

Emerging Issues and Recent Developments in Chemical and Product Liability Law

ABA Product Liability Committee Workshop
September 21, 2006
Wilmington, DE

Presented by

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How do we identify:

What's new?

What's next?

Trendspotting

- This is not the time to cut back on efforts to spot the next big trend. Here are ten low-cost trendspotting tips from the Harvard Management Update Newsletter Industry
- (1) Experts, (2) Customers, (3) Networking, (4) KM, (5) Organize & aggregate, (6) “Form a posse on the future”; (7) Diversify; (8) Get off the beaten trail; (9) Beware traditional research; (10) Watch the games people play.

Trendspotting

- Active Scanning - looking for answers in the items one normally comes across.
- Competitive Intelligence/Analysis - "Sometimes called corporate spying, opposition research, or simply market analysis, the term refers to marketplace knowledge that can be used to make business decisions."

Focus

- Research - Types of torts; legal arguments; new cases; verdicts?
- Injury/Exposure Type
- Science
- Geography
- Industry
- Delegation
- Networking
- Survey

Goals

- Educate
- Entertain
- Pacing: Move It! Move It!
- Stimulate Discussion
- Health & Safety

Question Presented

Please send me your list of emerging areas, trends, or examples of new mass torts, product/exposure claims (e.g., drugs, chemicals, silica, etc.), or developments in the law.

Responses

More than 75 Substantive Responses

Wide variety of responses

Not many surprises

Some were very helpful

Others not very productive

Final Product: Blog or Subscription Service (e.g., the Howard Report, Mert's Mass Torts, etc.)

Not So Helpful

- Apple is going to get a gazillion Ipod hearing loss cases. Now that's a tort. Asbestos? Silica? Think outside the box Mert.
- Make sure you tell your friends at DRI that they should pay big money all the time . . .
- I can't support defense efforts ... Tell your clients that IUDs are the latest product defects! hahahaha

Not So Helpful

- Emails/marketing from lawyers should be banned!!!
- Stop emailing me!!!
- Are you still alive?

Useless Responses

Why don't you ask Barry Bonds about chemical exposures and toxic torts?



September 21, 2006

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2006 ABA Product Liability Committee



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General Information

- [The Advantages and Disadvantages of Class Actions](#) — from [Cohelan on California Class Actions](#)
- [Mass Torts](#) — from [Class Actions and Other Multi-Party Litigation in a Nutshell](#)

[Consumer Products](#)

Food Safety and Inspection Service (FSIS): Recall Press Releases

- [04/09/2004] [Kansas Firm Recalls Ground Beef For Possible *E. coli* O157:H7](#)
- [04/02/2004] [Illinois Firm Recalls Deli Meat And Cheese Trays For Possible *Listeria* Contamination](#)
- [04/09/2004] [Massachusetts Firm Recalls Meatballs That May Contain Pieces Of Hard Plastic](#)
- [04/05/2004] [Pennsylvania Firm Recalls Bologna For Possible *Listeria* Contamination](#)
- [03/01/2004] [Idaho Firm Recalls Beef Chili Because Of Undeclared Allergens](#)

[Food and Drugs](#)

[Motor Vehicles](#)

Consumer Product Safety Commission (CPSC): Recall Press Releases

- [02/02/2006] [Four Seasons and Cardinal IG Co. Recall to Repair Sunroom Roof Glass](#)
- [02/01/2006] [Weil-McLain Company Recall of Boilers](#)
- [02/08/2006] [Recent Death Prompts Renewed Search for Simplicity Cribs with Graco Logo](#)
- [02/08/2006] [Lasko Recalls Box and Pivoting Floor Fans Posing Fire Hazard](#)
- [02/07/2006] [SFC America Recall to Repair Fire Extinguishers](#)

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Food and Drug Administration (FDA): Recall Announcements

NOTE: The recalls on this list are mainly [Class I](#) recalls.

