



Significant Cases

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Harmonie reports significant defense wins by member firms.

THE TOP 2002 DEFENSE WIN AS NOTED BY THE NATIONAL LAW JOURNAL

OHIO-MEDICAL MALPRACTICE

DEFENSE COUNSEL: James L. Malone and Alan Parker of *Reminger & Reminger*

Penny Chang, 15, was killed by Scott Strothers, 21, who repeatedly shot her as she walked home from school with friends. He pleaded guilty to murder and is serving 23-years-to-life. Chang's parents filed a \$20 million wrongful-death suit against the physician and the Cleveland Clinic, where Strothers had been a psychiatric patient. Strothers had spent five weeks in inpatient treatment after vandalizing the Chang family's property. The plaintiff attorney argued that the family had depended on mental-health experts to keep their daughter safe. The Cleveland jury found for the clinic and physician.



A TOP TEN DEFENSE WIN AS NOTED BY THE NATIONAL LAW JOURNAL

MASSACHUSETTS-PRODUCT LIABILITY

DEFENSE COUNSEL: Richard L. Edwards of *Campbell Campbell Edwards & Conroy*

Richard J. Lane was paralyzed from the waist down when he was ejected during a roll-over of the commercial van he was driving when the rear tire suddenly deflated. He sued tire maker Michelin seeking significant damages alleging a defect in the tire. The defense claimed it failed due to a combination of factors: 1.) previous impact damage that would have been detected with proper maintenance, 2.) the subject tire was under inflated and 3.) the vehicle was overloaded. The Boston panel deliberated for about five hours before siding with the defense.

OTHER SIGNIFICANT CASES

ALABAMA-MEDICAL MALPRACTICE

DEFENSE COUNSEL: Tom Kendrick of *Norman, Wood, Kendrick & Turner*

Plaintiff filed a medical malpractice suit against a doctor whose patient died on the operating table during surgery following a tracheal injury during intubation. Following a three week trial, the Alabama jury returned a verdict for the defense.

CALIFORNIA-ANTITRUST/UNFAIR COMPETITION

DEFENSE COUNSEL: Eric Haas and Jeanine Clausen of *Burnham Brown*:

Plaintiffs filed suit alleging a group boycott in violation of federal antitrust law as well as related claims under the Lanham Act and California unfair competition laws. Defendant is a national dog club whose "conflicting organization" rule prohibits any person from membership or participation at its sanctioned show trials if the person has registered a dog of the same breed with a different club or become a member of such an organization. The anti-trust claim was dismissed before trial. The Lanham Act and unfair competition claims proceeded to trial following which judgment was entered for the defendant.



CONNECTICUT- MEDICAL MALPRACTICE

DEFENSE COUNSEL: Kevin M. Tepas of *Ryan, Ryan, Johnson & Deluca*

Donald Mandela sustained shoulder dystocia during birth resulting in permanent nerve damage, disability and arm length disparity of his master arm. He sued the delivering obstetrician for malpractice. The demand at trial was \$2.5 million. The Connecticut jury returned a verdict in favor of the doctor.

FLORIDA-HEALTH CARE BENEFITS

DEFENSE COUNSEL: W. Edward McIntyre (trial) and Nancy W. Gregoire (on appeal) of *Bunnell, Woulfe, Kirschbaum, Keller, McIntyre & Gregoire, P.A.*

The plaintiffs appealed a final judgment in favor of Blue Cross and Blue Shield of Florida, Inc., claiming entitlement to benefits under a health care policy issued by Blue Cross. Blue Cross defended on the basis that the plaintiffs had assigned their benefits to their health care providers and were, therefore, not entitled to either benefits under the policy or interest allegedly due on late-paid claims. The Fourth District agreed with the trial court ruling that there was no basis upon which the plaintiffs could prevail, and affirmed the judgment for Blue Cross.

