# A CULTURE OF SUCCESS

*Harmonie law firms don't just win cases. They win big cases - big.*

*Just a few of the cases that The Harmonie Group firms won in 2005. Details inside.*

- **Merck** *vindicated in* **Vioxx** *case*
- **Toyota** *airbag lawsuit deflated*
- **Ford** *wrongful death case righted*
- *Class dismissed in* **Sentry Insurance** *suit*
- *Town Council and* **Police** *exonerated.*
- *Real win for* **Realtor** *in fraud case*
- **McDonald's** *discrimination case dismissed*
- *Court absolves* **Ephedra** *maker*
- **Volvo** *vindicated in liability case*
- **Car Dealer** *wins on appeal*
- **Keene Construction** *shocker grounded*
- **Assembly of God** *suit disassembled*
- **State Farm** *wins stay in state suit*
- *Metro-North* **Railroad** *wins hearing*
- *Plaintiffs ordered to* **Pay in Sex** *Case*
- **Physician** *fends off Malpractice suit*
- *Jury returns small verdict to* **Big Rig**
- *Jury just says "No" in* **Malpractice** *case*
- **Landlord** *wins lessor liability case*

## An exclusive network of some of the most formidable law firms in America.

**The Harmonie Group** legal defense firms understand that they are hired for just one purpose – to obtain the **best results possible no matter the circumstances**. That's why membership in our network is earned on the basis of a **successful track record** and a proven ability to formulate effective defense strategies and achieve **favorable outcomes.**

These cases document **The Harmonie Group firms'** ability to do just that. They operate in a culture of winning and approach each case with **an expectation of success**. Here are a few examples of what they accomplished for clients in 2005. This record speaks for itself and is a strong case for letting a **Harmonie Group defense firm help you achieve success in 2006.**

## MERCK VINDICATED IN VIOXX CASE


**In a major victory** for drug manufacturer **Merck & Co.**, a **New Jersey jury returned a verdict in its favor**, finding no failure to warn of the health risks associated with the use of Vioxx, Merck's blockbuster painkiller. The verdict came after a seven-week trial in which Frederick Humeston asserted that Merck failed to warn of an increased risk of myocardial infarctions and consumer fraud claims. Humeston, 60, suffered a heart attack two months after he began taking the drug. **Merck contested both liability and causation.**

CASE : **PHARMACEUTICAL PRODUCT LIABILITY**
COUNSEL : **CHRISTY D. JONES**
FIRM : **BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC**
HEADQUARTERS : **JACKSON, MS**

## TOYOTA AIRBAG LAWSUIT DEFLATED

**A woman sued Toyota Motor Corp.**, alleging that the airbag in her 1996 Toyota Corolla was too powerful. She was wearing a seat belt when her car veered across 3 lanes of traffic and hit a signpost, causing the car's airbags to inflate. The car became airborne and rolled over and landed on its wheels, causing her to be paralyzed from the neck down. **After 27 trial days, the jury issued a verdict for the defense,** finding no negligence and no breach of warranty. The case is currently on appeal.

CASE : **PRODUCT LIABILITY**
COUNSEL : **JAMES M. CAMPBELL, JOHN A.K. GRUNERT**
FIRM : **CAMPBELL CAMPBELL EDWARDS & CONROY**
HEADQUARTERS : **BOSTON, MA**

*When the outcome matters.*

THE HARMONIE GROUP®

# A FAVORABLE RULING

*The Harmonie Group defense firms focus on achieving results*

*Success. It's what we call **National Access to Excellence.** It is each member firm's goal.*

## MCDONALD'S DISCRIMINATION CASE DISMISSED

**Plaintiffs, including African-Americans and disabled persons who visited McDonald's while accompanied by alleged assistance dogs, filed suit** under the Unruh Civil Rights Act & Business & Professions Code 17200 that alleged that the franchise owner and employees discriminated against the plaintiffs on the basis of race and/or disability by refusing them and their alleged assistance dogs access to the restaurant. The defense presented evidence that plaintiffs had filed over a dozen similar lawsuits against other businesses and also that none of the dogs were either identified or acting as service animals when they were at the restaurant. The jury rejected plaintiffs' claims, which prior to trial amounted to $2.5 Million in damages. **One day later, at trial, the Judge granted defense verdict and dismissed the Unfair Business Practices Act Claim**.