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Wednesday, September 20, 2006

Sample Documents

Ron Miller of the Maryland law firm Miller & Zois sent me a note today, pointing out his firm's very helpful **Personal Injury Attorney Help Center**. It includes sample pleadings, transcripts (both dep and trial), discovery requests, jury instructions, and much more. Its audience is attorneys but the documents could be great for use in many classes as a way to make a bit more real some of the subjects you're discussing.

The firm also produces a **Maryland-oriented PI law blog**.

September 20, 2006 in [Documents](#), [Teaching Torts](#) | [Permalink](#) | [Comments \(0\)](#) | [TrackBack \(0\)](#)

Drink Immunization Ingredients, Make \$75K

Spontaneous Creation Publishing, which appears to be a natural health care publisher, is **offering** \$75,000 to any U.S.-licensed physician or pharmaceutical chief who will drink a body-weight-adjusted beverage made up of immunization ingredients (other than the active ones):

The mixture will not contain viruses or bacteria dead or alive, but will contain standard vaccine additive ingredients in their usual forms and proportions. The mixture will include, but will not be limited to, the following ingredients: thimerosal (a mercury derivative), ethylene glycol (antifreeze), phenol (a disinfectant dye), benzethonium chloride (a disinfectant), formaldehyde (a preservative and disinfectant), and aluminum.

An interesting snippet about it is [here](#), including assertions that the director of the publisher, Jock Doubleday, had rejected at least some willing participants.

Also, Doubleday is **available for petsitting**. At \$50 a day, it'll take a while to make \$75,000.

September 20, 2006 in [Products Liability](#) | [Permalink](#) | [Comments \(0\)](#) | [TrackBack \(0\)](#)

Tuesday, September 19, 2006

Mass. Democratic Governor Candidates on Health Care

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I contacted you in May about advertising for Crestor. Since that time, we have collected more than 650 new pharmaceutical and medical device leads.

In the last month, we began advertising for the ADHD drug Concerta, Guidant defibrillators, and PFOA, a chemical used in the production of Teflon and Gore-Tex which the EPA called a "likely carcinogen."

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PFOA Info:

<http://www.epa.gov/opptintr/pfoa/pfoatisk.htm>

Concerta Info:

<http://www.cnn.com/2005/HEALTH/conditions/06/29/attention.deficit.drug.ap/index.html>

Guidant Defibrillator Info:

<http://www.cnn.com/2005/HEALTH/06/21/defibrillator.problem.ap/index.html>



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SEE SAMPLE ADS

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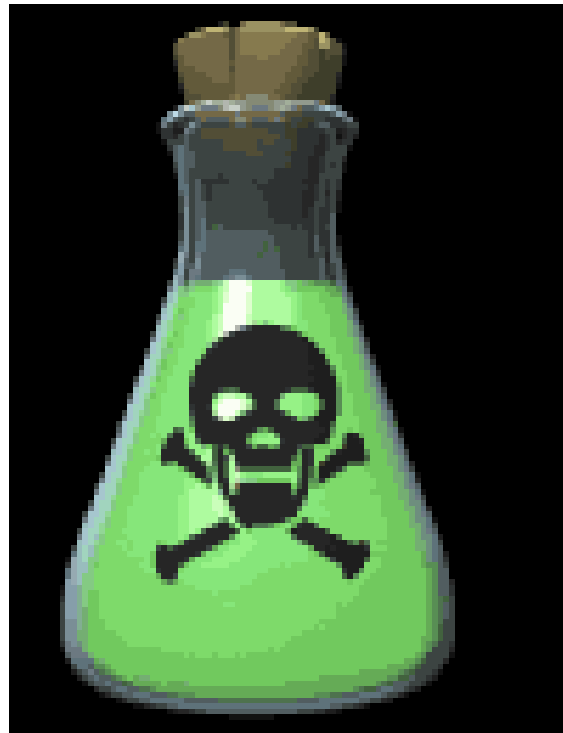
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Toxic People – National Geographic

Lead paint chips



Getting Focused



Exposures

- Benzene
- Diesel Exhaust
- Asbestos
- Noise
- Indoor Air
- MTBE
- Pesticides
- Bird Flu
- Formaldehyde
- Nanotechnology – Small Particles
- Arsenic - CCA

Exposures (cont.)

