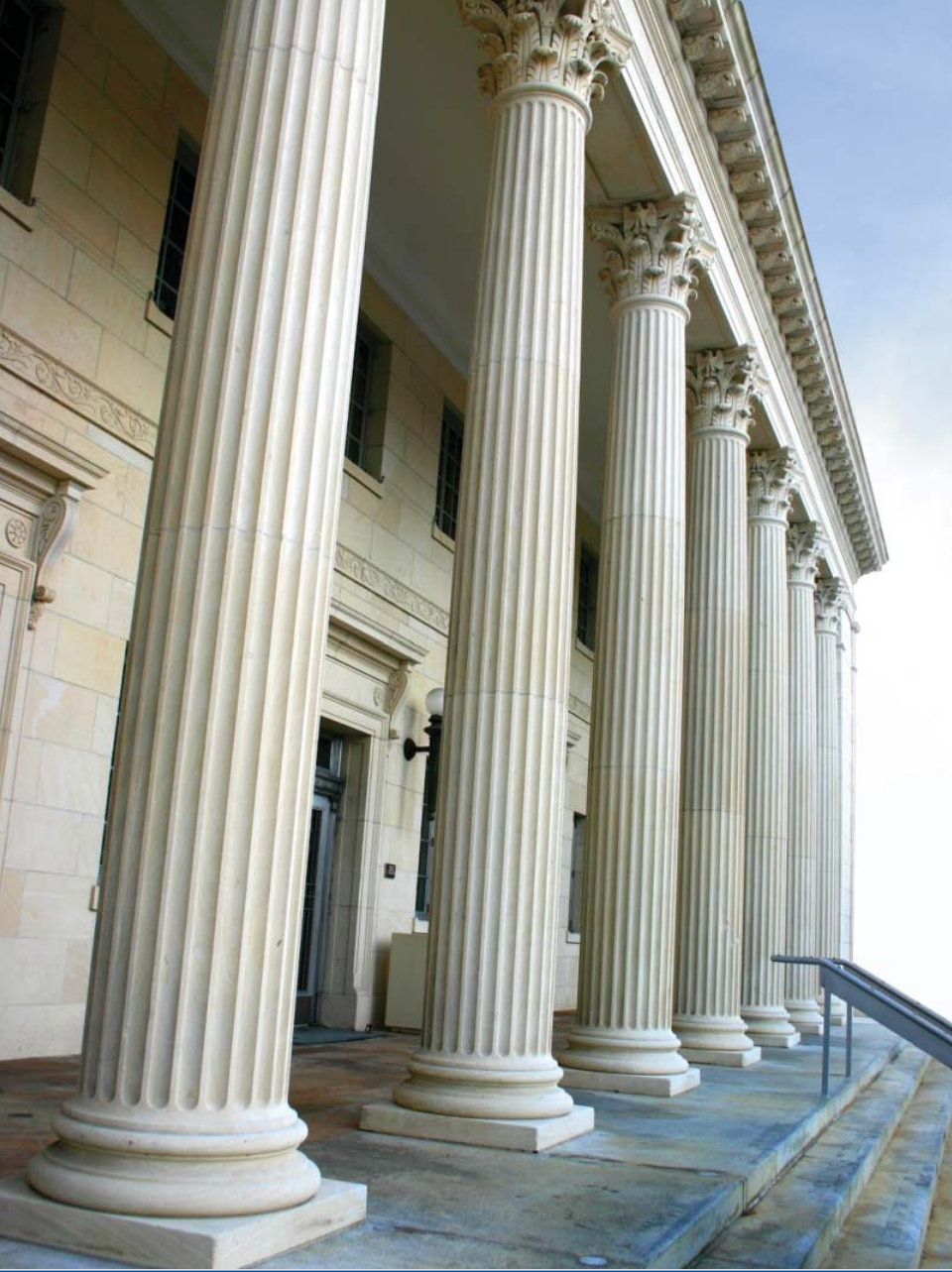


THE HARMONIE GROUP®

2008 SIGNIFICANT CASES

The Harmonie Group firms understand that they are hired to obtain the best possible results, no matter the circumstances. Membership in the Harmonie network is earned on a basis of a successful track record and a proven ability to achieve favorable outcomes. With over 50 firms working throughout the US, Mexico, and Europe, and in conjunction with the Canadian Litigation Counsel, The Harmonie Group is truly a global leader in defense victories.

