0.19 percent), Minnesota (1.59 percent), Missouri (0.4 percent), New Jersey (0.32 percent), Nevada (0.67 percent), North Carolina (0.26 percent), Ohio (0.28 percent), Oregon (0.91 percent), Rhode Island (0.21 percent), South Carolina (1.37 percent), Texas (0.63 percent), Utah (53.33 percent), and Vermont (1.44 percent). Utah resolved 8 tort cases by jury trial in 2020. National Center for State Courts, "CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate, 2020," State Court Caseloads," July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>

<sup>24</sup> Seventeen states plus the North Mariana Islands reported publishable data for total tort dispositions and jury trials in 2021. Their rates were as follows: Connecticut (0.8 percent), Hawaii (0.76 percent), Indiana (0.84 percent), Michigan (0.24 percent), Minnesota (1.79 percent), Missouri (0.88 percent), Nevada (0.9 percent), New Jersey (0.49 percent), New York (0.74 percent), North Carolina (0.62 percent), North Mariana Islands (0.0 percent), Ohio (0.4 percent), Oregon (0.52 percent), Rhode Island (0.16 percent), Texas (0.84 percent), Utah (90.48 percent), Vermont (0.29 percent), and Wisconsin (1.4 percent). Utah resolved 19 tort cases by jury trial in 2021. National Center for State Courts, "CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate, 2021," State Court Caseloads," July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>

<sup>25</sup> See National Center for State Courts, "CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate," July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>



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<sup>26</sup> Richard L. Jolly, Valerie P. Hans and Robert S. Peck, *The Civil Jury: Reviving an American Institution*. U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), <https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI-The-Civil-Jury-Reviving-an-American-Institution.pdf>

<sup>27</sup> See, e.g., Shari Seidman Diamond and Jessica M. Salerno, "Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges," 81 *La. L. Rev.* 120 (Fall 2020), <https://digitalcommons.law.lsu.edu/cji/viewcontent.cji?article=6816&context=lairev>

<sup>28</sup> ATRA simply says, "Nuclear verdicts are awards that exceed \$10 million." American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 5, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf). The Chamber similarly states, "Nuclear verdicts — defined as jury verdicts of \$10 million or more." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 2, [https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). Notably, the trucking industry also tried to define this term, but it arrived at it based on responses of less than half of those it surveyed, and only a "majority" of those. American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

<sup>29</sup> The Chamber says, for example, "While the sources used to develop the ILR database likely capture verdicts over \$10 million at a high rate, no jury verdict database captures all verdicts in every court." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 48, [https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>30</sup> The Chamber notes, "While the median nuclear verdict is about \$20 million, the mean is substantially higher — \$76 million." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 8, [https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>31</sup> Laerd Statistics, "FAQs – Measures of Central Tendency," <https://statistics.laerd.com/statistical-guides/measures-central-tendency-mean-mode-median-faqs.php#:~:text=What%20is%20the%20most%20appropriate,be%20distorted%20by%20the%20outliers> (viewed June 1, 2023); "How Do Outliers Affect the Mean?" *Statology*, January 29, 2020, <https://www.statology.org/how-do-outliers-affect-the-mean/>

<sup>32</sup> The Chamber only looks at verdicts above \$10 million. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 3, [https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>33</sup> This is according to the latest data from the U.S. Department of Justice, Bureau of Justice Statistics, "Tort Bench and Jury Trials in State Courts, 2005" (November 2009) at 12 (Table 12), <http://bjs.ojp.usdoj.gov/content/pub/pdf/tbitsc05.pdf>

<sup>34</sup> American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>

<sup>35</sup> Tyson Fisher, "Small verdicts costing trucking industry despite lawsuits being rare," *Land Line*, November 19, 2021, <https://landline.media/small-verdicts-costing-trucking-industry-despite-lawsuits-being-rare/>

<sup>36</sup> Joanne Doroshov and Douglas Heller, *Inventing Social Inflation 2023*, Consumer Federation of America and Center for Justice and Democracy (2023), <https://centerjd.org/content/inventing-social-inflation-2023>

<sup>37</sup> See, e.g., Andrew Popper, "In Defense of Deterrence," 75 *Albany L. Rev.* 181 (2011), [http://digitalcommons.wcl.american.edu/facsch\\_lawrev/294](http://digitalcommons.wcl.american.edu/facsch_lawrev/294)

<sup>38</sup> William M. Landes and Richard A. Posner, *The Economic Structure of Tort Law*. Cambridge, MA: Harvard University Press (1987).

<sup>39</sup> *Ibid.*

<sup>40</sup> See, e.g. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 8-10, 26, [https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>41</sup> See *infra* p. 19.