- Lead
- Welding Rods
- Mold
- Silica - Respirators
- Dioxin (very inactive for the past 15 years),
- Mercury
- Glycol ethers
- Perchlorate
- Hexavalent Chromium - Cadmium.
- Mixed solvents
- Bioaerosol exposure in biotechnology (just now hitting with some new technologies)
- CO₂

Exposures (cont.)

- Food Flavoring - Diacetyl (Popcorn Lung; Butter flavoring – how many other applications?)
- Beryllium
- Aluminum – Mixed Dust
- WTC Lung Injury Claims
- Genetically Modified Food

Benzene

- One of the top areas identified in my survey.
- There has been steady and sustained growth in mass tort claims related to benzene exposure (e.g., allegations of benzene-related leukemia and lymphoma). The largest grouping of these are employee workplace claims against multi-defendants who made products used by such employees.
- Benzene is also implicated in mass tort claims based on exposure to diesel fumes.
- Even after Fed and state (TX) tort reform, significant numbers of cases remain in Cal, TX, La, Miss and Illinois.

Benzene

- FDA assures consumers that it is working with the beverage industry to keep levels of this chemical as low as possible (9/18/06)
- Former employees of a Bridgestone/Firestone tire facility have sued the company and those supplying benzene-containing solvents used in the tire-making process, contending that such exposure led to a variety of fatal diseases. *Blackenship, et al. v. Bridgestone Americas Holding, et al.*, No. 2006-L-111 (Ill. 6th Jud. Cir. Ct., Macon Cty.).
- Benzene litigation education - programs - More and more popular for lawyers.

