

A CASE FOR SUCCESS

The Harmonie Group law firms know that what matters most to clients is a favorable outcome.

To that we say, "let the record speak for itself."



There are many factors that go into the handling of a complex legal issue, but in the end, there is only one that matters - a successful outcome. Harmonie Group law firms have a proven history of obtaining favorable results. On the following pages are a few of the more significant cases handled by our member firms in 2004. The results speak for themselves and make a strong case for letting a Harmonie Group defense firm help you achieve your own success in 2005.



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A FAVORABLE RULING.

The Harmonie Group defense firms focus on achieving results.

*Success. It's what we call **National Access to Excellence**. It is our goal.*

CASE : PHARMACEUTICAL/IMPROPER JOINDER OF PLAINTIFFS IN STATE COURT
STATE : MISSISSIPPI
COUNSEL : CHRISTY D. JONES
FIRM : BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
HEADQUARTERS : JACKSON, MISSISSIPPI
CO-COUNSEL : CHRISTY D. JONES
HEADQUARTERS : NATCHEZ, MS

The Mississippi Supreme Court handed down the second and third cases in a trilogy likely to have far-reaching effects on litigants throughout the country who find themselves in state courts in Mississippi, and **reversed a \$48 million judgment against Janssen Pharmaceutica Inc. and Johnson & Johnson**. Three months earlier, the Court severed the claims of 56 plaintiffs, only one of whom was from the forum county, but who used what had been considered Mississippi's liberal joinder rule to join their claims against Defendants related to the medication of Propulsid®. The Court held that "the prescribing of the drug Propulsid by 42 differ-



ent physicians to 56 different patients did not arise out of the same transaction, occurrence or series of transactions or occurrences" as required by Mississippi's Rule 20 and that allowing joinder "unfairly prejudices the defendants." The first case joined the claims of four plaintiffs, only one of whom resided in the forum county, against Defendant's sales representative and one physician. The Court severed the claims of each of the plaintiffs and remanded to the trial court with instructions to transfer their individual cases to those jurisdictions in which they could have been brought without reliance on another of the improperly joined plaintiffs. In the second case, **the Court reversed a \$100 million jury verdict**, remitted by the trial court to \$48 million. **The Court found the damage awards "evident of improper joinder"** given each plaintiff's unique medical history; and, although the joinder issue alone was sufficient to reverse the verdict, so were the addressed issues of venue, sufficiency of causation evidence and propriety of closing arguments. **Four additional cases are now reaching the same result, requiring severance and dismissing claims of out-of-state residents.**

CASE : ASBESTOS/MESOTHELIOMA
STATE : ILLINOIS
CO-COUNSEL : MANUEL SANCHEZ
FIRM : SANCHEZ & DANIELS
HEADQUARTERS : CHICAGO, IL
CO-COUNSEL : MARGARET O'SULLIVAN BYRNE
FIRM : MARTIN & BELL
HEADQUARTERS : CHICAGO, IL

Commonwealth Edison Company (ComEd) was sued for \$6 million by a retired iron worker's family alleging that he died from asbestos exposure. Plaintiff alleged that ComEd should have known of the hazards of using asbestos in their power plants. The defense was that the company did not know of the hazards, had no reason to know of the hazards, and furthermore used asbestos at a time when it was believed it improved the health, protection, and safety of the worker. The challenge to the defense was to have the jury ignore the natural sympathetic reaction and intellectually decide on the evidence. Several other defendants settled prior to trial. **Following a lengthy trial, the jury decided in favor of the defense.**

CASE : PRODUCT LIABILITY/NEGLIGENCE
STATE : TEXAS
COUNSEL : THAD D. SPALDING; DAVID L. SARGENT; MONTE K. HURST
FIRM : HERMES SARGENT BATES, LLP
HEADQUARTERS : DALLAS, TX

The Texas Supreme Court unanimously reversed the Dallas Court of Appeals and upheld a trial court's directed verdict in favor of FFE Transportation Services in a products liability and negligence case. The case arose out of injuries suffered by FFE's independent contractor driver following a tractor-trailer accident alleged to have been caused by loose and/or rusty bolts holding a refrigerated trailer's upper coupler assembly to the trailer itself. **The Texas Supreme Court concluded that: (1) strict product liability does not apply where a company gratuitously provides a product to an independent contractor working for the company for the sole purpose of accomplishing the company's business purpose; (2) as a matter of first impression, a trial court's determination as to whether expert testimony is necessary to establish a claim of ordinary negligence should be reviewed on appeal using a de novo standard of review; (3) upon doing so, the trial court did not err in finding that the standard of care for the proper inspection and maintenance of a refrigerated trailer is beyond the experience of the layman and, therefore, must be established by expert testimony; and (4) no probative expert testimony was admitted regarding this standard of care, noting that FFE's self-imposed standard with respect to the inspection of its own trailers (which was more stringent than the federal standard), taken alone, did not establish the standard of care that a reasonably prudent operator would follow.**