ILLINOIS-PERSONAL INJURY

DEFENSE COUNSEL: Howard Rosenblum of *Sanchez & Daniels*

A female truck driver claimed she was injured at a Dominick's Finer Foods warehouse when a Dominick's forklift driver caused a pallet of cases of apples to fall. Plaintiff sustained a torn rotator cuff as well as 3 herniated cervical discs requiring two fusion surgeries at 3 levels. Plaintiff's demand was for \$4.2 million. The Chicago jury returned a verdict in the amount of \$20,000 and reduced that by plaintiff's contributory fault of 49% for a total verdict of \$10,000.41.



INDIANA-BREACH OF CONTRACT

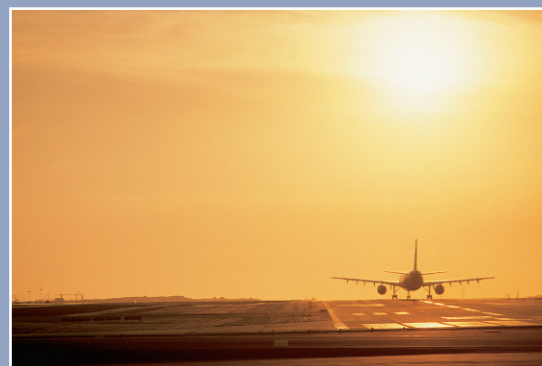
DEFENSE COUNSEL: David Kasper of *Locke Reynolds LLP*

The Client Insurance Company terminated broker agreements relating to sale by broker of personal lines policies to members of affinity groups. The insurer admitted breach and the case went to trial on damages only. Demand by plaintiff broker was \$1.8 million. The Indianapolis jury returned a verdict of \$28,000.

KENTUCKY-ENVIRONMENTAL

DEFENSE COUNSEL: Patrick Stallard of *Stites & Harbison*

The firm served as lead counsel for the Louisville Airport Improvement Program (LAIP), a \$780 million expansion and improvement of Louisville International Airport. The environmental team resolved issues of soil and groundwater contamination, the management, transportation and disposal of large quantities of hazardous waste, the discovery of underground storage tanks and other hazardous materials during excavation for construction, asbestos abatement in large buildings closed for decades, significant increases in de-icing and storm water discharge problems and a variety of other environmental issues. The centerpiece involved the former site of the Louisville Forge & Gear Works. This 120+ acre facility, now the site of Runway 17R/35L, served as a manufacturer of a variety of industrial products for nearly 50 years. The site was the subject of intensive study, coordination with state and federal agencies, remediation and litigation.



MARYLAND-WRONGFUL TERMINATION AND DEFAMATION

DEFENSE COUNSEL: Monte Fried and Bob Hesselbacher of *Wright, Constable & Skeen, LLP*

An employee sued a multi-state construction contractor claiming wrongful termination and defamation. She sought significant compensatory and punitive damages. The employee claimed that she had been fired because she reported misconduct by other employees. After extensive discovery, Defense Counsel filed a motion for summary judgment. The United States District Court ruled that the Plaintiff's evidence did not establish a claim of wrongful termination under the law and that her defamation claim was preempted by federal labor law. The employee recovered nothing. Thereafter the employee appealed. The U.S. Court of Appeals for the Fourth Circuit affirmed the District Court's decision



MISSISSIPPI-MEDICAL PRODUCT LIABILITY

DEFENSE CO-COUNSEL: Christy D. Jones of *Butler, Snow, O'Mara, Stevens & Cannada, PLLC.*

Butler Snow successfully defended SmithKline Beecham Corporation in the first case tried against SmithKline in the United States concerning Baycol, the cholesterol reducing medication manufactured by Bayer A.G. SmithKline was a co-marketer of Baycol in the United States pursuant to contracts with Bayer Corporation. The case was tried to a jury in Hinds County, Mississippi, commencing March 17, 2003. The trial judge granted SmithKline's Motion for Directed Verdict at the conclusion of all the evidence on March 28, 2003.

NEW MEXICO-PRODUCT LIABILITY

DEFENSE COUNSEL: Jeffrey Croasdell and Jessica Hernandez of *Rodey, Dickason, Sloan, Akin & Robb, P.A.*

The plaintiff sued Ford Motor Company alleging a defective steering gear assembly caused the plaintiff to lose control of his Ford truck and go into a ditch. Plaintiff claimed personal injuries, lost income, property damage, and pain and suffering. After a six-day trial, the Taos County New Mexico jury deliberated less than three hours before returning a verdict for the defense.