<sup>42</sup> *Madere v. Schnitzer Southeast, LLC*, Case No. SC17CV106 (Muscogee County Ct., Ga.) (consolidated pre-trial order, August 1, 2019).

<sup>43</sup> *Ibid.*

<sup>44</sup> American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>

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<sup>45</sup> American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

<sup>46</sup> *Ibid.*

<sup>47</sup> See *Dzion v. AJD Business Services, Inc.*, *infra* p. 18.

<sup>48</sup> Deborah Lockridge, "5 Takeaways From a Billion-Dollar Verdict," *All That's Trucking*, September 7, 2021, <https://www.truckinginfo.com/10150904/5-takeaways-from-a-billion-dollar-verdict>

<sup>49</sup> *Silkwood v. Kerr-McGee Corp.* 464 U.S. 238 (1984).

<sup>50</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf) (The Chamber says it objects to New York verdicts of three sizes — "\$75 million," "several for \$60 million" and "\$190 million." Yet it only cites one case — the \$190 million verdict. Because it involved five victims and their families, it also includes two \$60 million verdicts. We do not know if that is what the Chamber is referring to. But in any event, as we note, that entire verdict was cut by about 84 percent, which the Chamber does not discuss.)

<sup>51</sup> See, e.g., U.S. Chamber of Commerce Institute for Legal Reform, *On the Edge: New York County Asbestos Litigation at a Tipping Point* (August 2017), <https://www.almcms.com/contrib/content/uploads/sites/292/2017/08/Asbestos-court-rules-report.pdf>

<sup>52</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 48, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>53</sup> *Id.* at 55.

<sup>54</sup> Environmental Working Group, "EWG applauds Congressional leaders' bill to ban asbestos imports, commercial use," April 7, 2023, <https://www.ewg.org/news-insights/news-release/2023/04/ewg-applauds-congressional-leaders-bill-ban-asbestos-imports>

<sup>55</sup> See Center for Justice & Democracy, "FAQ: Asbestos – The Awful Truth," January 31, 2018, <https://centerjd.org/content/faq-asbestos-%E2%80%93-awful-truth>

<sup>56</sup> Agency for Toxic Substances and Disease Registry, "Who Is at Risk of Exposure to Asbestos?" August 26, 2014, [https://www.atsdr.cdc.gov/csem/asbestos/who\\_is\\_at\\_risk.html](https://www.atsdr.cdc.gov/csem/asbestos/who_is_at_risk.html)

<sup>57</sup> See Center for Justice & Democracy, "FAQ: Asbestos – The Awful Truth," January 31, 2018, <https://centerjd.org/content/faq-asbestos-%E2%80%93-awful-truth>

<sup>58</sup> See Paul Brodeur, "Annals of Law: Part IV – Bankruptcy," *New Yorker*, June 23, 1985, <https://www.newyorker.com/magazine/1985/07/01/the-asbestos-industry-on-trial-iv-bankruptcy>; "Annals of Law: Part 3 – Judgement," *New Yorker*, June 16, 1985, <https://www.newyorker.com/magazine/1985/06/24/the-asbestos-industry-on-trial-iii-judgement>; "Annals of Law: Part 2 – Discovery," *New Yorker*, June 9, 1985, <https://www.newyorker.com/magazine/1985/06/17/the-asbestos-industry-on-trial-ii-discovery>; "Annals of Law: The Asbestos Industry on Trial, Part 1 – A Failure to Warn," *New Yorker*, June 2, 1985, <https://www.newyorker.com/magazine/1985/06/10/the-asbestos-industry-on-trial-i-a-failure-to-warn>

<sup>59</sup> Agency for Toxic Substances and Disease Registry, "Who Is at Risk of Exposure to Asbestos?" August 26, 2014, [https://www.atsdr.cdc.gov/csem/asbestos/who\\_is\\_at\\_risk.html](https://www.atsdr.cdc.gov/csem/asbestos/who_is_at_risk.html)

<sup>60</sup> *Ibid.* U.S. Centers for Disease Control and Prevention, "Incidence of Malignant Mesothelioma, 1999–2018" (March 2022), <https://www.cdc.gov/cancer/uscs/about/data-briefs/no27-incidence-malignant-mesothelioma-1999-2018.htm>

<sup>61</sup> See, e.g., Emily Goswami et al., "Domestic asbestos exposure: a review of epidemiologic and exposure data," *10 Int J Environ Res Public Health* 5629 (November 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3863863/>

<sup>62</sup> 11 U.S. Code § 524.