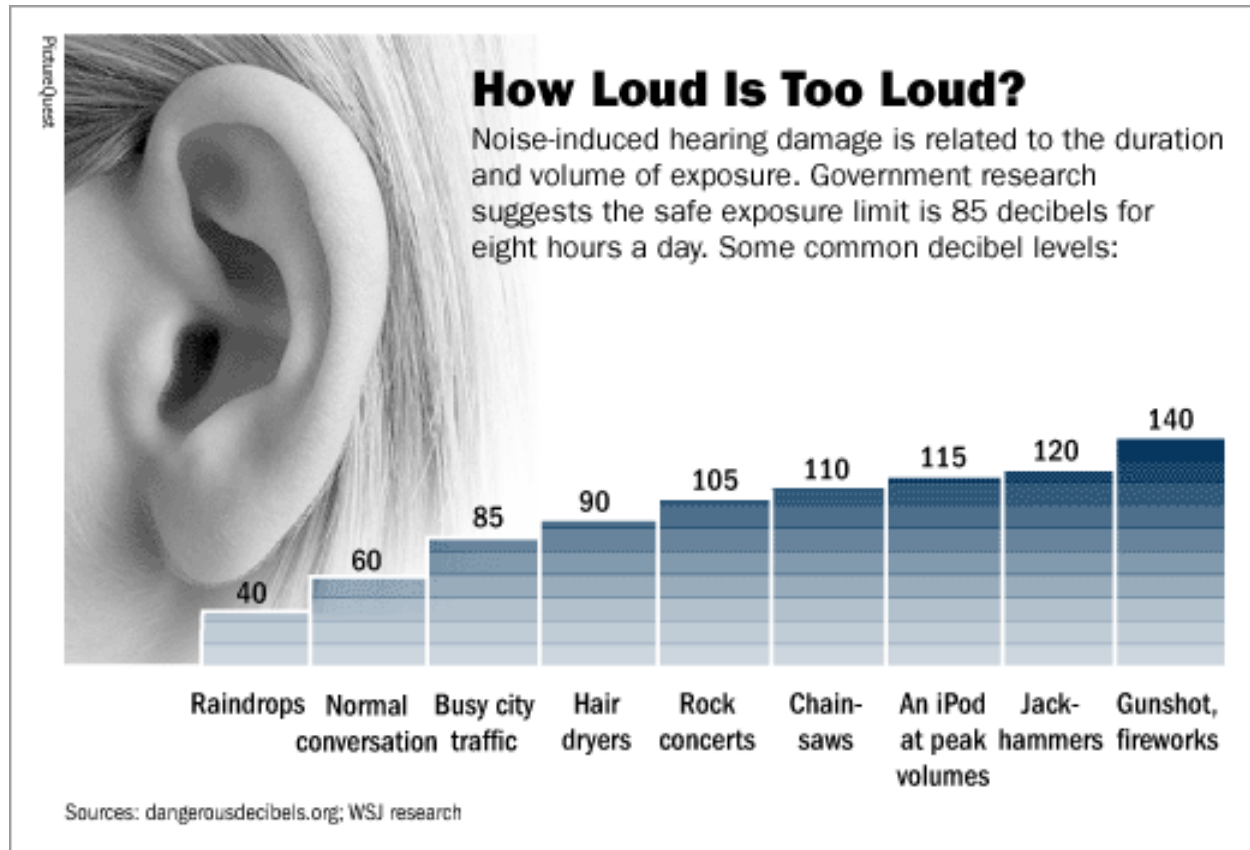
Diesel Exhaust

- November 2005 DRI, FTD Article by David Lutz
- Implicated as a cause of lung cancer
- WHO identified DE as carcinogen in 1986; NIOSH (1989); International Agency for research on Cancer – probable carcinogen in 1989.
- Non-malignant lung disease: Variety of symptoms and complications
- Exhaust contains gas constituents and particulate matter

Noise

- *John Kiel Patterson, individually and on behalf of all others similarly situated v. Apple Computer, Inc.*
1/31/2006 C06-0699 PVT(San Jose)
- Class Action alleging breach of implied warranty regarding defendant's manufacturing, marketing and distributing portable digital music players, including the iPod, and their components which are inherently defective in design and are not sufficiently adorned with adequate warnings regarding the likelihood of hearing loss and specifically the onset of noise-induced hearing loss, a condition which has no cure.

iPod Hearing Loss



Noise

- New research suggests that years of repeated exposure to loud noise increases the risk of developing a non-cancerous tumor that could cause hearing loss.
- An acoustic neuroma tumor slowly presses the cranial nerve that is responsible for sensing sound and helping with balance. Symptoms include hearing loss and a constant ringing in the ears, or tinnitus.
- The two types of loud noise posing the highest risk of acoustic neuroma development were exposure to machines, power tools and/or construction (1.8 times more likely to develop the tumor) and exposure to music, including employment in the music industry (2.25 times more likely to develop the tumor.)

Noise

- The tumor is fairly rare, accounting for only about 6 to 10 percent of tumors that develop inside the skull. Depending on the population, anywhere from one to 20 people per 100,000 develop acoustic neuroma each year. The people with the tumor in this study had the most common type - unilateral acoustic neuroma. About 95 percent of all cases of acoustic neuroma affect only one ear. The other kind, bilateral acoustic neuroma, is inherited and affects both ears.
- If the tumor is caught early enough through a thorough examination and hearing tests, a physician may be able to surgically remove it. But as the tumor grows larger, it may become attached to the nerves that control facial movement, balance and hearing, making it far more difficult to remove the entire tumor.

Noise

- Solvents worsen hearing ability.
- A report shows that exposure to the solvent styrene can lead to hearing loss. Workers in the plastic industry, who work with styrene in noisy surroundings have a higher risk of suffering hearing loss than people exposed only to excessive noise.
- The report was written by the National Institute for Working Life in Sweden. The study involved 300 people from 14 different work places. Approximately 150 worked in the plastic industry.