CASE : PRODUCT DEFECT (TIRE) / PERSONAL INJURY AND WRONGFUL DEATH
STATE : TEXAS (FEDERAL- MCALLEN)
COUNSEL : JEROMY D. HUGHES
FIRM : BROWN SIMS, P.C.
HEADQUARTERS : HOUSTON, TX

Ford, Goodyear and a local defendant that services tires were sued for personal injury and wrongful death. Plaintiffs were Mexican citizens driving in a Ford Expedition when a Goodyear tire allegedly suffered a tread separation, causing the Ford to rollover. A nine year old child was killed in the accident, and the other occupants alleged personal injury, arising in part from seat belt failure. The vehicle and tires were purchased in Mexico, but the tire that allegedly failed was serviced in the United States ten days prior to failure. The local defendant defaulted, while Goodyear and Ford moved to dismiss on forum non conveniens. After several lengthy hearings on the forum non conveniens motions, and a motion to sever the defaulted local defendant, the Court indicated it would grant the defense motions, but first ordered the parties to mediation. Plaintiffs demanded \$3,000,000. Goodyear was able to achieve a \$50,000 settlement. **The case is still pending against Ford, and will be appealed to the Fifth Circuit upon ruling on the motions.**

CASE : PRODUCT LIABILITY/DESIGN DEFECT
STATE : INDIANA
COUNSEL : KEVIN C. SCHIFERL
FIRM : LOCKE REYNOLDS, LLP
HEADQUARTERS : INDIANAPOLIS, IN
CO-COUNSEL : JOSEPH KRASOVEC
FIRM : SCHIFF HARDIN
HEADQUARTERS : CHICAGO, IL

Graco Children's Products, Inc. was sued in a product liability lawsuit brought by the parents of an eight-month-old infant who became entangled in the harness of a child swing and was fatally strangled. Plaintiffs contended that Graco defectively designed and provided inadequate warnings regarding a known strangulation hazard in the swing. Graco presented evidence that the child had been left unattended in the swing by his day care provider for a significant period and that the swing and harness had been altered in several ways, including a missing harness tie, inoperable batteries, and a knot connecting the harness to the swing's seat. The day

care provider, who testified in plaintiffs' case-in-chief, had been separately convicted in an Indianapolis criminal court of a D felony for neglect of a dependent. **Following a six day trial, the jury returned a defense verdict for Graco.**

CASE : PRODUCT LIABILITY/PRODUCT DESIGN DEFECT/MANUFACTURING DEFECT
STATE : NEW YORK
COUNSEL : GLENN A. JACOBSON
FIRM : ABRAMS, GORELICK, FRIEDMAN & JACOBSON, P.C.
HEADQUARTERS : NEW YORK, NY

S2 Yachts, Inc., was sued in a product liability/product design defect/manufacturing defect action where Plaintiff sustained injuries during a distance swimming event in Long Island Sound when he began to swallow water and became disabled. During the attempted rescue of plaintiff by members of the group sponsoring the event, the rescuers attempted to assist plaintiff onto a rescue boat manufactured by S2. While



doing so, plaintiff sustained severe lacerations to his lower abdomen and groin area, resulting in the loss of a testicle. Plaintiff alleged that his injuries were attributed, in part, to design and manufacturing defects on the part of S2. Upon completion of discovery, S2 moved to preclude the testimony of plaintiff's expert and for summary judgment. The Federal Court Judge conducted an extensive analysis of plaintiff's expert submissions under Daubert and its progeny. The Judge ruled that the opinions of plaintiff's expert concerning the boat's alleged design and manufacturing defects were insufficiently reliable and precluded the testimony. **Having excluded the expert's opinions, the Judge dismissed the case ruling the Plaintiff could not make a prima facie case of manufacturing or design defect.**

AN AFFIRMATIVE VERDICT.

