A NETWORK OF EXCELLENCE

Providing 24 hour access to legal defense services throughout North America

Just a few of the cases that The Harmonie Group firms won in 2007. Details inside.

- *Real Justice In* **Legal Malpractice** *Suit*
- **Beer** *Bust Case Busted*
- *Contractor's* **Paving** *Case Gets Flattened*
- *Jury Heaves* **Hyundai** *Product Liability Suit*
- **Mold** *Case Remediated*
- *Big* **Pizza** *Case Gets Tossed*
- *Pipeline* **Fire Negligence** *Suit Doused*
- *Bench Bails* **Bondsman**
- **RLI** *Rightly Reimbursed*
- *Verdict Absolutely Absolves* **Automaker**
- **Contractor** *Insulated From Liability Claim*
- *Denial Rights Granted* **Insurer**
- *Wheels Come Off* **Bike Liability** *Lawsuit*
- **Officers** *Exonerated In Orem Ordeal*
- *Judge Denies Whole Hog In* **Petting Zoo** *Case*
- *Complex* **Apartment** *Case Simply Dismissed*
- *Legal Action Backfires In* **Patent** *Case*

WHAT MATTERS TO CLIENTS IS WHAT MATTERS MOST TO HARMONIE FIRMS: RESULTS

The Significant Cases of 2007 reviewed in these pages are convincing evidence that Harmonie Group legal defense firms offer their clients a record of success in the courtroom.

Our Group is comprised of **seasoned trial attorneys** who have the knowledge and experience necessary to achieve results under the most difficult and complex circumstances. Membership in our network is limited to firms whose **track records indicate an ability to develop masterful defense strategies** and achieve favorable outcomes.

Harmonie Group firms have a **tradition of success** and a **high standard of excellence** that enables them to achieve the kind of results they do for their clients. Their **record speaks for itself** and makes a strong case for letting a Harmonie member law firm represent you.

CONVENIENT ACCESS TO ACCIDENT RESPONSE FIRMS ANYTIME: 24/7

Through our website, **The Harmonie Group** offers access to legal services required to respond to issues arising from major emergencies and accidents. Firms listed can provide legal services on a 24-hour basis that help companies navigate the complex landscape of post-accident investigations.

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Practice Area


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Where success is a matter of fact.

THE HARMONIE GROUP®

REAL JUSTICE IN LEGAL MALPRACTICE SUIT

Plaintiffs, a group of real estate partnerships that operated shopping centers in Long Island, filed a state court action against their former counsel seeking $34 million in damages claiming that the law firm had not advised them of negative ramifications of an agreement they had entered into in an attempt to forestall foreclosure on several properties. They also claimed counsel failed to assert a defense that would have protected them from foreclosure. The defendant law firm represented plaintiffs in foreclosure and bankruptcy proceedings that resulted in an intricate court-approved financing agreement. The properties were later foreclosed on when plaintiffs failed to meet conditions imposed by the new lender. In the legal malpractice action, defense moved for summary judgment on multiple grounds. Plaintiffs opposed the motion and cross-moved to add a cause of action alleging attorney misconduct. **The judge granted defendant's motion for summary judgment and dismissed plaintiffs' $34 million complaint,** finding that, by virtue of the bankruptcy, plaintiffs had no equity in the properties and therefore, had sustained no damages. **The Court also found no merit to the claim that the law firm failed to assert a defense and denied the cross-motion to assert a cause of action for attorney misconduct.**

CASE: **LEGAL MALPRACTICE**
CO-COUNSEL: **BARRY JACOBS**
FIRM: **ABRAMS, GORELICK, FRIEDMAN & JACOBSON, P.C.**
HEADQUARTERS: **NEW YORK, NY**

BEER BUST CASE BUSTED

Counsel defended a beer distributor accused of breaching a common-law duty to monitor alcohol consumption in a wrongful death case where Plaintiff's decedent was killed in a motor vehicle accident following attendance at an annual pig roast where the defendant had delivered and set up a beer truck. Picnic attendees used the taps on the truck to serve themselves draughts.