CASE SUCCESS:
PHARMACEUTICAL PRODUCT LIABILITY

COUNSEL: **Christy D. Jones, Michael B. Hewes, Kari L. Sutherland, Alyson B. Jones**

FIRM: **Butler, Snow, O'Mara, Stevens & Cannada, PLLC**

HEADQUARTERS: **Jackson, Mississippi**

Butler Snow attorneys served as lead trial counsel for the defendants, McNeil Consumer and Specialty Pharmaceuticals and Johnson & Johnson, in a product liability suit involving over-the-counter medication, Children's Motrin. Children's Motrin is manufactured by McNeil, a wholly owned subsidiary of Johnson & Johnson. The suit was filed by plaintiffs, alleging that Children's Motrin, given to their then-six-year-old daughter, caused Stevens Johnson Syndrome, resulting in the child's blindness. Stevens Johnson Syndrome is a rare, life-threatening disorder of the skin and mucous membranes caused by an immunological reaction generally triggered by drugs or infections, although the cause is often unknown and the reaction can neither be prevented nor predicted. Plaintiffs alleged strict product liability and negligent failure to warn, and sought nearly $1 billion in damages. After a six-week trial, jurors returned a verdict for the defendants. ■

CASE SUCCESS:
CLASS ACTION/CONSUMER PROTECTION

COUNSEL: **George T. Lewis**

FIRM: **Baker, Donelson, Bearman & Caldwell, PC**

HEADQUARTERS: **Memphis, Tennessee**

Plaintiff filed a putative class action seeking to certify a class of approximately 14,000 car buyers who paid an itemized charge called "Dealer Incurred Costs.". The estimated damages were approximately $15,000,000. The defense filed motions in the trial court to dismiss the class allegations because (1) the TN Consumer Protection Act does not allow private class actions, and (2) the class, in any event, should not be certified because the auto sales were the product of thousands of separate oral negotiations. The trial court denied the defendants' motions. The defendants brought an interlocutory appeal to the TN Court of Appeals. The Court of Appeals refused to hear the interlocutory appeal. The defendants then appealed to the TN Supreme Court, which granted permission to appeal. In a case of first impression, the TN Supreme Court reversed the trial court and held, resolving conflicting decisions in TN trial courts, that the TN Consumer Protection Act does not allow for private class actions and that in any event the case was inappropriate for class certification because of the individualized nature of the auto sales negotiations. ■

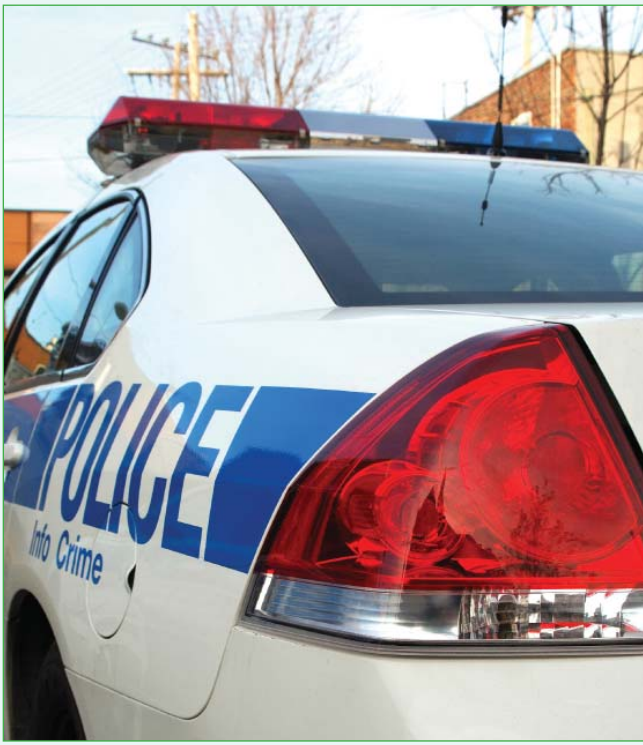
CASE SUCCESS:
SECTION 1983 CIVIL RIGHTS LITIGATION

COUNSEL: **Manny Sanchez, Emanuel Christopher Welch, Susan Chae and Meaghen Russell**

FIRM: **Sanchez Daniels & Hoffman LLP**

HEADQUARTERS: **Chicago, Illinois**

Seventy-nine Plaintiffs filed various federal and state claims, including excessive force, battery and malicious prosecution claims, against twelve individual Cicero police officers and against the Town of Cicero. Defense counsel represented the twelve individual police officer defendants. Plaintiffs' claims arose from an incident when Cicero officers responded to two different complaints made by neighbors of loud music, children in the streets and illegally parked cars. The Plaintiffs cooperated with the police at the time of the first visit, however, when police were dispatched to the party for a second time, the partygoers became unruly. Various partygoers began shouting obscenities at the officers and threw beer bottles and various other objects at them. The officers responded with the use of pepper spray and other means of force in order to regain control. Seven plaintiffs were arrested and various police officers were injured and went to the hospital for their injuries. At trial, six officers were found completely not guilty on all counts and five other officers and one lock up keeper won defense verdicts. Prior to trial, the Plaintiffs' final settlement demand was $8.6 million. The Defendants were willing to settle for $3 million prior to trial, and the final verdict against these defendants was $2.85 million. Of the seventy-nine Plaintiffs, only twenty-four received verdicts in their favor. ■