<sup>63</sup> Paul Brodeur, "Annals of Law: Part IV – Bankruptcy," *New Yorker*, June 23, 1985, <https://www.newyorker.com/magazine/1985/07/01/the-asbestos-industry-on-trial-iv-bankruptcy>; "Annals of Law: Part 3 – Judgement," *New Yorker*, June 16, 1985, <https://www.newyorker.com/magazine/1985/06/24/the-asbestos-industry-on-trial-iii-judgement>; "Annals of Law: Part 2 – Discovery," *New Yorker*, June 9, 1985, <https://www.newyorker.com/magazine/1985/06/17/the-asbestos-industry-on-trial-ii-discovery>; "Annals of Law: The Asbestos Industry on Trial, Part 1 – A Failure to Warn," *New Yorker*, June 2, 1985, <https://www.newyorker.com/magazine/1985/06/10/the-asbestos-industry-on-trial-i-a-failure-to-warn>

<sup>64</sup> The RAND Institute for Civil Justice found, "Most trusts do not have sufficient funds to pay every claim in full and...the median of the payment percentage is 25 percent." RAND Institute for Civil Justice, *Asbestos Bankruptcy Trusts: An*

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Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts (2010), [http://www.rand.org/content/dam/rand/pubs/technical\\_reports/2010/RAND\\_TR872.sum.pdf](http://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.sum.pdf)

<sup>65</sup> See Center for Justice & Democracy, "Group Letters Opposing the FACT Act, H.R. 906," February 14, 2017, <https://centerjd.org/content/group-letters-opposing-fact-act-hr-906>

<sup>66</sup> Ibid.

<sup>67</sup> "Men's Cancer Stemmed From Exposure to Asbestos, Suit Alleged," 2013 Jury Verdicts LEXIS 8335.

<sup>68</sup> Ibid.

<sup>69</sup> *Assenzio v A.O. Smith Water Prods. Co.*, 2015 NY Slip Op 30201, February 5, 2015, <https://cases.justia.com/new-york/other-courts/2015-2015-ny-slip-op-30201-u.pdf?ts=1423865339>

<sup>70</sup> Michael Lipkin, "NY Judge Cuts \$190M Award Over Asbestos Injuries To \$30M," *Law360*, February 10, 2015, <https://www.law360.com/articles/620573/ny-judge-cuts-190m-award-over-asbestos-injuries-to-30m>, discussing *Assenzio v A.O. Smith Water Prods. Co.*, 2015 NY Slip Op 30201, February 5, 2015, <https://cases.justia.com/new-york/other-courts/2015-2015-ny-slip-op-30201-u.pdf?ts=1423865339>

<sup>71</sup> "Secondary asbestos exposure caused cancer, plaintiff alleged," 2022 Jury Verdicts LEXIS 5836.

<sup>72</sup> Ibid. See also, *Warren v. Algoma Hardwoods Inc.*, Case No. 20STCV04852 (L.A. County Superior Ct., Cal) (complaint, February 6, 2020).

<sup>73</sup> *Warren v. Algoma Hardwoods, Inc.*, 2022 WL 16627708.

<sup>74</sup> Ibid.

<sup>75</sup> "Secondary asbestos exposure caused cancer, plaintiff alleged," 2022 Jury Verdicts LEXIS 5836.

<sup>76</sup> *Warren v. Algoma Hardwoods, Inc.*, 2022 WL 16627708.

<sup>77</sup> *Warren v. Algoma Hardwoods, Inc.*, 2022 WL 16627709.

<sup>78</sup> *Warren v. Algoma Hardwoods, Inc.*, Case No. B323396 (2nd App. Dist. Cal.) (docket viewed April 18, 2023).

<sup>79</sup> *Amerisure Mutual Insurance Company v. Metal Masters, Inc.*, 2022 WL 270908; *Weist v. Brake Parts, Inc., LLC*, Case No. 2020-CP-40-02597 (Richland Common Pls. Ct., S.C.) (fourth amended complaint, September 7, 2021).

<sup>80</sup> "Suit: Second-hand exposure caused mesothelioma," 2021 Jury Verdicts LEXIS 10986; *Amerisure Mutual Insurance Company v. Metal Masters*, 2021 WL 9759344.

<sup>81</sup> "Suit: Second-hand exposure caused mesothelioma," 2021 Jury Verdicts LEXIS 10986.

<sup>82</sup> Robert initially pursued claims against many companies, alleging that his wife's death was caused by second-hand asbestos exposure from his, her father and uncle's work. Most of the defendants settled and/or were dismissed prior to trial, including any entities related to work performed by her father and uncle. The only defendants remaining at trial, Kraft Heinz and Metal Masters, were related to Robert's work.