After rejecting the Plaintiff's demand of $3,500,000, the trial concluded with the judge granting defendant's Motion for Directed Verdict, noting that the distributor had neither a statutory nor common-law duty of care towards Plaintiff's decedent; the Appellate Division ultimately concurred.

CASE: **LIQUOR LIABILITY, WRONGFUL DEATH**
COUNSEL: **COLLEEN M. READY**
FIRM: **MARGOLIS EDELSTEIN**
HEADQUARTERS: **PHILADELPHIA, PA**

CONTRACTOR'S PAVING CASE GETS FLATTENED

Defense represented the Municipality of Anchorage, in a case brought by Alaska Construction & Paving, Inc., a contractor who performed a construction project that involved substantial renovations and improvements to an old existing road in Anchorage. Many unanticipated conditions were encountered during excavation, and there were over 70 change orders approved during the project to compensate ACP for additional costs that totalled nearly $1 million. At the conclusion of the job, the contractor asserted a "cumulative impact" claim resulting from the dozens of incremental changes that had occurred during the contract, and also a claim for business destruction as a result of ACP's loss of bonding. The contractor's last offer to settle before trial was $2.5 million. **Following a two-week bench trial, the court issued a lengthy written opinion dismissing all aspects of the contractor's claim** for damages and declaring the MOA as the prevailing party, thereby entitling it to an award of its costs and fees under Alaska's civil rules. **ACP was awarded nothing.**

CASE: **CONSTRUCTION LAW**
COUNSEL: **MICHAEL C. GERAGHTY**
FIRM: **DELISIO MORAN GERAGHTY & ZOBEL, P.C.**
HEADQUARTERS: **ANCHORAGE, AK**

JURY HEAVES HYUNDAI PRODUCT LIABILITY SUIT

Defense counsel obtained a defense verdict for Hyundai Motor Company in a case where plaintiff alleged permanent total disability due to traumatic brain damage. Plaintiff criticized the deployment strategy for the supplemental restraint system in the 2002 Hyundai Elantra and claimed that the strategy to suppress deployment of the passenger side airbags when no passenger was present deprived her of expected protection in an off-side collision. Plaintiff's 2002 Hyundai Elantra was struck on the passenger side by a tractor trailer. Plaintiff struck her head on the passenger side B pillar and was rendered unconscious after the accident. Subsequent diagnostic scans revealed a subarachnoid hemorrhage. The trial lasted six trial days. Plaintiff asked for $3.4 million. **The jury deliberated for 40 minutes before returning a unanimous defense verdict.**

CASE: **PRODUCT LIABILITY-AUTOMOBILE**
COUNSEL: **HUGH J. BODE & ROBERT S. YALLECH**
FIRM: **REMINGER & REMINGER CO., L.P.A.**
HEADQUARTERS: **CLEVELAND, OH**

HARMONIE FIRMS: PROVEN RESULTS THROUGHOUT NORTH AMERICA

The Harmonie network provides access to high caliber defense attorneys that handle complex high-stakes litigation throughout the United States, and in Canada and abroad through Harmonie's International Friends.

MOLD CASE REMEDIATED

Defense counsel obtained a summary judgment on behalf of an excess insurer in an action filed by a general contractor seeking coverage under a CGL policy for mold remediation expenses arising out of faulty workmanship and the provision of defective materials in the construction of a housing development. The court found that the mold remediation expenses constituted nothing more than costs incurred to repair the insured's defective work, which failed to satisfy the "occurrence" definition of the insuring agreement. **In so ruling, the court rejected the insured's arguments** based upon the subcontractor exception to the "your work" exclusion, explaining that an exclusion cannot create or extend coverage where none otherwise exists. The insured has appealed to the United States Court of Appeals for the Fourth Circuit.