Noise

Sources:

<http://aje.oxfordjournals.org/cgi/content/abstract/kwj044v1>

<http://www.hearinglossweb.com/Medical/Causes/an.htm>

<http://www.sciencenewsdaily.org/story-9551.html>

<http://www.hear-it.org/page.dsp?page=655>

Indoor Air

- California Air Resources Board (CARB) - the California Environmental Protection Agency (Cal/EPA).
- CARB, in partnership with local air districts, oversees all air pollution control efforts to attain and maintain health-based air quality standards in California.
- July 2005, published a 363 page report, reviewed by a panel of University of California scientists with expertise in various aspects of indoor air quality and air pollution exposure.
- It purports to summarize the best scientific information available on indoor air pollution

Indoor Air

The CARB Report is divided into 10 major sections:

- (1) Introduction and Background;
- (2) Health Effects, Sources and Concentrations of Indoor Air Pollutants;
- (3) Costs of Indoor Air Pollution;
- (4) Existing Regulations, Guidelines and Practices;
- (5) Methods to Prevent and Reduce Indoor Air Pollution;
- (6) Prioritization of Sources and Pollutants Based on Exposure and Adverse Impacts;
- (7) Options to Mitigate Indoor Air Pollution;
- (8) Summary;
- (9) References; and
- (10) Glossary.

Indoor Air

CARB is currently focused on two areas of concern:

- (1) air cleaners and purifiers, particularly those that emit ozone; and
- (2) volatile organic compounds (VOCs) that are emitted from consumer products.

Indoor Air

General mitigation options:

- (1) create a management system for indoor air quality;
- (2) establish emission limits (e.g., for air cleaners);
- (3) require manufacturers to submit consumer products for emission testing;
- (4) make children's health in schools, homes and care institutions a top priority;
- (5) develop indoor air quality guidelines and best practices;

Indoor Air

General mitigation options (cont.):

- (6) amend building codes, with a focus on assuring adequate ventilation under all circumstances;
- (7) fund and outreach and education program focused on professionals;
- (8) conduct more research on indoor air quality; and
- (9) fund an Innovative Clean Air Technology Program.

Teflon

- Perfluorooctanoic acid (PFOA)
- January 30, 2006, a panel of outside experts gave draft comments to the Environmental Protection Agency (EPA) saying that an indestructible, toxic chemical that pollutes nearly every American's blood is a "likely human carcinogen." The panel urged the agency to adopt stricter guidelines to protect human health, according to a majority of its members. This announcement follows news just last week that the EPA signed a voluntary agreement with the chemical's maker, DuPont, and seven other companies to reduce the chemical's use in products by 95 percent over the next five years and aim for total elimination of its use by 2015.
- Most of the experts on the panel called PFOA a "likely human carcinogen," not a "suggested human carcinogen," as the EPA had proposed.

Asbestos

- The old adage about what is the next asbestos can usually be answered with “it is asbestos”. The plaintiffs’ bar continues to make asbestos an emerging area by finding new defendants, or making peripheral defendants targets, etc
- Asbestos will remain maybe the biggest issue by far but people often forget it because it is right in front of them hidden in open view.
- Trace levels - trivial exposures - encapsulated materials
- Trials – lots of trials

Asbestos

- SF Bay Area
 - Ever-Increasing volume of work
 - More and more cases getting single assignment and treated like regular BI case
 - Published Case Law (130 cases?)
 - California growing more popular for nonresidents
 - Premises owner liability for secondhand exposures
 - Electronic Filing and Service - (E-Discovery?)
 - New General Orders

Asbestos

SF General Orders - Totally Revamped

- No client specific written discovery allowed except for Requests for Admission;
- No PMK / COR depositions
- Plaintiffs must disclose all product ID witnesses and documents against each defendant. If more than 3 witnesses, plaintiffs must submit declarations. If plaintiffs fail to disclose a witness, they will be excluded from trial except on a showing of good cause.
- Plaintiffs' experts must disclose all of their opinions to be offered at trial, even if defendants ask no questions.
- All expert depositions completed 14 days before trial
- Plaintiffs must disclose all prior settlement amounts.

Asbestos

SF General Orders (cont.)

- Motion in Limine rulings restricting testimony of certain plaintiff experts; conspiracy claims excluded; ambient exposures to asbestos are admissible; only actual medical expenses paid are recoverable costs.
- Parties cannot object to trial consolidation with another asbestos related case
- Master Asbestos Interrogatories must be verified by the PMK for each question.
- Defendants have 5 days to submit briefing to rebut any evidence that plaintiff intends to use at trial against that defendant, or else defendant is excluded from using any additional evidence at trial.