<sup>83</sup> *Weist v. Brake Parts, Inc., LLC*, Case No. 2020-CP-40-02597 (Richland Common Pls. Ct., S.C.) (fourth amended complaint, September 7, 2021).

<sup>84</sup> "Suit: Second-hand exposure caused mesothelioma," 2021 Jury Verdicts LEXIS 10986.

<sup>85</sup> "Suit: Second-hand exposure caused mesothelioma," 2021 Jury Verdicts LEXIS 10986; *Amerisure Mutual Insurance Company v. Metal Masters, Inc.*, 2022 WL 270908.

<sup>86</sup> *Amerisure Mutual Insurance Company v. Metal Masters Inc.*, Case No. 22-1200 (4th Cir.) (docket as of March 1, 2023).

<sup>87</sup> See U.S. Environmental Protection Agency, "Current Best Practices for Preventing Asbestos Exposure Among Brake and Clutch Repair Workers," <https://www.epa.gov/asbestos/current-best-practices-preventing-asbestos-exposure-among-brake-and-clutch-repair-0>

<sup>88</sup> "Missouri Jury Awards \$20M In Asbestos Friction Products Case," 2022 LexisNexis Jury Verdicts & Settlements 22.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> "St. Louis jury awards \$ 20M mesothelioma verdict," 2001 Dolan Media Jury Verdicts LEXIS 3937.

<sup>93</sup> Ibid.

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- <sup>94</sup> John Sammon, "Jury decides asbestos in Ford brake drums caused man's mesothelioma, awards \$20 million," *St. Louis Record*, March 10, 2022, <https://stlrecord.com/stories/621672220-jury-decides-asbestos-in-ford-brake-drums-caused-man-s-mesothelioma-awards-20-million>
- <sup>95</sup> "Missouri Judge Denies Post-Trial Motions, Leaving \$ 20M Asbestos Verdict," 2022-6966 *Mealey's Daily News Update* 27.
- <sup>96</sup> See *Trokey v. Ford Motor Company*, 2023 WL 2214122.
- <sup>97</sup> See *Trokey v. Ford Motor Company*, 2023 WL 2632782.
- <sup>98</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 16-7, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)
- <sup>99</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 54, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)
- <sup>100</sup> Stock Analysis, "Johnson & Johnson (JNJ)," <https://stockanalysis.com/stocks/jnj/market-cap/> (viewed May 16, 2023).
- <sup>101</sup> "Women's Ovarian Cancer, Death Due to J&J Talc Powder: Plaintiffs," 2018 Jury Verdicts LEXIS 38930.
- <sup>102</sup> *Ibid.*
- <sup>103</sup> "Plaintiff Blamed Talc in Baby Powder for Her Ovarian Cancer," 2017 Jury Verdicts LEXIS 2504.
- <sup>104</sup> *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (2020).
- <sup>105</sup> "Woman Argued Talc Products' Link to Cancer Was Concealed," 2016 Jury Verdicts LEXIS 5144.
- <sup>106</sup> "Plaintiff Blamed Talc in Baby Powder for Her Ovarian Cancer," 2017 Jury Verdicts LEXIS 2504.
- <sup>107</sup> *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (2020).
- <sup>108</sup> Carl O'Donnell and Lisa Girion, "Johnson & Johnson to stop selling talc baby powder in U.S. and Canada," *Reuters*, May 19, 2020, <https://www.reuters.com/article/us-johnson-johnson-babypowder/johnson-johnson-to-stop-selling-talc-baby-powder-in-u-s-and-canada-idUSKBN22V32U>; Kilmer House, "The Birth of Our Baby Products," April 30, 2007, <https://www.kilmerhouse.com/2007/04/the-birth-of-our-baby-products>
- <sup>109</sup> Chris Kirkham and Lisa Girion, "Special Report: As Baby Powder concerns mounted, J&J focused marketing on minority, overweight women," *Reuters*, April 9, 2010, <https://www.reuters.com/article/us-johnson-johnson-marketing-specialrepo/special-report-as-baby-powder-concerns-mounted-jj-focused-marketing-on-minority-overweight-women-idUSKCN1RL1JZ>
- <sup>110</sup> "Women's Ovarian Cancer, Death Due to J&J Talc Powder: Plaintiffs," 2018 Jury Verdicts LEXIS 38930.
- <sup>111</sup> Lisa Girion, "Powder Keg: Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder," *Reuters*, December 14, 2018, <https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/>
- <sup>112</sup> See, e.g., Tiffany Hsu, "Johnson & Johnson Cleared by New Jersey Jury in Latest Talc Cancer Trial," *New York Times*, July 22, 2022, <https://www.nytimes.com/2019/03/27/business/johnson-johnson-talc-cancer.html>; Fraiser Kansteiner, "J&J escapes \$120M verdict after appellate court reverses loss in long-running talc case," *Fierce Pharma*, July 22, 2022, <https://www.fiercepharma.com/pharma/jj-escapes-120-million-payout-after-appellate-court-reverses-loss-long-running-talc>; Jef Feeley, "Two Johnson & Johnson Talc Cancer Lawsuits Dismissed by New Jersey Judge," *Insurance Journal*, September 6, 2016, <https://www.insurancejournal.com/news/east/2016/09/06/425502.htm>
- <sup>113</sup> *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017).
- <sup>114</sup> Angus Liu, "J&J proposes \$8.9B talc settlement deal but some plaintiffs decry 'woefully inadequate' offer," *Fierce Pharma*, April 5, 2023, <https://www.fiercepharma.com/pharma/jj-opens-its-wallet-whopping-89b-talc-settlement-after-years-long-legal-battle>
- <sup>115</sup> *Ibid.*
- <sup>116</sup> J&J shifted all of its liability from approximately 40,000 pending talc cases into a newly created subsidiary, LTL Management. The subsidiary then filed for bankruptcy. The victims strongly objected and the Third Circuit Court of Appeals agreed with them. However, J&J has not given up and on April 4, 2023 filed a second bankruptcy, which is still pending. Dietrich Knauth and Mike Spector, "J&J Unit files for second bankruptcy to pursue \$8.9 billion talc settlement," *Reuters*, April 5, 2023, <https://www.reuters.com/legal/jj-unit-goes-bankrupt-second-time-pursue-89-bln-talc-settlement-2023-04-04/>; *In re LTL Mgmt., LLC*, 58 F.4th 738 (3d Cir. 2023); Dan Levine and Mike Spector, "Special report: Inside J&J's secret plan to cap litigation payouts to cancer victims," *Reuters*, February 4, 2022, <https://www.reuters.com/business/healthcare-pharmaceuticals/inside-jjs-secret-plan-cap-litigation-payouts-cancer-victims-2022-02-04/>
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<sup>119</sup> *Echeverria v. Johnson & Johnson*, 37 Cal.App.5th 292 (2019).