CASE: **INSURANCE COVERAGE, CONSTRUCTION DEFECTS AND MOLD**
COUNSEL: **ELIZABETH SKILLING AND THOMAS GARRETT**
FIRM: **HARMAN, CLAYTOR, CORRIGAN & WELLMAN**
HEADQUARTERS: **RICHMOND, VA**

BIG PIZZA CASE GETS TOSSED

Defense counsel blocked efforts by 200 current and former pizza restaurant managers to certify themselves as a class of exempt employees under California law. Plaintiffs alleged they were misclassified and sought damages of $10,000,000 in unpaid overtime wages, rest breaks, meal breaks, statutory penalties and attorney fees. The court rejected the claim that the mere existence of uniform practices, procedures and common job description was sufficient to certify a class. Because of evidence verifying wide variances in the daily work of each manager and the individual discretion each exercised, **the court held that the lawsuit was not suitable for class certification**.

CASE: **EMPLOYMENT – WAGE AND OVERTIME CLASS ACTION**
COUNSEL: **CATHY ARIAS, ROBERT BODZIN, ALLYSON COOK**
FIRM: **BURNHAM BROWN**
HEADQUARTERS: **OAKLAND, CA**

PIPELINE FIRE NEGLIGENCE LAWSUIT GETS DOUSED

Plaintiff, Houston Pipeline Company, asserted negligence against environmental contractor, Ensource Corporation, for a pipeline fire and explosion. HPL had a master Environmental Services Contract with Ensource for various services, including hazardous waste transportation. HPL was removing natural gas condensate from its pipeline in East Texas and having vacuum trucks haul the condensate to another facility where it was sold for a profit. HPL originally hired its own trucks, but then called Ensource, knowing it was not a trucking contractor, to help locate additional trucks when the amount of condensate turned out to be greater than expected. Ensource did so and agreed to serve as an intermediary since there was no time to establish a direct relationship. During the project, a vacuum truck caught fire and led to an explosion costing significant damage and lost profits. **HPL sued Ensource, seeking $1.5 million in damages and $700,000 in attorney's fees, claiming a breach of the Environmental Services Agreement and negligence in selecting the trucking company.** Ensource countered that the Environmental Services Agreement did not apply because "providing a trucking company" was beyond the scope of work in the contract, and because it only applied to transporting waste, and not a product sold at a profit. Ensource also claimed the fire was caused by HPL's own negligent site design and control, and was not caused by any defect in the vacuum truck or negligent activity of the driver. Further, Ensource claimed that for the Environmental Services Agreement to apply, Ensource would have had to have been given control over the worksite, when in fact HPL completely controlled the site itself. **After a two week jury trial in Woodville, Texas, Ensource obtained a complete defense verdict. The jury found that the Environmental Services Agreement was not breached**, and that the fire was a result of the Plaintiff's own sole negligence.

CASE: **BREACH OF CONTRACT/NEGLIGENCE**
COUNSEL: **JEROMY D. HUGHES, CHARLES CLAYTON CONRAD**
FIRM: **BROWN SIMS, P.C.**
HEADQUARTERS: **HOUSTON, TX**

BENCH BAILS BONDSMAN IN 4TH AMENDMENT CASE

Defense counsel obtained a defense verdict for a bail bondsman after a six-day jury trial. **The plaintiffs claimed that the bondsman and two bounty hunters unlawfully searched their home for a fugitive**. They claimed consent for the search was not voluntary and was the result of coercion by the bondsman and local police, who advised the homeowners at the scene that the bounty hunters had "special rights" to search their home. The plaintifs claimed that consent was given only after police threatened to shoot their dog. According to the plaintiffs, the bondsman and police acted in concert to obtain entry to the house, rendering the bondsman liable for Fourth Amendment violations. They claimed that the bondsman improperly targeted their home as the family had no connection with the fugitive. During trial, the defense was able to prove a romantic relationship between the 27 year-old fugitive and the plaintiffs' 17 year-old daughter, noting that she had his name tattooed on her ring finger and had told her parents about her desire to marry him. After deliberating just two hours, **the jury returned a verdict finding that the plaintiffs had consented to the search of their home, and the court entered judgment on behalf of the defendants on all counts accordingly**.