Asbestos

SF General Orders (cont.)

- Motion in limine rulings excluding
 - other causes of lung disease (i.e., smoking defense is excluded);
 - prior cancers;
 - workers' compensation depositions and treatments;
 - polio vaccinations;
 - prior medical history/ doctor appointments before diagnosis with asbestos disease;
 - defendants can no longer claim asbestos was in the product because it was made specifically for the government or pursuant to government specification

Asbestos

- Wrongful death claim on behalf of 74 year old former construction laborer and shipyard worker resulted in verdict of \$15.25 million for his exposure to chrysotile asbestos products (*Silvestro v. Bondex International, et al.*, No. BC253974, Calif. Super., Los Angeles Co.) (August 2006)
- San Francisco jury awards \$18.5 million based on exposure to Union Carbide Calidria (*David Bakkie v. Union Carbide Corp.*, SFSC No. 445300). Plaintiff worked at an aerospace plastics molding company and used Union Carbide asbestos to make a sealant that was used to fill the seams between concrete sections on projects including the California Aqueducts. (August 2006).
- A Los Angeles jury on June 23, 2006, awarded \$12.6 million to a 71 year old former banker suffering from mesothelioma (*Saeed Behshid v. Bondex International Inc., et al.*, No. BC343104, Calif. Super., Los Angeles Co.).
- *Robert Johnson v. Kaiser Gypsum* (SFSC), 74 year old mesothelioma, \$5.9 million (May 2006).

Nanotechnology

Nanotechnology involves building products by manipulating individual atoms into macromolecular structures rather than miniaturizing larger sized materials.

- 1 nm = 1 BILLIONTH OF A METER
- To approximate a particle 1 nm wide, split a human hair 80,000 times
- A human red blood cell is 7000 nm wide
- A nanomaterial is one that is less than 100 nm in at least one dimension. A nanoparticle is less than 100 nm in three dimensions

Nanotechnology (Thanks to Bruce Parker – Venable)

BIOLOGICAL EFFECTS OF NANOPARTICLES

- Exceptionally large surface area relative to their mass makes nanoparticles very reactive.
- Nanoparticles could enter the blood stream via inhalation through contact with alveoli.
- Undesired passage through the blood-brain barrier.
- Dermal penetration through the use of cosmetics.
- Once absorbed, nanoparticles may operate as “free radicals” and cause undesired oxidative stress on cells.
- Absorbed through the gut.
- Due to their size, nanoparticles may not be recognized by the immune system.
- Possible effects on enzymatic regulation of biologic processes

Nanotechnology

International Center for Technology Assessment filed a Legal Petition to the FDA (www.icta.org/nanotech/index.cfm) seeking:

- a formal FDA opinion clarifying the agency's stance regarding nano-products;
- the amendment of FDA regulations to include nanotechnology terminology and comprehensive nano-product regulations, including nano-specific toxicity testing and mandatory nano-product labeling;
- the amendment of sunscreen regulations to address nanoparticle sunscreen ingredients, including the requirement that all nano-sunscreens be considered new drug products;
- the declaration that nano-sunscreens are an imminent hazard to public health and must be recalled until FDA's nano-products regulations are implemented and nano-sunscreen manufacturers submit new drug applications; and
- agency consideration of human health and environmental impacts related to nano-product regulation, in accordance with the National Environmental Policy Act (NEPA).