<sup>120</sup> *Ibid.*

<sup>121</sup> *Echeverria v. Johnson & Johnson*, Case No. S257378 (Cal. S.Ct.) (petition for review denied, October 23, 2019), [https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc\\_id=2294280&doc\\_no=S257378&request\\_token=NilwLSEmLkw6W1BVSCMTEplQEA0UDxTJiMuSz1RMCAqCq%3D%3D](https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2294280&doc_no=S257378&request_token=NilwLSEmLkw6W1BVSCMTEplQEA0UDxTJiMuSz1RMCAqCq%3D%3D)

<sup>122</sup> "Women's Ovarian Cancer, Death Due to J&J Talc Powder: Plaintiffs," 2018 Jury Verdicts LEXIS 38930; *Ingham v. Johnson & Johnson*, 2017 WL 3034696.

<sup>123</sup> *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (2020).

<sup>124</sup> *Ibid.*

<sup>125</sup> *Johnson & Johnson v. Ingham*, 141 S.Ct. 2716 (cert. denied, June 1, 2021); *Ingham v. Johnson & Johnson*, SC98674 (cert. denied, September session 2020), <https://www.chamberlitigation.com/sites/default/files/cases/files/20202020/Order%20--%20Ingham%20v.%20Johnson%20%26%20Johnson%20%28Missouri%20Supreme%20Court%29.pdf>

<sup>126</sup> "Missouri State Jury Awards \$110,451,021.02 To Woman Who Claimed Johnson & Johnson Brand Talc Powder Caused Her Ovarian Cancer," 2017 Jury Verdicts LEXIS 1384.

<sup>127</sup> "Plaintiff Blamed Talc in Baby Powder for Her Ovarian Cancer," 2017 Jury Verdicts LEXIS 2504.

<sup>128</sup> "Missouri State Jury Awards \$110,451,021.02 To Woman Who Claimed Johnson & Johnson Brand Talc Powder Caused Her Ovarian Cancer," 2017 Jury Verdicts LEXIS 1384.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Slemp v. Johnson & Johnson*, 589 S.W.3d 92 (Mo. Ct. App. 2019). The court ruled that non-Missourian Slemp, who used talc products made in Georgia, shouldn't have gotten to trial in St. Louis just by having filed her claims in a consolidated action with Missouri residents. Daniel Siegal, "Recently Reversed: How J&J, Avis & LG Toppled Big Verdicts," *Law360*, November 15, 2019, <https://www.law360.com/articles/1220368/recently-reversed-how-j-j-avis-lg-toppled-big-verdicts>