CASE SUCCESS:
INSURANCE COVERAGE/PRODUCT LIABILITY

COUNSEL: **D. David Keller and Alan L. Landsberg**

FIRM: **Bunnell, Woulfe & Keller, P.A.**

HEADQUARTERS: **Ft. Lauderdale, Florida**

Plaintiff filed suit as personal representative of the estate of her deceased husband, as surviving spouse, and on behalf of their minor children. The husband was operating a truck mounted dual rotary drill when he was struck by a pipe in the course of lifting it with a winch cable. He was taken to a trauma unit where he survived for seven days before succumbing as a result of a closed depressed skull fracture and resulting brain hemorrhage. The Plaintiff obtained a $265,000,000 default judgment against Foremost Industries, Inc. Plaintiff then attempted to collect against GCAN (Gerling of Canada) as the insurer for Foremost pursuant to Florida Statutes. The defense responded, based on both Florida and Canadian law, and successfully defeated the Plaintiff's Motion to Enter Judgment against the Canadian insurer, challenging jurisdiction and statutory compliance, advising the court on choice of law principles, and responding to allegations of bad faith. Defense further coordinated the efforts of GCAN's appointed defense counsel to attack the basis for the underlying Default Judgment against the insured defendant. The Motion to Enter Judgment against GCAN was defeated. Subsequent to their successful defense against Plaintiff's efforts to secure judgment against the insurer for this enormous excess verdict, the case was favorably resolved at mediation on a confidential basis. ■

CASE SUCCESS:
AUTO ACCIDENT/RESPONDEAT SUPERIOR/ REAL ESTATE AGENT

COUNSEL: **Stanley P. Wellman and Danielle D. Giroux**

FIRM: **Harman, Claytor, Corrigan & Wellman, P.C.**

HEADQUARTERS: **Richmond, Virginia**

Defense counsel obtained summary judgment in two $25 million personal injury lawsuits arising out of a motor vehicle collision. Plaintiffs, two German nationals visiting the USA, suffered catastrophic and permanent injuries, requiring life care plans with a projected cost of approximately $30 million. Plaintiffs sought to hold defendant real estate company liable under a theory of respondeat superior, asserting that, at the time of the accident, their agent was working in the scope of his employment. In granting summary judgment, the court ruled that the agent was not an employee. Although a broker has a general statutory duty to ensure that its salespersons comply with statutory and administrative regulations, the Court ruled that the statutory scheme did not create a de facto master-servant relationship. In addition, the Court determined that the defendant did not control "the means and methods" of its agents' work, and that "[t]his hands-off association is the sine qua non of an independent contractor relationship." ■

CASE SUCCESS:
DRILLING RIG FIRE AT SHIPYARD

COUNSEL: **Michael D. Williams and Charles C. Conrad**

FIRM: **Brown Sims, P.C.**

HEADQUARTERS: **Houston, Texas**

Defense counsel obtained declaratory judgment on the first day of trial on behalf of shipyard client Gulf Copper in a $45 million property damage and lost profits lawsuit. The case arose out of a fire on Plaintiff's drilling rig undergoing refurbishment and repairs. Plaintiff alleged that the local fire marshal's investigation was correct and that the fire was caused by welding work directed by Gulf Copper. Plaintiff sought property damages in excess of $20 million and lost profits of at least $25 million. Gulf Copper developed evidence that the rig fire was actually caused by an electrical short-circuit of a breaker box under the control of plaintiff and repaired by plaintiff's electrical contractor. On the first day of trial, Gulf Copper successfully argued to the Court that the shipyard contract in question provided for plaintiff to indemnify Gulf Copper for all of the damages being sought in the lawsuit as long as Gulf Copper was not in control of the property. The Court ruled that Gulf Copper was not in control of the property at the time of the incident. ■

CASE SUCCESS:
PREMISES LIABILITY

COUNSEL: **Trystan B. Smith**

FIRM: **Snow, Christensen & Martineau**

HEADQUARTERS: **Salt Lake City, Utah**

A national retailer was accused of failing to maintain adequate safety procedures for closing roll-up doors (large garage doors) during business hours. Plaintiff alleged she suffered a traumatic brain injury as result of an employee allowing a roll-up door to close on her head while she was walking out of the store's contractor's exit. Plaintiff alleged hundreds of stores nationwide were inherently dangerous because the retailer should have not have installed roll-up doors, but should have installed large sliding glass doors with motion sensors. Plaintiff further alleged the retailer failed to maintain adequate safety procedures to warn customers when the roll-up door closed. At trial, plaintiff sought close to $500,000 in future and past wage loss. After 50 minutes of deliberations, the jury returned a unanimous defense verdict finding plaintiff was 100% at fault. The defense is now pursuing a claim for attorneys' fees. ■