NEW YORK-ASBESTOS/MESOTHELIOMA

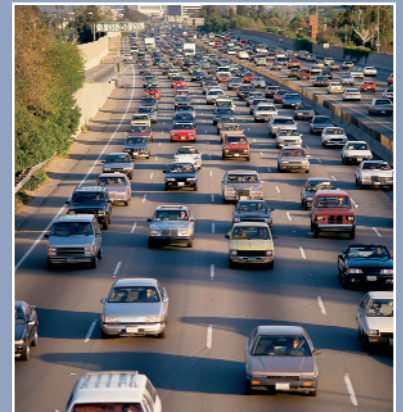
DEFENSE COUNSEL: Glenn Jacobson of *Abrams, Gorelick, Friedman & Jacobson, P.C.*

Plaintiff claimed exposure to asbestos at numerous facilities in which he had worked resulting in mesothelioma. Defendants Harris Industries, Inc., Harco Labs, Inc. and HE&M, Inc. are Connecticut corporations the principal shareholder of each had been George Harris. While HE&M had, in fact, distributed asbestos containing nichrome heating element wire to one of Plaintiff's employers, Harris Industries and Harco Labs had not. Plaintiff's counsel sought to pierce the corporate veil and impose liability upon Harris and Harco, arguing that the various Harris companies had been operated as one entity. Defense counsel moved for summary judgment disputing this and asserting that there was no asbestos containing product linked to Harris or Harco. The New York State Supreme Court agreed and granted summary judgment for Harris Industries and Harco Labs. The action against HE&M was settled for only \$25,000.

NEW YORK-VICARIOUS LIABILITY

DEFENSE COUNSEL: Andrew Harrison of *Molod Spitz & DeSantis, P.C.*

In this accident case, a nine year-old plaintiff sustained fractures of both legs, and after eight years of litigation against the franchisee, plaintiff's counsel impleaded Rent-A-Wreck of America, Inc. and Bundy American Corporation, licensor for the nationally known chain of rental vehicle agencies. The suit, of substantial exposure, was dismissed on a Motion for Summary Judgment with the court holding that neither the franchisor-licensor nor its parent could be considered "owners" under New York's Vehicle and Traffic Law, and thus could not be held vicariously liable for the rental car driver's negligence. Their role did not constitute substantial control of the rental agency's regular operations sufficient to deem the franchisor an "alter ego" of the rental agency.



OKLAHOMA-WRONGFUL DEATH

DEFENSE COUNSEL: Daniel Sullivan and Thomas LeBlanc of *Best & Sharp*

Plaintiff sought \$8 million in a wrongful death action against a private jail operator following the death of an inmate resulting from gangrene of the bowel caused by severe acid-reflux. Plaintiff claimed the jail operator was negligent in failing to notify the medical department after repeated calls from the inmate's wife notifying the jail of her husband's dire medical situation. The Tulsa District Court jury returned a verdict for the defense after 6 trial days.

PENNSYLVANIA-MEDICAL MALPRACTICE

DEFENSE COUNSEL: James R. Kahn and Jacques Mann of *Margolis Edelstein*

Plaintiff sued a Philadelphia ob-gyn physician, among others, in a case that involved admitted birth injuries to a baby causing cerebral palsy, spastic quadriplegia, retardation and cortical blindness. The demand was \$23 million. The defense motion for a non-suit at the close of Plaintiffs' case, made in the ninth day of the trial, was granted in favor of this defendant.



WYOMING-MEDICAL PRODUCT LIABILITY

DEFENSE COUNSEL: Thomas G. Gorman and Tom Nicholas of *Hirst & Applegate*

Plaintiff sued Bristol-Meyers Squibb Company claiming that as a result of his use of the prescription antidepressant Serzone, he developed priapism, the treatment for which led to permanent impotence. Plaintiff brought claims for negligence, strict liability, breach of warranty and loss of consortium and sought compensatory and punitive damages. The Court granted summary judgment principally holding that the Plaintiff's claims were barred by the "learned intermediary" doctrine.

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