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<sup>132</sup> Daniel Siegal, "J&J Wins Mo. Appeal Of \$72M Talc Cancer Verdict," *Law360*, October 17, 2017, <https://www.law360.com/articles/975425/j-j-wins-mo-appeal-of-72m-talc-cancer-verdict>

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<sup>134</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 22, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>135</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 4-7, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>136</sup> "Car rollover 101; How rollovers happen and what you can do to avoid one," *Consumer Reports* (April 2014), <https://www.consumerreports.org/cro/2012/02/rollover-101/index.htm>

<sup>137</sup> *Hill v. Ford Motor Company*, Case No. 16-C-04179-S2 (Gwinnett County St. Ct., Ga.) (closing arguments, August 17, 2022), <https://www.documentcloud.org/documents/22156208-2022-08-17-hill-v-ford-am-closing-arguments>

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> "Georgia Jury Awards \$ 24,038,500 To Estate After Couple Killed When Tire Fails And Ford Roof Is Crushed In Rollover Collision," 2022 Jury Verdicts LEXIS 6972.

<sup>142</sup> *Ibid.*

<sup>143</sup> Everett Catts "Hills Seeking \$549M in Attorney Fees in Ford \$1.7B Verdict," *Daily Report*, September 13, 2022, <https://www.law.com/dailyreportonline/2022/09/13/hills-lawyers-seeking-549m-in-fees-in-ford-1-7b-verdict/>

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<sup>144</sup> "Pickup's roof wasn't crashworthy, per plaintiffs," 2022 Jury Verdicts LEXIS 9934.

<sup>145</sup> *Ibid.*

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<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> "Pickup's roof wasn't crashworthy, per plaintiffs," 2022 Jury Verdicts LEXIS 9934.

<sup>154</sup> O.C.G.A. 51-12-5.1. Punitive damages

<sup>155</sup> Rosie Manins, "Ford Says \$1.7B 'Trial By Sanctions' Verdict Can't Stand," *Law360*, December 19, 2022, <https://www.law360.com/articles/1559443/ford-says-1-7b-trial-by-sanctions-verdict-can-t-stand>

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<sup>157</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 7, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>158</sup> *Andrews v. Autoliv Japan, Ltd.*, 2022 WL 16753148.

<sup>159</sup> "Faulty seat belt design led to motorist's death, per man's estate," 2022 Jury Verdicts LEXIS 8371.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> *Andrews v. Autoliv Japan, Ltd.*, 2022 WL 16753148.

<sup>163</sup> *Ibid.*

<sup>164</sup> "Faulty seat belt design led to motorist's death, per man's estate," 2022 Jury Verdicts LEXIS 8371.

<sup>165</sup> Aaron Keller, "Widow Asks 11th Circ. To Uphold \$100M Fatal Crash Award," *Law360*, April 19, 2023, <https://www.law360.com/articles/1598712/widow-asks-11th-circ-to-uphold-100m-fatal-crash-award>

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<sup>167</sup> *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713 (Tex. App. 2021).

<sup>168</sup> *Reavis v. Toyota Motor Sales, U.S.A., Inc.*, 2021 WL 389094.

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<sup>172</sup> *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713 (Tex. App. 2021); *Reavis v. Toyota Motor Sales, U.S.A., Inc.*, 2021 WL 389094 (memorandum opinion, February 4, 2021); *Reavis v. Toyota Motor North America, Inc.*, Case No. DC-16-15296 (Dallas County Dist. Ct., Tex) (complaint, November 29, 2016).

<sup>173</sup> *Reavis v. Toyota Motor Sales, U.S.A., Inc.*, 2021 WL 389094.

<sup>174</sup> *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713 (Tex. App. 2021).

<sup>175</sup> *Reavis v. Toyota Motor North America, Inc.*, Case No. DC-16-15296 (Dallas County Dist. Ct., Tex) (complaint, November 29, 2016).

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<sup>176</sup> *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713 (Tex. App. 2021).

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<sup>178</sup> *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713 (Tex. App. 2021).

<sup>179</sup> *Ibid.* The Reavises released their judgment against Toyota Sales "only to streamline the appeal."

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<sup>181</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 7, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf). ATRA identified this case as *Baetchelder v. Malibu Boats LLC*, which is a misspelling. The correct spelling is *Batchelder*.

<sup>182</sup> *Batchelder v. Malibu Boats West Inc.*, Case No. 2016-CV-0114 (Rabun County Super. Ct., Ga.) (order on Malibu Boats, LLC's post-trial motions, July 18, 2022).