CASE: **DISCRIMINATION – UNRUH CIVIL RIGHTS ACT, RACE, STATE DISABILITY**
COUNSEL: **CATHY L. ARIAS AND CLAUDIA LEED**
FIRM: **BURNHAM BROWN**
HEADQUARTERS: **OAKLAND, CA**

## COURT ABSOLVES EPHEDRA MANUFACTURER

**A teenage boy had a heart attack** immediately after taking an over-the-counter medicine, which contained ephedrine. On motion for summary judgment **the court absolved the manufacturer of all fault**, finding that regardless of one's motives for taking a medication, an abuse of dosage is not a reasonably anticipated use.

CASE: **EPHEDRA**
COUNSEL: **JAMES SUTTERFIELD, GORDON SEROU**
FIRM: **SUTTERFIELD & WEBB, L.L.C.**
HEADQUARTERS: **NEW ORLEANS, LA**

## VOLVO VINDICATED IN LIABILITY CASE

**After a three-week trial, Volvo Trucks North America, Inc., received a defense verdict** in a suit involving its VED12C 465 hp truck diesel engines. Plaintiff was Pro Transportation, a 300-truck fleet based in Little Rock, AR, with $50 million in annual gross revenues. It blamed its demise on its Volvo truck engines alleging that the engines experienced excessive and premature piston and cylinder liner wear and failure. Pro sought damages of $80MM, including lost earnings of $52MM, compensation for its remaining liability on its truck leases of $16MM, downtime damages of $8MM, and other incidental damages. Volvo Trucks established that Pro's reported failure rate, 200 out of 300 trucks at 500,000 miles or less, was vastly out of proportion to that experienced by other purchasers of trucks with the identical engines. Other trucking companies with 100 or more Volvo trucks with the same engines had either no failures under 500,000 miles or a failure rate, which was well within accepted standards.

Pro's failure rate was due to its terrible preventive maintenance program and oil drain intervals of 90,000-100,000 miles. Volvo Trucks recommends a drain interval of 15,000-25,000 miles, depending on the type of oil. Volvo Trucks also presented an aggressive damages defense, which established that Pro's collapse was unrelated to the performance of its Volvo trucks. Rather, Pro's problems were caused by hauling cheap freight, the 2001 recession (which was particularly hard on the trucking industry), off-balance-sheet financing, missing its trade cycle and excessive shareholder and officer compensation. Volvo Trucks' defense copied Pros' entire financial and operating database, operating system and software and conducted a micro evaluation of Pro and every load it carried. This revealed that the Pro trucks with piston-liner failures actually ran more miles than the trucks that did not. **The jury deliberated less than an hour in reaching a defense verdict.**

CASE: **PRODUCT LIABILITY**
COUNSEL: **MICHAEL J. EMERSON AND PERRY WILSON**
FIRM: **BARBER, MCCASKILL, JONES & HALE, P.A.**
HEADQUARTERS: **LITTLE ROCK, AR**

## FORD WRONGFUL DEATH CASE RIGHTED

**Plaintiffs alleged their Ford truck had a defectively designed power window system that made the vehicle unreasonably dangerous** because it allowed the vehicle's power windows to be inadvertently actuated by a child. Plaintiff's daughter inadvertently rolled the power window up and caught her neck between the edge of the glass and the doorframe. Plaintiffs claimed the vehicle was defective because it did not possess a lockout switch that would have allowed deactivation of the passenger window switch and prevent her daughter from becoming entrapped. She died shortly after being entrapped. Ford argued the rocker switch was neither defective nor unreasonably dangerous, it was in compliance with Federal Motor Vehicle Safety Standards and had an ignition interlock that prevents the power window from operating unless the key is in the ignition and turned to either the "ON" or "ACCESSORY" position. Due to Plaintiff's distraction with the vehicle key in the "ON" position, she overrode the safeguard in the system. **After an hour of deliberation, the jury returned a unanimous defense verdict for Ford Motor Company.**