CASE SUCCESS:
INSURANCE COVERAGE/LATE NOTICE

COUNSEL: **Michael E. Gorelick and James E. Kimmel**

FIRM: **Abrams Gorelick Friedman & Jacobson, P.C.**

HEADQUARTERS: **New York, New York**

QBE Insurance Company sought a declaratory judgment that it was "not obligated to defend and indemnify" its named insured and others seeking defense and indemnification in a bodily injury action in which plaintiff claimed serious bodily injuries sustained as a result of a fall from a ladder at a construction site in 2003. QBE was notified of the accident in 2006, when a purported "additional insured" forwarded the summons and complaint to QBE's agent. This was QBE's first notice of the accident. QBE immediately disclaimed coverage on the grounds that the notice of the accident was untimely and that, in any event, the company giving notice was not an "additional insured" under the QBE policy. QBE immediately sent a reservation of rights letter to its named insured pending an investigation and notified plaintiff's counsel accordingly. QBE completed its investigation and promptly disclaimed coverage on the grounds of late notice. Plaintiff's counsel then sent a letter to QBE advising it of plaintiff's bodily injury claim and requesting that a claim be opened. QBE then commenced a declaratory judgment action which ultimately resulted in the filing of motions by the "insureds" seeking a declaration that the QBE disclaimers were invalid. QBE cross-moved for summary judgment for an order declaring that it was "not obligated to defend and indemnify" any of the defendants in the underlying action. The "insureds" and plaintiff set forth several "excuses" for their delay in providing notice to QBE and proffered several reasons why QBE should be estopped from raising a late notice defense. While the motions were pending, the judge before whom the underlying case was pending sought a $400,000 contribution from QBE as part of a global settlement of the cases asserting that it was unlikely QBE would prevail on the motion. Plaintiff's demand was for $2.2 million. QBE declined to contribute and elected to proceed with its motion. The Court held that since neither the "insureds" nor plaintiff had given QBE timely notice of the underlying incident, and since QBE's disclaimer was timely and proper, QBE was "not obligated to defend or indemnify" any of the defendants in the underlying action. ■

CASE SUCCESS:
CONTRACT/NON-COMPETE AGREEMENT

COUNSEL: **Richard J. Gilloon and Bradley Mallberg**

FIRM: **Erickson & Sederstrom, P.C., L.L.O.**

HEADQUARTERS: **Omaha, Nebraska**

AON Consulting Inc. merged with Alexander & Alexander (A&A) in 1997, and acquired all of the assets of both companies in the process. The company surviving the merger was AON Consulting, Inc. Included in the assets were non-compete agreements signed by key employees of A&A. A former employee of A&A before the merger, remained employed with AON after the merger until 2001 when he left to do the same consulting work for a competing company, Midlands. The former employee continued to work with many of his former AON customers after his move to Midlands notwithstanding the terms of his non-compete agreement. AON sued him to enforce the non-compete agreement and recover lost profits resulting from his selling to his old customers. The former employee defended on the basis that the non-compete agreement was a personal services contract not assignable to AON, and that there was no consideration given by AON to him to enforce the non-compete agreement. The court ruled in favor of AON, ruling the agreement enforceable, and that AON suffered lost profits of $123,000 during the two years that the former employee was bound not to compete with AON for his former customers. The former employee appealed to the Nebraska Supreme Court. The Nebraska Supreme Court upheld the Non-Compete Agreement and verdict in favor of AON. ■

CASE SUCCESS:
RACE DISCRIMINATION/CIVIL RIGHTS

COUNSEL: **Cathy L. Arias**

FIRM: **Burnham Brown**

HEADQUARTERS: **Oakland, California**

Plaintiffs claimed they were subjected to race discrimination after they were denied drive-thru service at approximately 2:00 a.m. when visiting McDonald's. Plaintiffs alleged they were denied service because they are African-American. The restaurant vehemently denied that Plaintiffs' race played any factor in the evening's events and established at trial that a technical problem caused the restaurant employee to be unaware of the Plaintiffs' presence at the drive-thru menu board. Further, it was Plaintiffs' angry and profanity laced reaction to their missed order that ultimately caused the restaurant to deny them service. Defense was able to obtain a dismissal with prejudice of the first plaintiff's claims. The second plaintiff proceeded to trial and the jury unanimously rejected his assertion that he was subjected to discrimination. ■

CASE SUCCESS:
LIABILITY/FIRE LOSS/SPONTANEOUS IGNITION/ PRODUCT SAFETY

COUNSEL: **Michael F. Perley**

FIRM: **Hurwitz & Fine, P.C.**

HEADQUARTERS: **Buffalo, New York**

The plaintiffs, through national subrogation counsel, seeking a recovery in excess of $1 million in a catastrophic fire, alleged that employees of Kisloski Construction Group improperly stored used staining rags on the premises resulting in their spontaneous ignition and the fire. After a five day jury trial that involved the testimony of six liability experts - four for plaintiffs and two for the defendant - the jury returned a verdict in defendant's favor after less than one hour of deliberations. ■