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> "Boat manufacturer failed to include proper warnings: suit," 2021 Jury Verdicts LEXIS 7289.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Batchelder v. Malibu Boats West Inc.*, Case No. 2016-CV-0114 (Rabun County Super. Ct., Ga.) (order on Malibu Boats, LLC's post-trial motions, July 18, 2022).

<sup>192</sup> *Ibid.*

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<sup>198</sup> *Id.* at 21-2.

<sup>199</sup> *Id.* at 17-8.

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<sup>201</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 57, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

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<sup>206</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, "Fatality Facts 2021: Large Trucks" (May 2023), <https://www.iihs.org/topics/fatality-statistics/detail/large-trucks>

<sup>207</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, "Large Trucks" (May 2023), <https://www.iihs.org/topics/large-trucks>

<sup>208</sup> The COVID-19 pandemic had a particular impact on trucking demands. See, e.g., U.S. Department of Transportation, *Supply Chain Assessment of the Transportation Industrial Base: Freight and Logistics* (February 2022), [https://www.transportation.gov/sites/dot.gov/files/2022-02/EO%2014017%20-%20DOT%20Sectoral%20Supply%20Chain%20Assessment%20-%20Freight%20and%20Logistics\\_FINAL.pdf](https://www.transportation.gov/sites/dot.gov/files/2022-02/EO%2014017%20-%20DOT%20Sectoral%20Supply%20Chain%20Assessment%20-%20Freight%20and%20Logistics_FINAL.pdf) ("To meet pandemic-induced freight demand, the number of trucks making last-mile deliveries, the number of truck stops, and attendant congestion [especially in urban areas] have increased.")

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<sup>217</sup> "Florida Jury Awards Motorcyclist \$411,726,608.42 In Negligence Action Brought After Multi-Vehicle Collision," 2020 Jury Verdicts LEXIS 396163; "Plaintiff wins \$411 million during virtual court hearing for I-10 pileup lawsuit," WCTV (Tallahassee, Fla.), October 5, 2020, <https://www.wctv.tv/2020/10/05/plaintiff-wins-411-million-during-virtual-court-hearing-for-i-10-pileup-lawsuit>; *Washington v. Top Auto Express, Inc.*, 2020 WL 6582234 (Gadsden County Cir. Ct., Fla.) (verdict and settlement summary, October 2, 2020); *Washington v. Sinclair Broadcast Group, Inc.*, 2020 WL 6161669. (Gadsden County Cir. Ct., Fla.) (fourth amended complaint, 2020).

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- <sup>258</sup> 49 C.F.R. § 383.131(a)
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<sup>294</sup> *Melendez v. Mo*, 2022 WL 5264513.

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<sup>296</sup> "Recovery center liable for bipolar patient's death, per lawsuit," 2022 Jury Verdicts LEXIS 8360.

<sup>297</sup> *Ibid.*

<sup>298</sup> *Ibid.*

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<sup>299</sup> Ibid.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> \$250,000 is the maximum amount of punitive damages permitted by state law in a non-product liability case unless a defendant acted with specific intent to cause harm. Here, the jury did not find that MARR acted with specific intent to harm.

<sup>303</sup> "Recovery center liable for bipolar patient's death, per lawsuit," 2022 Jury Verdicts LEXIS 8360; *Carusillo III v. Metro Atlanta Recovery Residences Inc.*, 2022 WL 18621208.

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<sup>305</sup> *Carusillo III v. Metro Atlanta Recovery Residences, Inc.*, Case No. 19A73528 (DeKalb County St. Ct., Ga.) (docket as of March 29, 2023).

<sup>306</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

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<sup>309</sup> *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003); *Koenig v. Patrick Constr. Corp.*, 298 N.Y. 313 (1948).

<sup>310</sup> New York's "scaffold law" (also known as Labor Law § 240 and § 241) requires "all contractors and owners and their agents...to give proper protection" to construction workers who work at heights. N.Y. Lab. Law § 240, <https://www.nysenate.gov/legislation/laws/LAB/240>. It was enacted because lawmakers were concerned with the "unsafe conditions" and "widespread accounts of deaths and injuries in the construction trades." *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003). In 2003, New York's highest court, the Court of Appeals, reiterated, "The objective was — and still is — to force owners and contractors to provide a safe workplace...." See *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003).

<sup>311</sup> See *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003).

<sup>312</sup> *Perez v. Live Nation*, 2020 N.Y. Misc. LEXIS 3549.