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*Harmonie Group firms rank among the best in America and are held in high regard for their excellence in negotiations, litigation, trial advocacy and transactional matters. In your local area and throughout the country, you can rely on a network of legal experts backed by **Experience and Professionalism.***

CASE : PRODUCT DESIGN DEFECT
STATE : NEW MEXICO
CO-COUNSEL : JEFFREY M. CROASELL
FIRM : RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
HEADQUARTERS : CONCORD, NH
CO-COUNSEL : GERARD CEDRONE
FIRM : LAVIN, COLEMAN, O'NEIL, RICCI & FINARALLI
HEADQUARTERS : PHILADELPHIA, PA

Mazda Motor Corporation was sued in a product liability suit. The lawsuit alleged that plaintiff's 1992 Mazda Protegé was defective. Plaintiff drove over a truck brake shoe which lodged in the ground puncturing the fuel tank. The contact with the ground ignited the spilling gasoline. Plaintiff was burned severely, including burns to 60-70% of her body. She sued Mazda, claiming that the fuel tank should have been shielded. Plaintiff asked for \$3,000,000. The defense was able to get summary judgment on dismissal of punitive damages before trial. **After a nine-day trial, the jury returned its unanimous defense verdict in under four hours, finding no defect or negligence by Mazda.**



CASE : PRODUCTS LIABILITY DEFENSE
STATE : NORTH DAKOTA/WYOMING
CO-COUNSEL : LARRY BOSCHEE
FIRM : PEARCE AND DURICK
HEADQUARTERS : BISMARCK, ND
CO-COUNSEL : TOM NICHOLAS
FIRM : HIRST & APPLGATE
HEADQUARTERS : CHEYENNE, WY

Pearce and Durick and Hirst & Applegate, both Harmonie firms, successfully defended Louisville Ladder Group in a products liability action. The accident occurred when the plaintiff was attempting to complete the installation of conduit to a heating and air conditioning unit in the gym. The plaintiff, who was using a 12-foot stepladder in a manner contrary to instructions, fell from the ladder sustaining compressed fractures of the cervical vertebrae, fractures of both scapula, and broken ribs. Plaintiff claimed the ladder was defective in design, that the warnings were inadequate, and that Louisville Ladder was negligent. Plaintiff sought damages totaling over \$1,000,000. There were no substantial settlement negotiations prior to trial. After a week long jury trial in Cheyenne, Wyoming, the jury returned a defense verdict finding the ladder was not defec-

tive in design, that the ladder warnings were adequate, and that Louisville Ladder was not negligent. **Judgment was entered for the Defendant and the Defendant was awarded its costs.**

CASE : DISABILITY DISCRIMINATION CASE
STATE : CALIFORNIA
CO-COUNSEL : CATHY L. ARIAS
CO-COUNSEL : ROBERT M. BODZIN
FIRM : BURNHAM BROWN
HEADQUARTERS : OAKLAND, CA

The plaintiff, an adult student, filed suit against a major university, a property owner and a property manager alleging he was discriminatorily denied handicapped-accessible housing because of his physical disabilities. The allegedly wheelchair-bound plaintiff sought damages in excess of \$10,000,000, for personal injuries, medical expenses and future lost earnings. Plaintiff sought recovery under theories that included the Unruh Civil Rights Act, the Unfair Business Practices Act, the False Advertising Practices Act and the California Public Accommodations Law (the California version of the Americans with Disabilities Act). Prior to jury selection, the court ruled that only the latter claim would be heard by the jury. **Following opening statements and the first day of witness testimony, plaintiff lowered the settlement demand to \$650,000 and when it was rejected, settled for \$200,000, which was less than the original offer before trial and about the cost defendants might have incurred to finish the jury and bench trials.**

CASE : ADMIRALTY LAW, DEATH ACTION
STATE : KENTUCKY
CO-COUNSEL : JOHN L. TATE
CO-COUNSEL : JULIE MCDONNELL PAYNE
FIRM : STITES & HARBISON PLLC
HEADQUARTERS : LOUISVILLE, KY

Southwire Co. was sued in U.S. District Court by the estate and survivors of a longshoreman who died after falling from a runaway barge hatch into the hold of a partially unloaded barge. The accident occurred at Southwire's aluminum smelting facility on the Ohio River in Hawesville, Ky., and the Longshore and Harbor Workers' Compensation Act was governing law. Disputing plaintiffs' contention that it was liable in negligence as the pro hac vice owner of the barge, Southwire obtained summary judgment the month before trial. The week before trial, however, in a lengthy hearing, the court yielded to plaintiffs' re-argument and vacated Southwire's summary judgment. The judge also denied Southwire's motion for a continuance. A two week jury trial resulted in a \$3,595,000 million verdict for the plaintiffs, including \$2,500,000 million in punitive damages. On Southwire's appeal to the Sixth Circuit, the appellate court determined that Southwire was not, as a matter of law, the pro hac vice owner of the barge. In the Sixth Circuit's view, the trial court "should have stuck to its guns" when it granted Southwire summary judgment. **The plaintiffs' verdict was vacated and judgment entered for Southwire. Plaintiffs' motion for rehearing en banc was denied.**