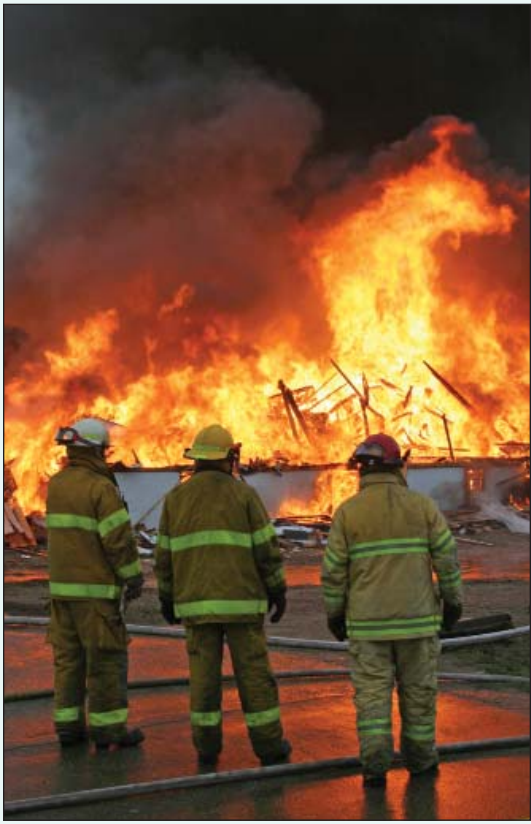
CASE SUCCESS:
LIABILITY/FIRE LOSS/PRODUCTS LIABILITY/ DUTY OF LANDLORD

COUNSEL: **Donald M. Davis**

FIRM: **Margolis Edelstein**

HEADQUARTERS: **Philadelphia, Pennsylvania**

Defense secured a Summary Judgment in favor a property owner/landlord of a warehouse leased to a distributor of truck parts. The warehouse burned to the ground causing losses of approximately $750,000. The truck parts distributor's insurer filed a subrogation claim against the manufacturer of highly flammable aerosol products which it claimed were defective, leaked and caused the fire. The manufacturer joined the landlord as a third-party defendant initially claiming certain electrical equipment installed by the owner caused the fire. When the electrical equipment was eliminated as a cause, even by the manufacturer's experts, the manufacturer then claimed that the landlord was liable because they retained control of the property and were required to install sprinklers or other fire prevention systems in accordance with the National Fire Protection Association (NFPA) Code requiring specialized handling of flammable aerosol products, and further failed to create required partitions in floors and ceilings to separate flammable products from other areas, and otherwise failed to implement appropriate fire precautions.



At the conclusion of extensive discovery in the matter, defense filed a Motion for Summary Judgment contending the owner/landlord did not retain control of the property as a matter of law, based on the lease terms and the factual testimony, and that no exception existed to the general rule of non-liability of a landlord out of possession. The court agreed and granted Summary Judgment in the client's favor. ■

CASE SUCCESS:
PRODUCT LIABILITY/PERSONAL INJURY/ MOTOR VEHICLE

COUNSEL: **James M. Campbell and Michelle I. Schaffer**

FIRM: **Campbell Campbell Edwards & Conroy P.C.**

HEADQUARTERS: **Boston, Massachusetts**

A young, single mother of three sustained thoracic fractures resulting in paraplegia after a large SUV struck the rear of her stopped Ford Explorer. The impact caused the Explorer to strike the vehicle in front of it, which then hit another vehicle. The plaintiff alleged that the driver's seat and seat belt in the Explorer were defective in design. The plaintiff pointed to seats with integrated restraint systems as a reasonable alternative design. The plaintiff's special damages exceeded $8 million. The Defendant, Ford Motor Company, argued that the driver's seat in the Explorer was well designed and that the proposed alternative design would not provide better injury protection. Ford's biomechanic explained to the jury that the only possible cause of plaintiff's unique thoracic injuries was her having worn the shoulder belt portion of the seat belt behind her back at the time of the accident. The plaintiff vehemently denied that she was wearing the belt improperly. After a day of deliberations, the jury returned a defense verdict. ■

CASE SUCCESS:
WRONGFUL DEATH

COUNSEL: **Colleen Shea and Casey Wagner**

FIRM: **Cranfill Sumner & Hartzog, LLP**

HEADQUARTERS: **Raleigh, North Carolina**

This is a wrongful death case arising out of the death of an 11 year old girl who was crushed when she became wedged between the residential elevator car and the elevator shaft wall. Suit was originally filed against the general contractor and the installer, and after several months of contested discovery, the defense obtained a dismissal in the case based on the general contractor's intervening and superseding negligence. After settling with the general contractor, the Estate subsequently re-filed its suit against the installer. Defense filed a Motion for Judgment on the Pleadings grounded on the doctrines of judicial and collateral estoppel, which was granted, resulting in dismissal of the Estate's case with prejudice. ■

CASE SUCCESS:
MEDICAL MALPRACTICE

COUNSEL: **Catherine S. Nietzel**

FIRM: **Ryan Ryan Deluca LLP**

HEADQUARTERS: **Stamford, Connecticut**

Plaintiff, Executor of the Estate, sued a psychiatric hospital following the suicide of the Estate's decedent. The decedent had previously been admitted to the hospital on seventeen occasions over a twenty year period. As a child, she had been repeatedly sexually abused and thereafter developed multiple personalities. Nevertheless, she was able to attend college and then maintain employment as a librarian at the town library. Two years before the suicide, the decedent had attempted suicide by hanging while a patient at the hospital.

The decedent had become involved with another patient she had met in a previous admission at the hospital. The decedent named the patient the executor of her estate and changed her will to name him a beneficiary of her estate. The decedent had a long-standing therapeutic relationship with a psychiatrist, who was a co-defendant in the case. The psychiatrist had repeatedly entreated the patient to sever her relationship with the other patient, the executor of her estate. The Executor was named as a defendant for apportionment purposes in the action, with the defendants claiming he had contributed to the decedent's decision to commit suicide by his treatment of her, which included tying her up and forcing her to watch pornography, which was particularly disturbing for the victim of childhood sexual abuse.