CASE: **FOURTH AMENDMENT UNLAWFUL SEARCH/ UNFAIR TRADE PRACTICES**
COUNSEL: **ROBERT C. E. LANEY**
FIRM: **RYAN, RYAN, JOHNSON & DELUCA, LLP**
HEADQUARTERS: **STAMFORD, CT**

RLI RIGHTLY REIMBURSED

Insurance company RLI filed a declaratory judgment action against its insureds seeking a declaration that it had no duty to defend them in a lawsuit alleging faulty construction of condominium towers, and that it was also entitled to reimbursement for expenditures incurred in defending said litigation. The US District Court granted summary judgment in favor of RLI on the issue of its duty to defend, declaring that the case did not involve "property damage" that qualified for coverage. On the issue of reimbursement, the insureds asserted RLI had no right to recoup defense costs because the policy did not provide a broad right to reimbursement. RLI pointed to specific reservations and warnings which specified when it would provide a defense. A Special Magistrate concluded that an insurer is entitled to reimbursement when an adequate reservation of rights has been made even if the policy contains no reimbursement provision. The decision was based on a theory of unjust enrichment. **The Magistrate granted that a judgment of $481,000 plus interest be paid by the insured to RLI.**

CASE: **DUTY TO DEFEND/RESERVATION OF RIGHTS/ REIMBURSEMENT OF DEFENSE COSTS**
COUNSEL: **DAVID W. MCDOWELL AND GEORGE T. LEWIS, III**
FIRM: **BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC**
HEADQUARTERS: **MEMPHIS, TN**

VERDICT ABSOLUTELY ABSOLVES AUTOMAKER

Two Harmonie firms collaborated on a defense victory in the first motor vehicle case to be tried where the claim was based on the vehicle's lack of an electronic stability control system. A 20-year-old youth pastor who had been driving through the night lost control of his 2000 Ford Explorer when he attempted to steer it back onto the highway after it had drifted into the median. The driver overcorrected, and the vehicle yawed, slid sideways and rolled over, ejecting the unbelted driver, who died at the scene. His belted wife, who was sleeping at the time, sustained serious injuries. Plaintiff argued that the Ford Explorer was "inherently unstable" and that "under ordinary circumstances", an SUV should not roll over on flat, dry, paved surfaces as a result of steering inputs and that the Explorer ought to have been made with greater rollover resistance. Plaintiff contended that the SUV should have had an electronic stability control system which would have helped her husband regain control of the vehicle. Ford argued that the Explorer was well designed and that the driver's loss of control because of fatigue caused the accident. Ford also asserted that electronic stability control systems were not yet available in the 2000 model year and that the stability of the Explorer was consistent with other SUVs at the time. **The jury agreed with the defense finding that Ford was not responsible for the death of the pastor or injuries to his wife.**

CASE: **PRODUCT LIABILITY/WRONGFUL DEATH/PERSONAL INJURY – MOTOR VEHICLE**
COUNSEL: **JAMES M. CAMPBELL AND DAVID M. ROGERS**
FIRM: **CAMPBELL CAMPBELL EDWARDS & CONROY PROFESSIONAL CORPORATION**
HEADQUARTERS: **BOSTON, MA**
COUNSEL: **KEVIN C. SCHIFERL AND KAREN M.R. WEBER**
FIRM: **LOCKE REYNOLDS LLP**
HEADQUARTERS: **INDIANAPOLIS, IN**

CONTRACTOR INSULATED FROM LIABILITY CLAIM

Defense attorneys prevailed defending AAC Environmental Company, an insured of Seneca Insurance Company. At issue was liability arising out of the negligent installation of polyurethane foam insulation which caused a fire at a historic Madison, WI mansion for which the parties stipulated to damages of $4 million. The insured was the last contractor in the house and had finished insulation work just three hours before the fire was discovered. The jury concluded that AAC Environmental was not negligent in installing the insulation and was not liable for damages caused by the fire.