CASE : MEDICAL MALPRACTICE
STATE : NEW HAMPSHIRE
COUNSEL : ROB LANNEY
FIRM : SULLOWAY & HOLLIS, P.L.L.C.
HEADQUARTERS : CONCORD, NH

A hospital was sued for medical malpractice. The patient alleged negligent failure to diagnose appendicitis prior to discharge from the E.R. The patient had come to the E.R. complaining of generalized abdominal tenderness with no evidence of tenderness on palpation. The patient was discharged with a diagnosis of undifferentiated abdominal pain and provided with discharge instructions regarding follow up care if he developed a fever or if his symptoms worsened or continued for more than 24 hours. The patient failed to follow these instructions. When the patient finally sought medical care, his appendix had perforated. He was critically ill with infection and bowel obstruction: requiring extensive surgery and a prolonged recovery. The patient claimed that he did in fact have abdominal pain to palpation despite evidence to the contrary in the emergency physician's record. The plaintiff's expert testified that the patient's abdominal pain required an abdominal CT scan and a surgical consult. **Following day long deliberations, the jury returned a unanimous verdict for the defendant emergency physician.**

CASE : PREMISES LIABILITY
STATE : NORTH CAROLINA
CO-COUNSEL : DAN M. HARTZOG
CO-COUNSEL : STEPHANIE A. GASTON
FIRM : CRANFILL, SUMNER & HARTZOG, LLP
HEADQUARTERS : RALEIGH, NC

The owner of a high-rise apartment complex for the elderly was sued in a case where a criminal assault was perpetrated against a resident at a property that the defendant owned and operated. The decedent's estate sued the defendant landlord for personal injuries sustained by the decedent as a result of the assault and for wrongful death. The Plaintiff claimed that the defendant was negligent in failing to provide reasonable security, and that this negligence caused the injuries and eventual death. At the time, numerous measures were in place to control access to the building and provide reasonable security to the residents, including a fingerprint and code system to access the front door; audible alarms at each exit door; surveillance cameras; a live-in police officer; and numerous memos to residents, warning them not to allow people into the building that they did not know. The Plaintiff sought damages for pain and suffering as well as reimbursement for over \$200,000 in medical expenses for the decedent's hospitalization and treat-



ment from the date of the assault until her death. **After a trial lasting eight days, the jury returned a verdict in favor of the Defendant on all issues.**

CASE : CONSTRUCTION
STATE : IDAHO
CO-COUNSEL : PHILLIP S. OBERRECHT, for plaintiff/counter-defendant, Lockheed Martin Idaho Technologies Company
FIRM : HALL, FARLEY, OBERRECHT & BLANTON, PAQ.
HEADQUARTERS : BOISE, ID
C)-COUNSEL : JIM NAGLE, BOB BURKE, MIKE SCHESTOPOL
FIRM : OLES, MORRISON, RINKER & BAKER
HEADQUARTERS : SEATTLE, WA

Lockheed Martin Idaho Technologies Company (a separate entity, autonomous from Lockheed Martin Advanced Environmental Systems), as contract agent for the U.S. Department of Energy, default terminated and then **filed suit against Lockheed Martin Advanced Environmental Systems, Inc.** and Lockheed Martin Corporation to recover monies paid under contract plus the cost to demolish and remove facilities built on DOE property. The case arose out of a failed demonstration project to remediate mixed chemical and nuclear waste buried at the Idaho National Engineering and Environmental Laboratory. After a three month bench trial in federal district court, the plaintiff won a verdict for the return of \$54,386,000 plus 12% interest from July 1, 1998 and \$11,706,000.00 for demolishing the facilities and **obtained a defense verdict defeating a \$322,000,000 counterclaim for constructive changes to the contract.**

CASE : PERSONAL INJURY
STATE : WASHINGTON
CO-COUNSEL : STEVE BLOCK
CO-COUNSEL : JODY REICH
FIRM : BETTS, PATTERSON & MINES, P.S.
HEADQUARTERS : SEATTLE, WA