The decedent admitted to the hospital voluntarily for purposes of detoxification from pain medications she took for severe jaw pain following dental surgery. When she was admitted, the admitting psychiatrist for the hospital placed the decedent on constant observation, but, within twenty-four hours, the decedent's personal psychiatrist, who had privileges at the hospital and became her attending physician there, placed the decedent on fifteen minute checks. Several days later, the decedent committed suicide by hanging herself in the bathroom of the same room where she had attempted suicide two years prior. The jury found that the defendants were not negligent in their care and treatment of the decedent. The defendants had offered evidence that the decedent was forward thinking and not acutely suicidal during the admission and that to restrict her through constant observation contributed to the decedent's humiliation and feeling of a lack of control, which was detrimental to her improvement. The jury never reached the issue of apportionment against the executor as it found no negligence on the part of the hospital and psychiatrist. ■

CASE SUCCESS:
TRANSPORTATION/WRONGFUL DEATH

COUNSEL: **Richard Mincer and Amanda Good**

FIRM: **Hirst Applegate, P.C.**

HEADQUARTERS: **Cheyenne, Wyoming**

Plaintiff widow filed a wrongful death action against three trucking companies (D1, D2, and D3) seeking recovery for the death of her husband in a 22 vehicle pile-up on I-80 near Elk Mountain, WY, in adverse weather conditions. Hirst Applegate represented D1, a small family owned trucking company from the northwest. D1's driver spoke almost no English, had a suspended driver's license at the time of the accident, had an unauthorized passenger in the truck, left the scene of the accident, did not timely take his post-accident alcohol test, produced no log books, and allegedly falsified his application. Some Wyoming Highway Patrolmen also believed D1 tried to mislead the officers with respect to who was driving the truck, since the driver's brother spoke to authorities several days after the accident and reportedly led them to believe he was the driver. The trial judge admitted evidence of all these acts.

With respect to the accident, the D1 and D2 units were involved in a collision with a non-party tractor trailer unit at the front of the crash. D1 stopped in the left lane while D2 jack-knifed and reportedly blocked the right travel lane. Several vehicles, including that driven by the decedent, then entered the scene and either stopped or were involved in relatively minor collisions. The decedent then got out of his car. At that point, the D3 unit drove through the scene, hit several vehicles, and ran over the decedent crushing him between the D3 tractor and the D1 trailer. Plaintiff alleged D1 and D2 were negligent for blocking the road and D3 was negligent for running over the decedent. Plaintiff also alleged negligent hiring, training and retention against D1 and D3. In fact, the judge instructed the jury on punitive damages on the direct negligence claims. The jury trial lasted just over two weeks. The jury returned a verdict in favor of D1 and D2 and against D3, finding D3 100 percent at fault. The jury awarded the widow $1,000,000, two adult sons $150,000 each, but awarded no compensatory damages to several of the decedent's siblings. D3 was also ordered to pay $400,000 in punitives damages for a total award of $1.7 million. ■

CASE SUCCESS:
EMPLOYMENT DISCRIMINATION CASE/ CHURCH DOCTRINE

COUNSEL: **Ross G. Weaver**

FIRM: **Molod Spitz & DeSantis, P.C.**

HEADQUARTERS: **New York, New York**

The Seventh Day Adventist Church's fundamental beliefs instruct that sexual relations are a privilege to be enjoyed solely within marriage. The plaintiff, a 5th Grade teacher for The Seventh Day Adventist Church, began her teaching career there and as a lifelong Seventh Day Adventist, agreed that she would abide by all the fundamental teachings of the church and be a role model for the students. However, although unmarried, plaintiff became pregnant. The school thereafter discharged her for violating its tenets and engaging in premarital sex. Her suit for employment discrimination claimed that she was fired because she was pregnant. At trial, the defense presented evidence demonstrating that the school's employment decisions were protected by the First Amendment of the Constitution and could not properly be the subject of an action under Federal or State employment discrimination laws. Although churches are generally subject to the anti-discrimination provisions of the Civil Rights Act of 1964, the United States Circuit Courts in many jurisdictions have held that the First Amendment to the Constitution prevents the Federal Government from interfering with a church's hiring practices as to its ministers and religious employees. During the trial, sufficient evidence was presented as to the religious character of the plaintiff's job to convince the judge that the "ministerial exception" applied to this case, and granted the defense motion for a directed verdict for the Church. ■