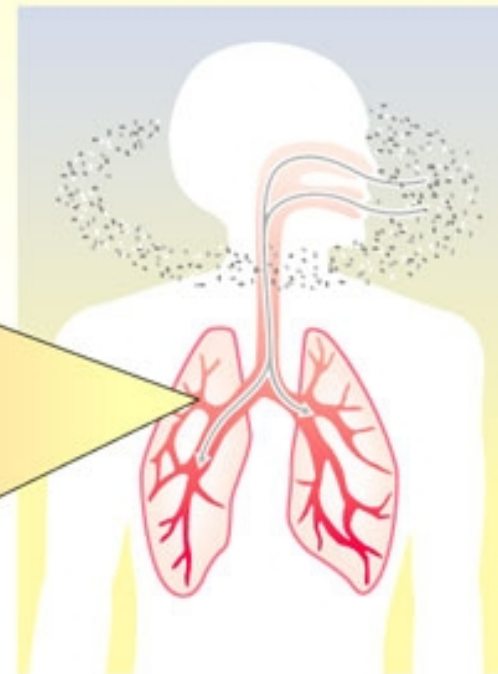
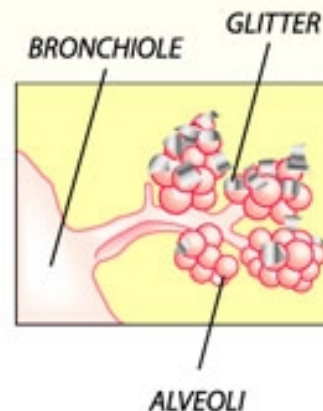
Pneumosparklyosis

What Is Glitter Lung?

Glitter lung, or pneumosparklyosis, is a respiratory disease caused by the chronic inhalation of precision-cut, iridescent, metallized particles. Elementary-school art teachers and transgendered "drag queen" entertainers are the populations most at risk.

- 1 Airborne glitter enters through the nose and mouth. First attracted to glue-like mucous membranes, the glitter then settles into the lungs.

- 2 Glitter deposits cause scarring, inflammation, and twinkliness of the lungs, leading to bedazzlemia—a condition in which alveoli are so sparkly that oxygen molecules are reflected away from the bloodstream.



- 3 Eventually, the alveoli become completely decorated and are unable to function, leading to massive system failure due to oxygen starvation. Although the dangers of glitter lung are just now becoming known, the body's intolerance of shiny substances has been studied for decades (see "Symptoms and treatments of goldfingeritis," *New England Journal Of Medicine*, 1964).

Pneumosparklyosis



Cases Of Glitter Lung On The Rise Among Elementary-School Art Teachers

- November 23, 2005 | [Issue 41•47](#)
- CHICAGO—The Occupational Safety And Health Administration released figures Monday indicating that record numbers of elementary-school art teachers are falling victim to pneumosparklyosis, commonly known as glitter lung.
- Nearly 8,000 cases were reported in 2004, the most recent year for which statistics are available. This is the highest number since the arts-and-crafts industry was deregulated in 1988.
- Characterized by a lack of creative energy and shortness of breath, and accompanied by sneezing or coughing up flakes of twinkly, reflective matter, glitter lung typically strikes teachers between the ages of 29 to 60 who spend 20 hours per week in an art-class setting during the school year.
- Until heavier, less toxic forms of glitter are developed, physicians recommend using alternative media to enhance children's artwork.
- Source: <http://www.theonion.com/content/node/42814>

Products

- Medical Devices (Defibrillator)
- Toys
- PVC
- Firearms
- Public Nuisance
- Food

Drugs

- Accutane
- Bextra
- Clozaril
- Paxil
- PPA
- Risperdal
- Seroquel
- Vioxx
- Zyprexa

Drugs

- More than 6,000 lawsuits have been filed in recent years against four drugs taken by millions of patients: hormone-replacement drug Prempro, birth-control patch Ortho Evra, anti-psychotic Seroquel and anti-seizure drug Neurontin. Unlike Vioxx, these drugs are still being sold,
- The lawsuits raise questions about whether drugmakers and the FDA pay ample attention to patient safety. Since 2000, more than 65,000 product liability lawsuits have been filed against prescription drugmakers, the most of any industry, says researcher Thomson West.“
- Is Preemption the Silver Bullet?

Spinach

SF Chronicle reports that spinach growers were warned about produce safety

- State, federal officials concerned by 20 reports of tainted greens. Just 10 months before fresh spinach started sending people to the hospital, state and federal officials warned Salinas Valley growers and packers to clean up their act after a decade of deadly E. coli bacteria breakouts.
- In November 2005, the FDA sent a letter to growers, packers, processors and shippers warning them to improve produce safety.
- "In view of continuing outbreaks," the agency wrote, "we encourage firms to consider modifying their operations accordingly to ensure that they are taking the appropriate measures to provide a safe product to the consumer."