<sup>313</sup> Evidence included "that his traumatic brain injury resulted in numerous, extensive, and ongoing symptoms, including continual head pain, post-traumatic epilepsy, left hemiparesis, light and noise sensitivity, emotional dysregulation, depression, anxiety, fatigue, post-traumatic stress disorder, clinically severe neuropsychiatric disorder, aphasia, and profound cognitive deficits, such as deficits in motor speed, attention, information-processing speed, verbal fluency, visual perception, verbal linguistic function, memory, concentration, attention, and executive functions. The evidence also supported [Mark's] allegations that he is missing a significant amount of brain tissue, which will not regenerate, and that his brain damage and cognitive deficits are permanent and progressive." *Perez v. Live Nation*, 2020 N.Y. Misc. LEXIS 3549.

<sup>314</sup> Ibid.

<sup>315</sup> *Perez v. Live Nation*, 2020 N.Y. Misc. LEXIS 3549; "\$101 Million Awarded By New York Jury To Worker Knocked Off Event Booth," 2019 LexisNexis Jury Verdicts & Settlements 366.

<sup>316</sup> *Perez v. Live Nation*, 2020 N.Y. Misc. LEXIS 3549.

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<sup>319</sup> Ibid.

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<sup>324</sup> *Martin v. Six Flags Over Georgia II, L.P.*, 301 Ga. 323 (2017).

<sup>325</sup> *Six Flags Over Georgia II, L.P. v. Martin*, 335 Ga. App. 350 (2015).

<sup>326</sup> *Ibid.*

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<sup>330</sup> *Six Flags Over Georgia II, L.P. v. Martin*, 335 Ga. App. 350 (2015).

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<sup>338</sup> Ben Brasch, "Deal reached in '07 beating outside of Six Flags," *Atlanta Journal-Constitution*, April 1, 2018; Savannah Brock, "After 10 years, \$35M suit against Six Flags in man's beating settled," *11 Alive*, March 30, 2018, <https://www.13wmaz.com/article/news/crime/after-10-years-35m-suit-against-six-flags-in-mans-beating-settled/93-53377449>

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<sup>342</sup> *Ibid.*

<sup>343</sup> Dorothy Atkins, "Kroger Insurer's Trial Gamble Blamed For 'Runaway' Verdict," *Law360*, February 16, 2021, <https://www.law360.com/articles/1355409/kroger-insurer-s-trial-gamble-blamed-for-runaway-verdict>. In February 2021, Kroger's insurance company, Great American, sued its excess insurer, Starr Surplus Lines, seeking a declaration that it negligently failed to settle the case within its \$25 policy limit. According to Great American, "Starr knew or should have known it would be a difficult case to win at trial, given the severity of Taylor's injuries and the location of the attack. Kroger personnel had also identified the store as needing more security and lighting in the parking lot, and management had been warned about at least one of the assailants who loitered around the lot with a gun before the incident. But the supermarket chain still delayed implementing additional security efforts, according to Great American's complaint. On the eve of trial and throughout, Starr and Taylor's counsel entered settlement negotiations and his attorneys repeatedly made demands that were within Starr's policy limits, but the company refused, Great American says. Had Starr simply settled the case within its policy limits, Kroger's next layer of excess coverage wouldn't have been exposed to the judgment, Great American said."

<sup>344</sup> *Georgia CVS Pharmacy, LLC v. Carmichael*, 362 Ga. App. 59 (2021).

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

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- <sup>350</sup> *Carmichael v. Georgia CVS Pharmacy, L.L.C.*, Case No. 14EV002214 (Fulton County St. Ct., Ga.) (complaint, October 2, 2014).
- <sup>351</sup> "CVS was aware of criminal activity on premises, per lawsuit," 2019 Jury Verdicts LEXIS 120649.
- <sup>352</sup> *Georgia CVS Pharmacy, LLC v. Carmichael*, 362 Ga. App. 59 (2021).
- <sup>353</sup> Rosie Manins, "Ga. Justices Question \$45M Verdict In CVS Shooting Case," *Law360*, February 8, 2023, <https://www.law360.com/articles/1574030/ga-justices-question-45m-verdict-in-cvs-shooting-case>
- <sup>354</sup> *Hedges v. Planned Sec. Serv. Inc.*, 190 A.D.3d 485 (2021).
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- <sup>359</sup> *Hedges v. Planned Sec. Serv. Inc.*, 190 A.D.3d 485 (2021).
- <sup>360</sup> *Ibid.*
- <sup>361</sup> *Hedges v. Planned Sec. Serv.*, 2021 N.Y. LEXIS 2182.
- <sup>362</sup> *Taylor v. Devereux Foundation*, 2023 WL 2519243.
- <sup>363</sup> "Treatment facility patient sought damages for sexual assault," 2020 Jury Verdicts LEXIS 316871.
- <sup>364</sup> *Ibid.*
- <sup>365</sup> *Ibid.*
- <sup>366</sup> *Ibid.*
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