CASE : **PRODUCT DEFECT-WRONGFUL DEATH**
CO-COUNSEL : **KEVIN SCHIFERL, ROB THORNBURG**
FIRM : **LOCKE REYNOLDS LLP**
HEADQUARTERS : **INDIANAPOLIS, IN**

## CLASS DISMISSED IN SENTRY INSURANCE SUIT

**Plaintiffs asserted that various chemical companies and insurance company defendants unreasonably exposed plaintiffs to a carcinogen,** which caused or aggravated the disease in the liver and brain. **Defendant was successful in obtaining a dismissal of the claims** against Sentry Insurance Company.

CASE : **CLASS ACTION-CHEMICAL EXPOSURE**
COUNSEL : **BRIAN C. HARRIS**
FIRM : **BRAFF, HARRIS & SUKONECK**
HEADQUARTERS : **LIVINGSTON, NJ**

## TOWN COUNCIL AND POLICE EXONERATED

**A former police officer sued the Town of Elkton**, the town council and police chief, seeking $3 million for wrongful termination. The plaintiff alleged that his termination was retaliation for exercising his First Amendment rights to free speech and freedom of association and also violated his Fourteenth Amendment rights. The plaintiff also alleged a state law defamation claim against the police chief for telling the town council he had "conspired to disrupt the police department." **The court dismissed the Fourteenth Amendment claim and granted summary judgment concluding the plaintiff's First Amendment interest did not outweigh the defendants' interest** in preserving discipline in the police department. In the defamation claim, the court found the police chief's statement was protected by a qualified privilege, because it was made during the course of an employee discharge matter. The plaintiff could not present convincing evidence of personal spite, or ill will, independent of the occasion on which the communication was made.

CASE : **PUBLIC EMPLOYMENT/WRONGFUL TERMINATION/CIVIL RIGHTS**
COUNSEL : **DAVID P. CORRIGAN AND JEREMY D. CAPPS**
FIRM : **HARMAN, CLAYTOR, CORRIGAN & WELLMAN**
HEADQUARTERS : **RICHMOND, VA**

## REAL WIN FOR REALTOR IN FRAUD CASE

**Plaintiff sued a real estate agent for fraud** in connection with the sale of real property alleging the agent had coerced her into selling the property for far less than its fair market value because the agent had an undisclosed interest in the company, which was purchasing the property. Plaintiff further alleged she was falsely imprisoned until she executed a re-conveyance deed. A co-defendant accused the agent of suborning perjury. **The defendant obtained a defense verdict and an award of more than $80,000 in attorney fees and costs.**

CASE : **ALLEGED FRAUD IN THE SALE OF REAL ESTATE**
COUNSEL : **ANDREW L. LEFF**
FIRM : **SPILE & SIEGAL, LLP**
HEADQUARTERS : **LOS ANGELES, CA**

# AN AFFIRMATIVE VERDICT

*The Harmonie Group firms, ranked among the best in America, offer legal expertise from coast to coast and are held in high regard for their excellence in negotiations, litigation, trial advocacy and transactional matters.*

## CAR DEALER WINS ON APPEAL

**Plaintiff filed a class action complaint claiming a violation of TILA** and various state statutes when she did not receive a copy of a vehicle retail installment sales contract before she signed the document. Twenty-six such claims were filed and consolidated with the state class action, which consisted of some 400 class members. **On appeal the court found failure to provide a copy of the contract is not a violation leading to damages.**

CASE : **TRUTH-IN-LENDING ACT**
COUNSEL : **MICHAEL D. WADE AND DANIEL SAYLOR**
FIRM : **GARAN LUCOW MILLER, P.C.**
HEADQUARTERS : **DETROIT, MI**