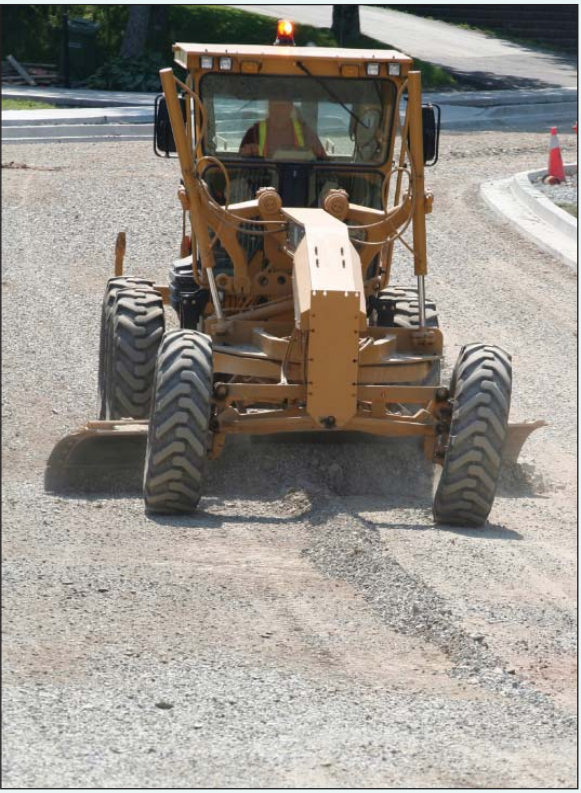
CASE SUCCESS:
PRODUCT LIABILITY/EXPLOSIVE SEPARATION OF WHEEL ASSEMBLY ON HEAVY MACHINERY

COUNSEL: **Jeffrey M. Croasdell of Rodey, Dickason, Sloan, Akin & Robb, P.A., and Tom Womble (Womble, Howell & Croyle, Houston, TX)**

FIRM: **Rodey, Dickason, Sloan, Akin & Robb, P.A.**

HEADQUARTERS: **Albuquerque, New Mexico**

Plaintiff was providing a picnic lunch to a road crew that was grading the road near his house. One of the crew's motor graders suffered a flat tire. Plaintiff decided to help the grader operator air up the multi-piece wheel assembly using a hose that he had retrieved from his house. The operator stopped the process at one point, saying "I think it might blow up."



Plaintiff pushed the operator away, telling him "Don't be afraid." Because the lock ring was missing from the wheel assembly, the wheel assembly suffered from an explosive separation. Plaintiff was hit by the heavy flange that held the tire in place and suffered from multiple injuries, including brain damage, several broken bones, scarring, and continued pain and suffering. Plaintiff sued Caterpillar Inc. as the manufacturer of the motor grader and supplier of the wheel assembly alleging a design defect in the wheel assembly and a failure to warn. After a two-week trial the jury returned a unanimous verdict in favor of the grader manufacturer, finding that the wheel assembly was not defective and that Caterpillar provided adequate warnings. ■

CASE SUCCESS:
ARSON

COUNSEL: **H. Michael Bagley, Karen K. Karabinos, and Benson Ward**

FIRM: **Drew Eckl & Farnham, LLP**

HEADQUARTERS: **Atlanta, Georgia**

Plaintiffs brought suit against home owner's insurance company for breach of contract and bad faith after the insurer denied coverage for their $2.9 million house fire loss on grounds of arson, misrepresentation, and failure to cooperate. Defense counsel were successful in obtaining not only a defense jury verdict but also a jury award of over $1 Million in damages on the insurer's counterclaim. ■

CASE SUCCESS:
PROFESSIONAL LIABILITY/ENGINEERING

COUNSEL: **William S. Thomas**

FIRM: **Rabbitt, Pitzer & Snodgrass, P.C.**

HEADQUARTERS: **St. Louis, Missouri**

The U.S. Department of Justice brought suit against engineering firm, TWM, among other defendants, for alleged violations of the Fair Housing Act's "design and construct" provisions, prohibiting the design or construction of new multi-family residential units which discriminated on the basis of handicap. It was alleged TWM's involvement allowed the facility to be built in such a manner as to prevent handicapped individuals from having access to the ground floor units, which were recessed into the ground 1/2 story. DOJ brought suit against TWM. After a weeklong jury trial, the jurors unanimously found TWM had not violated federal law in their involvement with the project, which was limited to zoning submittals and concept plans only. TWM then filed an Equal Access to Justice Act claim against the DOJ seeking reimbursement for over $200,000 in fees and costs it had incurred in defending themselves in the litigation, and prevailed on that motion as well. TWM was totally vindicated, and all of their fees and costs were reimbursed to them. ■