CASE: **FIRE LIABILITY/ALLEGED NEGLIGENT INSTALLATION**
COUNSEL: **MICHAEL P. CROOKS AND ANTHONY D. CONLIN**
FIRM: **PETERSON, JOHNSON & MURRAY, S.C.**
HEADQUARTERS: **MADISON, WI**

DENIAL RIGHTS GRANTED

Defense counsel obtained a ruling in a Georgia federal court that an insurer that provided defense of a catastrophic tort suit against its insured without an immediate reservation of rights was not barred from denying coverage and seeking a declaratory judgment that it had no coverage. The mother of a catastrophically injured child filed suit for tort damages against the putative insured of PSIC. The insurer assigned defense counsel for the putative insured without first reserving its rights to deny coverage. At the time the insurer arranged for defense of the putative insured, the lawsuit of the putative insured was already in default. Approximately two months after counsel entered an appearance on behalf of the putative insured and obtained an order opening the default, the insurer issued a reservation of rights to the putative insured and also filed a petition for declaratory judgment that no coverage existed. The federal judge ruled that the reservation of rights by the insurer was effective even though it was issued after assumption of defense of the insured. **The court found that no prejudice to the insured existed and that the insured had taken only limited, preliminary steps in defense between the time counsel was hired to represent the putative insured and the time the insurer mailed its reservation-of-rights letter to the insured.**

CASE: **INSURANCE COVERAGE LAW**
COUNSEL: **G. RANDALL MOODY AND MICHAEL MILLS**
FIRM: **DREW, ECKL & FARNHAM, LLP**
HEADQUARTERS: **ATLANTA, GA**

WHEELS COME OFF BIKE LIABILITY LAWSUIT

Attorneys from The Cavanagh Law Firm successfully defended a major U.S. bicycle distributor against an injured accident victim's claims that his bicycle was defective and unreasonably dangerous, notwithstanding its compliance with CPSC (Consumer Product Safety Commission) regulations. The bicycle's front wheel was secured to its front forks via an industry-standard "quick release" front hub which the plaintiff claimed was defective because it allegedly did not include "secondary retention features." The plaintiff was racing with his child and some other children in the parking lot of an apartment complex when he encountered a speed bump and the front wheel disengaged. This threw him to the pavement head-first, resulting in head injuries and alleged permanent disability. The plaintiff was not wearing a helmet, and there was evidence that his blood alcohol content was likely above the "legal limit" at the time of the accident. Both parties' experts agreed that the wheel was loose at the time the bicycle encountered the speed bump. Plaintiff demanded $2.6 million. **After a three-week trial, the jury returned a unanimous defense verdict within thirty minutes.**

CASE: **PRODUCT LIABILITY–BICYCLE**
COUNSEL: **MARY PRYOR AND KERRY GRIGGS**
FIRM: **THE CAVANAGH LAW FIRM, P.A.**
HEADQUARTERS: **PHOENIX, AZ**

OFFICERS EXONERATED IN OREM ORDEAL

Defense prevailed in a 9-day trial for the City of Orem and its police officers where plaintiffs claimed the officers used excessive force when they shot and killed their son. On the night of the shooting, a man led two police officers on a forty five minute chase through several cities in Utah County, UT and ultimately led to his home. He got out of his car and fled on foot. The defendant officer, along with his partner, pursued the man. Suddenly, the man stopped, turned and raised his arms at the officer. Thinking the man was pointing a gun at them, the officer and his partner shot and killed him. The man was, in fact, wielding a knife. **At the conclusion of the trial, a jury returned a unanimous verdict finding that the officers had not violated the man's 4th Amendment constitutional right to be free from excessive force.**

CASE: **CIVIL RIGHTS – POLICE SHOOTING**
COUNSEL: **ANDREW M. MORSE**
FIRM: **SNOW, CHRISTENSEN & MARTINEAU**
HEADQUARTERS: **SALT LAKE CITY, UT**