## SHOCKING SUIT AGAINST KEENE CONSTRUCTION GROUNDED

**Plaintiff sued Keene Construction Company for $3,200,000** claiming she had received electric shock while using the telephone at her place of business. Allegedly, a power line circuit blew outside the building causing partial power outage. Plaintiff contended that the circuit blowing caused a power surge to the building, which somehow arched to the telephone line and caused her injuries. Plaintiff alleged short-term memory loss, chronic pain, chronic fatigue, hearing loss in the right ear, vision loss, early development of cataracts, muscle spasms, migraines, hemorrhoids, arthritis, depression, personality changes (leading to, among other things, shopping sprees and adultery) and urge incontinence (for which a special implant had to be inserted in her buttocks to regulate her system). Plaintiff's husband alleged a loss of consortium claim.

Keene presented evidence the premises was properly grounded and in compliance with electrical codes and that any defects relative to electrical or telephone systems were the work of subsequent contractors. Keene also presented an expert on electrical conduction, who testified that there was insufficient voltage to have arched the distance from the plastic earpiece to Plaintiff's ear. Phone wires were not melted, the phone system was not blown out, and another phone plugged into Plaintiff's same phone jack worked fine. EMT records and physician reports of the incident showed no visible sign of injury or burns to Plaintiff's hand or ear, contrary to Plaintiff's claims of burns and melted jewelry. If the electrical surge had been of the intensity calculated by Plaintiff's expert, the alleged shock would have been lethal. The power company prevailed on summary judgment just prior to trial. The property owner prevailed on directed verdict. **In a two and half week trial, the jury decided in favor of the defense. Motion for new trial was denied.**

CASE : **PERSONAL INJURY/CONSTRUCTION DEFECT**
COUNSEL : **FRANK RAPPRICH AND JOSEPH TAMBORELLO, JR.**
FIRM : **FISHER, RUSHMER, WERRENRATH, DICKSON, TALLEY & DUNLAP, P.A.**
HEADQUARTERS : **ORLANDO, FL**

## ASSEMBLIES OF GOD LAW SUIT DISASSEMBLED

**The Nebraska District Council of the Assemblies of God, insured by Church Mutual, was sued by a local member church.** The District Council determined that a local member church had ceased to function as set out by church doctrine, closed the church and took possession of the real and personal property. The membership of the local church brought suit under the Non Profit Corporation Act seeking to have the church reopened and the real and personal property returned. The issues evoked high emotions on both sides and two attempts at mediation failed. A two-day trial took place, involving issues of both civil law and church law. **The finder of fact sided with the Nebraska District Council on all issues, resulting in a dismissal of all claims by the local church.**

CASE : **NONPROFIT BUSINESS CORPORATION ACT, RELIGIOUS FREEDOM/1 4TH AMENDMENT, REPLEVIN**
COUNSEL : **JERALD RAUTERKUS**
FIRM : **ERICKSON SEDERSTROM**
HEADQUARTERS : **OMAHA, NE**

## STATE FARM WINS STAY IN STATE SUIT

State Farm issued a No Fault insurance policy, which provided broader geographical and familial coverage than its "basic" policy, but with no additional monetary coverage limits. **An adverse appellate decision in a matter handled by different counsel, found the policy language ambiguous and the court held that the issued policy not only provided broader geographic and familial coverage but provided an additional $50,000 in benefits** over what insurer expected the policy to provide. Plaintiff's lawyer then brought a class action seeking to declare that all such policies issued through the State of New York containing similar language provided the $50,000 in additional benefits. **Defense secured a dismissal of the class action lawsuit prior to a certification motion**, and before pre-certification discovery, affirmed on appeal, convincing the motion and appellate court that the insurer had sufficiently modified its policy language, following a state insurance department circular opinion, to remove any ambiguity.