A woman sued a restaurant, seeking \$2,300,000 million in damages because she slipped and fell in insured's restaurant, indisputably fracturing her sacrum. Liability was admitted. The trial was on damages. By virtually all medical accounts, the fracture healed normally within two to four months. But the woman continued complaining of horrific neurological, urological and gynecological symptoms. The woman's credibility and sympathetic appeal were a challenge to the defense. An out-of-state orthopedic surgeon testified for Plaintiff about a concealed spinal injury ostensibly undetectable by "traditional" medical science. The restaurant's insurer, through third party claims administrator and litigation managers Ron Coleman & Associates, Ltd. of Richmond, Virginia (a user of the Harmonie network of independent defense firms), worked in conjunction with defense counsel to vigorously pursue the medical evidence, medical depositions (numerous), trial graphic demonstrative exhibits, anatomical portrayals, visual timelines, and other extensive trial preparation matters involving the approval by RCA of multiple attorneys on the defense team to defend against the excessive claim. **Following trial of the \$2,300,000 million claim, the jury awarded only \$89,000 (this amount is also well below an earlier \$250,000 offer of judgment). Jurors explained that defense demonstratives had guided their decision.**

CASE : PROFESSIONAL LIABILITY CLAIM AGAINST REAL ESTATE PROFESSIONALS
STATE : CALIFORNIA
CO-COUNSEL : RICK GOOR
CO-COUNSEL : SHELDON RALPH
FIRM : SPILE & SIEGAL, LLP

A real estate agent, seller, home inspector and termite inspector were sued for fraud, non-disclosure and negligence in connection with plaintiffs' purchase of residential property, claiming that after moving into the home they discovered that a load-bearing wall had been removed years earlier, rendering the home unsafe. Plaintiffs further contended that the real estate agent knew the wall had been removed, but intentionally concealed that fact. **After a multi-week trial, the jury returned a unanimous verdict in less than three hours, absolving the real estate agent of any liability.**

CASE : AGE DISCRIMINATION
STATE : MINNESOTA
COUNSEL : CHARLES JONES
FIRM : MEAGHER GEER
HEADQUARTERS : MINNEAPOLIS, MN

The Minneapolis Golf Club (hereinafter "MGC") was sued by 61 year old defendant claiming age discrimination. Plaintiff voluntarily resigned from her position to accept another job. MGC hired an administrative assistant for the position Plaintiff vacated. Later, MGC inquired whether Plaintiff would consider returning to MGC should an opportunity arise. When laid-off from her new job, Plaintiff contacted MGC to discuss the possibility of being re-hired. After a number of communications, in three of which MGC made it clear that hiring was contingent on obtaining authority from the President of MGC, Plaintiff was not re-hired. Because there is no evidence that Defendant MGC

made a clear and definite offer of employment to Plaintiff, and further, that Defendant did not intend for Plaintiff to rely upon Defendant's statements, and that Plaintiff did not rely upon these statements to her detriment: **Plaintiff has not met the elements necessary to proceed with claims for age discrimination and promissory estoppel. Defendant's Motion for Summary Judgment was granted.**

CASE : MEDICAL MALPRACTICE
STATE : VERMONT
COUNSEL : S. CROCKER BENNETT, II
FIRM : PAUL FRANK + COLLINS, P.C.
HEADQUARTERS : BURLINGTON, VT

A plaintiff sued a hospital for medical malpractice. Plaintiff's daughter, 13, visited the emergency room with a sore throat and difficulty breathing brought on by coughing. She was found to be hyperventilating and to have a fever. The ER treated her with IV Fluids for dehydration and Tylenol, and conducted tests and physical examinations. All tests were returned negative, her breathing returned to normal and she was discharged with medications to control the cough and fever. She died three hours later. The family sued the hospital for malpractice, claiming that she should not have been discharged, as no clear reason had been established for why she hyperventilated, other than the coughing. At trial, the hospital offered testimony to show that the autopsy revealed her airway to be found normal and little to explain why she suffered sudden cardio-respiratory arrest within three hours after being discharged in satisfactory condition. The plaintiff's lawyer made no specific demand for damages, leaving that determination to the jury's discretion. **After 1.5 hours of deliberation, the Vermont Superior Court jury returned a verdict in favor of the hospital.**

ABOUT THE GROUP.

The Harmonie Group is an association of independent law firms whose member firms provide legal services to corporations, insurance carriers and third party claim administrators. Membership is by invitation only and limited to highly-qualified firms with the experience and success in handling the type of complex and difficult high-stakes litigation that has earned Harmonie firms the reputation and respect they have among their peers, the courts and their clients. Our network spans all fifty states, affording clients efficient, reliable and consistent services across jurisdictions. Access to defense firms in Canada is also available through our affiliation with the Canadian Litigation Counsel.

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