JUDGE DENIES WHOLE HOG IN FAIR PETTING ZOO CASE

Defense represented an insured petting zoo operation in a U.S. District Court action concerning the insurance coverage available to a number of children who experienced symptoms of E. coli exposure after visiting a petting zoo at the North Carolina State Fair where N.C. Health Department officials confirmed the presence of E. coli. **The plaintiff argued that each individual child's exposure constituted a separate occurrence, which made them eligible for the aggregate limit of $2,000,000** because they each made separate trips to the fair over two weeks, touching different animals and structures in the petting zoo. Defense countered that under North Carolina law, an "occurrence" is determined by the original cause(s) of the damage, not the subsequent manifestations or injuries; that the cause of damage was singly the insured's failure to prevent exposure to E. coli; and that, because the conditions at the petting zoo were "substantially similar" during the two week course of the fair, all damages arose from a single original cause and were one occurrence. **As a result, the judge agreed that together each child's illness constituted a single "occurrence" rather than multiple "occurrences" and that the insurer was only liable for the single occurrence limit of $1,000,000.**

CASE: **INSURANCE COVERAGE/E. COLI**
COUNSEL: **SUSAN BURKHART AND MEREDITH BERARD**
FIRM: **CRANFILL, SUMNER & HARTZOG, L.L.P.**
HEADQUARTERS: **RALEIGH, NC**

COMPLEX APARTMENT CASE SIMPLY DISMISSED

The buyer of an apartment complex sued the builder for more than $21 million in compensatory and punitive damages. Plaintiff alleged that construction defects permitted water to seep into the interior walls causing the building to rot, and that covered external dryer vents caused a fire hazard. The plaintiff also sued the architect for $10 million for negligence and malpractice, although it did not have a contract with either defendant. Rather than allowing the plaintiff to try and build its case factually through discovery, defense counsel preemptively filed motions to dismiss, successfully convincing the trial court that the complaint failed to state any legal basis for recovery against either defendant. **Even after the court permitted the plaintiff to amend its complaint with additional facts, defendants again successfully won dismissal of the complaint in its entirety.** Appellate courts affirmed the dismissals since the allegations did not establish a risk of death or injury needed to recover in tort under the exception to the economic loss rule where the parties have no contract.

CASE: **CONSTRUCTION DEFECT**
COUNSEL: **HOWARD S. STEVENS AND JASON R. POTTER**
FIRM: **WRIGHT, CONSTABLE & SKEEN, LLP**
HEADQUARTERS: **BALTIMORE, MD**

LEGAL ACTION BACKFIRES IN SPIKES PATENT CASE

PMG, Inc. of West Virginia filed suit against Lockheed Martin Idaho Technologies Company and Bechtel BWXT Idaho LLC in the Federal District of Idaho for fraud in the inducement and breach of a patent license agreement for the commercialization of the Retractable Spike Barrier Strip, a device used by law enforcement for the deflation of vehicle tires in high speed chases. PMG alleged it had been defrauded by non-disclosure of a prior litigation threat and that LMITCO and BBWI had breached the License Agreement by refusing to defend and indemnify PMG when the competitor, that had previously threatened litigation, sued PMG for patent infringement. **PMG sought $3,976,000 plus punitive damages. After a three week trial, the jury returned a verdict for LMITCO and BBWI, rejecting the fraud and breach of contract claims of PMG, finding that PMG had breached the License Agreement, and awarded LMITCO and BBWI all of their damages in the amount of $1,195,178.90.**

CASE: **FRAUD AND BREACH OF PATENT LICENSE AGREEMENT**
COUNSEL: **PHIL OBERRECHT AND JIM THOMSON**
FIRM: **HALL, FARLEY, OBERRECHT & BLANTON, P.A.**
HEADQUARTERS: **BOISE, ID**

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 and abroad through Harmonie's International Friends.

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