CASE : **INSURANCE COVERAGE**
COUNSEL : **DAN D. KOHANE, SCOTT C. BILLMAN**
FIRM : **HURWITZ & FINE, P.C.**
HEADQUARTERS : **BUFFALO, NY**

## METRO-NORTH RAILROAD WINS HEARING

**Plaintiff (the first of 32) brought suit against MTA Metro-North Railroad** pursuant to the Federal Employers Liability Act alleging occupational hearing loss by continued and prolonged exposure to hazardous noise in the work place. Plaintiff was a signalman working in the railroad industry since 1967. He joined Metro-North upon its creation on January 1, 1983. In pretrial discovery, the plaintiff settled his claims against all the railroads for which he worked prior to joining Metro-North. The trial judge determined that Metro-North would be responsible for plaintiff's entire hearing loss, although only a portion of it allegedly occurred while he was employed by Metro-North. Based upon the court's instructions, if the jury found that Metro-North was responsible in even the slightest degree for any of the plaintiff's hearing loss, it would have to respond in damages for all of the hearing loss. The defense's position was that the plaintiff failed to prove that the noise he was exposed to was of sufficient intensity and duration so as to cause high frequency hearing loss. **After a five-day jury trial, the jury returned a unanimous verdict in favor of Metro-North, finding that the defendant was not negligent.**

CASE : **OCCUPATIONAL HEARING LOSS**
COUNSEL : **CHARLES A. DELUCA**
FIRM : **RYAN, RYAN, JOHNSON & DELUCA, LLP**
HEADQUARTERS : **STAMFORD, CT**

## PHYSICIAN FENDS OFF MALPRACTICE SUIT

**Plaintiff, a middle aged woman, sued her gynecologist for medical malpractice** because of an alleged 10-month delay in diagnosis of her uterine cervical cancer. Plaintiff alleged that she was at high risk for the disease, presented with uterine bleeding and had a suspicious ultrasound, but was not promptly scheduled for a D&C and biopsy to diagnose the cancer. Defendant contended that the symptoms and ultrasound results were variable and inconclusive and did not warrant further testing, and also questioned whether Plaintiff even had cancer at the time of the earlier visits. Plaintiff did not have a recurrence or metastasis, and would have required a hysterectomy in any event, but claimed that her painful radiation treatment would not have been necessary had the disease been diagnosed earlier. Plaintiff argued that the grade of the cancer changed from grade 1 to 3 during the ensuing months. The defense countered that the grade is an immutable cell type and did not change, and that radiation would have been required even if the diagnosis had been made earlier. **After one hour of deliberation the jury returned a unanimous defense verdict finding no negligence on the part of the doctor.**

CASE : **MEDICAL MALPRACTICE**
COUNSEL : **JAMES R. KAHN AND PAUL F. WEISBEIN**
FIRM : **MARGOLIS EDELSTEIN**
HEADQUARTERS : **PHILADELPHIA, PA**

## PLAINTIFFS ORDERED TO PAY IN SEX CASE

**Defense obtained summary judgment plus sanctions against the plaintiffs and their attorney in a federal lawsuit involving allegations of sex discrimination** and a sexually hostile work environment. The plaintiffs alleged that they had been passed over for promotions because they had refused to accede to their boss's purportedly sexual overtures, whereas other women who took more kindly to these "overtures" had been fast-tracked for promotions. The plaintiffs also alleged that the terminations of their employment were based on their sex; however, the Court essentially adopted the defendant-employer's argument that the unauthorized three-hour lunch escapade that the plaintiffs had engaged in, where they spread gossip and rumor-mongered about their boss and supervisors, justified the terminations. The Court also found that the plaintiffs had offered no evidence of sexual favoritism in the workplace. The plaintiffs appealed to the Fourth Circuit, but then withdrew their appeal. **The Court imposed sanctions and costs against the plaintiffs and they were ordered to pay $13,768.56 to the defendant.**

CASE : **SEX DISCRIMINATION, PLAINTIFF SANCTIONS**
COUNSEL : **RACHEL ESPOSITO, PATRICIA L. HOLLAND**
FIRM : **CRANFILL, SUMNER & HARTZOG, LLP**
HEADQUARTERS : **RALEIGH, NC**