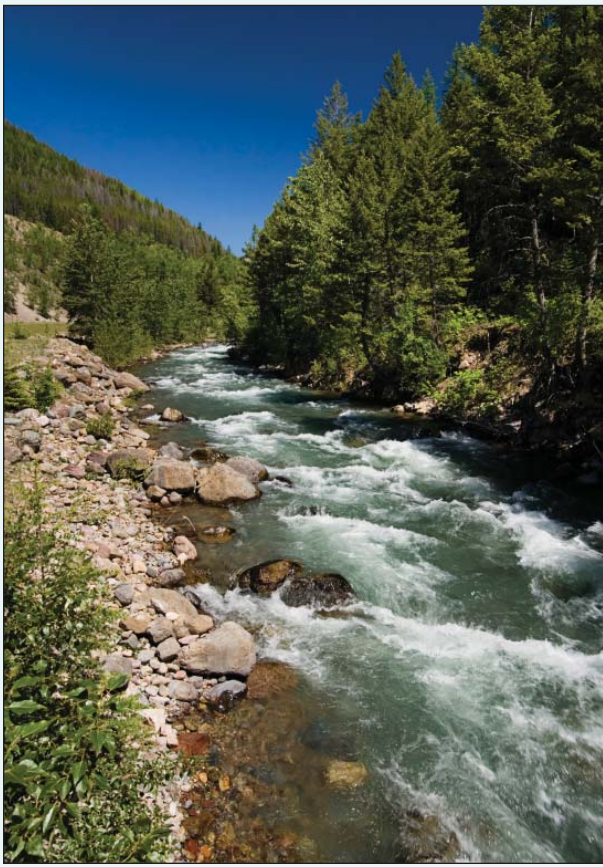
CASE SUCCESS:
ENVIRONMENTAL/INSURANCE SUBROGATION

COUNSEL: **Christian Nygren of Milodragovich, Dale, Steinbrenner & Nygren, P.C. (MT) and Laura Hanson of Meagher & Geer, PLLP (MN)**

FIRM: **Milodragovich, Dale, Steinbrenner & Nygren, P.C. (MT) and Meagher & Geer, PLLP (MN)**

HEADQUARTERS: **Missoula, Montana and Minneapolis, Minnesota**

Plaintiff MT Petroleum Tank Board filed subrogation claims for environmental clean-up costs in over 100 sites across MT. Defense counsel, from two Harmonie member firms, were engaged to defend approximately half of the claims. Counsel were successful in obtaining a defense jury verdict and three favorable MT Supreme Court decisions on behalf of the insurance company resulting in dismissal of 46 of the remaining filed law suits. In cases of first impression, the Montana Supreme Court decisions resulted in Montana recognizing an absolute pollution exclusion exists and that the statute of limitations begins to run when the leak/environmental contamination occurred, not when the cleanup begins. The amount of hard cleanup costs saved by insurance company involved on these cases totaled approximately $9.5 million with additional administrative costs and fees. These cases are now considered the controlling law cases for all insurance carriers in Montana and will most likely result in dismissal of most, if not all the remaining cases. ■

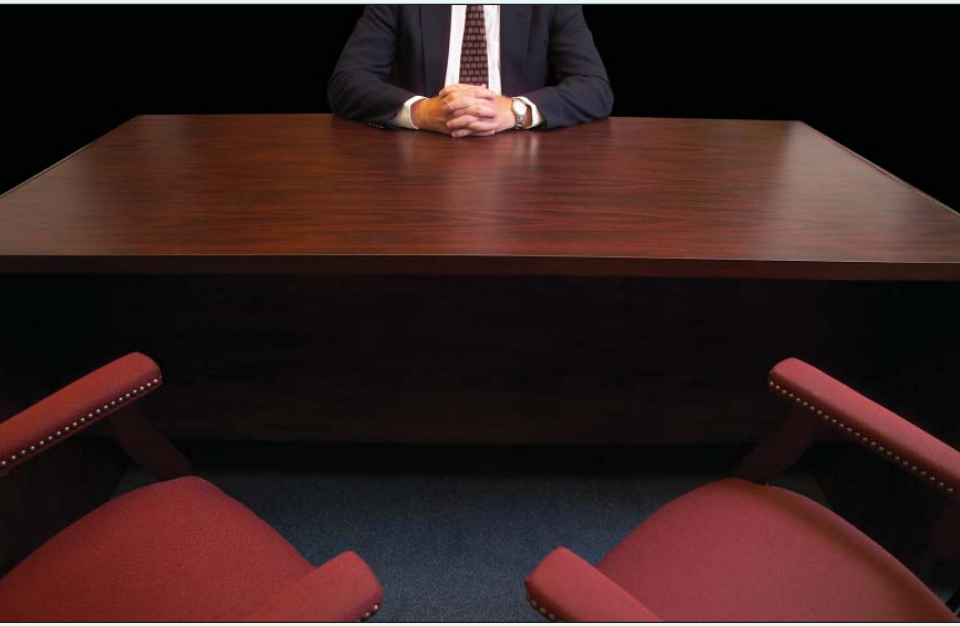


CASE SUCCESS:
LEGAL MALPRACTICE/ BREACH OF FIDUCIARY DUTY

COUNSEL: **Charles E. Jones**

FIRM: **Meagher & Geer, PLLP**

HEADQUARTERS: **Minneapolis, Minnesota**



Defense obtained summary judgment in favor of defendant attorneys in a legal malpractice case arising out of a securities transaction. The defendant attorneys represented a large group of investors who bought restricted shares of stock in a company called IGM in 1992. The expectation was that the shares would be registered with the SEC and freely tradable, but this never occurred. In 1993, IGM executed a "Waiver" which purportedly would have increased the investors' ability to sell their shares. In 1994, IGM collapsed. Several lawsuits followed. In 2000, an attorney claimed to have rediscovered the "Waiver." In 2005, that same attorney wrote to many of the investors asking them to join a lawsuit against defendant attorneys claiming that they had failed to disclose the "Waiver" and seeking approximately $8 million in damages. Sixteen responded, and the case was filed in late 2005. The Court dismissed, finding that the investors' claim was time-barred. The Court further concluded that plaintiffs' evidence of causation amounted to speculation and conjecture. ■

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