## JURY RETURNS SMALL VERDICT TO BIG RIG

Defendant, while operating a tractor-trailer owned by S.E. Cooperative, crested a hill to find a pickup stopped in his lane a short distance away without lights. He braked, skidded, jack knifed, crossed the centerline and collided with plaintiff's on-coming vehicle. **Plaintiff, whose husband died at the scene, sued for compensation for her husband's wrongful death and injuries she sustained.** Last offer before trial was $50,000 vs. a demand for **$5 million**. During the trial the offer increased to $200,000 while the demand fell to $3 million, then $1.8 million and finally $950,000. **The jury handed down a verdict of $218,000 for wrongful death and $2000 for the personal injury.**

CASE : **WRONGFUL DEATH/PERSONAL INJURY**
COUNSEL : **GARY SNODGRASS AND PHILLIP BRYANT**
FIRM : **RABBITT, PITZER & SNODGRASS**
HEADQUARTERS : **ST. LOUIS, MO**

## JURY JUST SAYS "NO" IN MALPRACTICE CASE

**The plaintiff alleged negligence on the part of a doctor and hospital for causing her child to be born with hypoxic ischemic encephalopathy**, which requires life-long medical care and 24-hour supervision. Plaintiff argued that the hospital nurses were negligent in monitoring the drugs Cytotec and Pitocin, in their use of the fetal monitor strip, and in communication with the Doctor. Plaintiff's attorneys presented nine experts on liability, causation, and damages during trial, in an attempt to convince the jury of negligence on the part of the healthcare providers. Experts projected that the minor child would need somewhere between $17 and $19 million for lifetime medical expenses. Plaintiff claimed additional damages of $807,000 to $1.4 million for future wages, as the minor child would never have the ability to work due to her medical condition.

**The jury returned a verdict in favor of both of the Defendants as they answered the first question on negligence and proximate cause with a "No."**

CASE : **MEDICAL MALPRACTICE/OBSTETRICIAN/GYNECOLOGIST**
COUNSEL : **MICHAEL HURST, DAVID SARGENT, TANJA MARTINI**
FIRM : **HERMES SARGENT BATES, L.L.P.**
HEADQUARTERS : **DALLAS, TX**

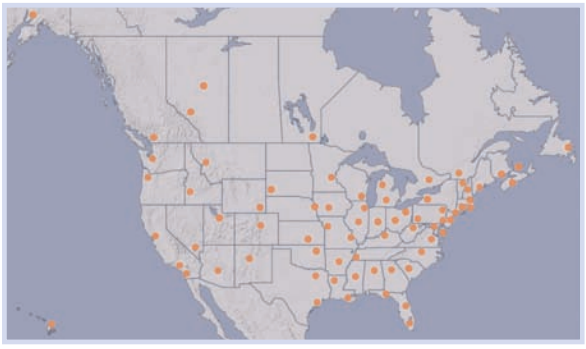
## LANDLORD WINS LESSOR LIABILITY CASE

Defendant sub-leased the manufacturing portion of its premises to a former employee of its jewelry operation. **Plaintiff, 16 and an apprentice and cousin of the sub-tenant manufacturer, was using a soldering torch when the flux ignited, spilled onto him and ignited his clothing** causing severe burns requiring hospitalization and skin grafts. After liability issues were narrowed through motion practice and appeal, plaintiff sought to recover from defendant under New York's "safe place to work statute", Labor Law Section 200. Plaintiff's demand prior to trial was $1 million vs. defendant's offer of $100,000. The jury trial was bifurcated, with liability tried first. At trial, the defense successfully precluded plaintiff's liability expert. **The jury rendered a verdict for the defense**. Even though they found an unsafe condition existed, they unanimously determined that defendant did not have the requisite prior notice to be made responsible for the accident.

CASE : **LESSOR LIABILITY FOR UNSAFE MANUFACTURING PRACTICE**
COUNSEL : **GLENN A. JACOBSON**
FIRM : **ABRAMS, GORELICK, FRIEDMAN & JACOBSON, P.C.**
HEADQUARTERS : **NEW YORK, NY**

# ABOUT THE GROUP

The Harmonie Group is a network 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 the Canadian Litigation Counsel.



*The Harmonie Group network spans all fifty of the United States of America with access to defense firms in Canada through the Canadian Litigation Counsel.*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