Mercury/Tuna

Lockyer v. Tri-Union Seafoods, San Francisco Superior Court, Consolidated Case Nos. CGC-01-402975 and CGC-04-432394. The State of California sued certain Tuna Cannerys who would not comply with Proposition 65 Warnings regarding methylmercury. Judge Dondero presided over a bench trial and on May 11, 2006, issued an opinion (118 pages) holding, among other things, that the Proposition 65 warnings, as applied to canned tuna, were preempted by federal law. In addition, because the methylmercury in tuna was found to be naturally occurring, there is no “exposure” under Proposition 65.

Food

- Obesity
- Acrylimide
- Tuna
- Supplements
- Cold Remedies
- Water

Economic Loss

- Privacy/Identity
- Loss in Value

Law & Developments

- *Elleree Jones v. John Crane, Inc.* (2005) 132 Cal.App.4th 990 (as modified 9/21/05)
- “[California law] does not require that each exposure be sufficient to independently cause lung cancer. To the contrary, the exposure need only be "a substantial factor in contributing to the aggregate dose of asbestos the plaintiff ... inhaled." (*Rutherford*, 16 Cal.4th at 976.) The mere fact that comparable levels could be found in ambient air does not render the exposure "negligible or theoretical." (Id. at p. 978.)”

California Tightens Rules for Admissibility of Expert Opinion

- *Stephen v. Ford Motor Company* (2005) 134 Cal.App.4th 1363 (precluded testimony from tire engineer with over 25 years experience because he never tested the specific type of steel belted tires at issue in the case and his reliance on “supposedly similar” tire failures was insufficient).
- *Geffcken v. D’Andrea* ((2006) 137 Cal.App.4th 1298 (experts’ sampling data to prove exposure to a specific type of toxic mold was excluded because the test had not gained general acceptance in the relevant scientific community).
- *Nardizzi v. Harbor Chrysler Plymouth Sales, Inc.* ((2006) 136 Cal.App.4th 1409) (expert excluded because he failed to consider undisputed evidence in the case).
- *Andrews v. Foster Wheeler, LLC* (2006) 138 Cal. App. 4th 96 (excluding expert affidavits offered in opposition to summary judgment motion on product identification and re-entrainment theory).

California Supreme Court to Consider Sophisticated User

- Inspired by recent cases, including the Texas Supreme Court's decisions in *U.S. Silica Company v. Tompkins* (2005) 156 S.W.3d 578, and *Humble Sand and Gravel, Incorporated* (2004) 146 S.W.3d 170, the California Supreme Court has granted review in *Johnson v. American Standard, Incorporated* (2005) 133 Cal.App.4th 496. In that case, the Court will determine whether California law recognizes the "Sophisticated User" doctrine. In short, the "Sophisticated User" doctrine holds that a manufacturer has no duty to warn a member of a particular trade against dangers that should be known in the tradesperson's particular field. *Tompkins* and *Humble Sand*, however, expanded the doctrine, extending it to the claims of less sophisticated users whom should have been warned by intervening sophisticated users.

Things to think about

The clean-up of all MTBE in the U.S. is estimated to cost as much as \$140 billion... and while some claim MTBE causes cancer and other deadly diseases, others state that there is no proof that anyone has ever been harmed by MTBE in drinking water. As the controversy swirls, the litigation battles intensify.

Mealey's Program - December 5, 2006, NYC

Class Inaction: Plaintiffs' Lawsuits Sharply Decline

- "Companies involved in many of the largest and most controversial legal clashes of recent decades are seeing a sharp decline in the number of lawsuits filed against them. In recent months, judges have dismissed or challenged tens of thousands of individual cases, in matters ranging from claims of lung damage from asbestos and silica dust to allegations that the diet drug fen-phen caused heart problems. Moreover, fewer new claims like these are being launched, as state and federal courts and legislators attack the methods used by some attorneys to round up plaintiffs for large-scale litigation. There is no comprehensive count of claims, **but a look at several key areas -- particularly asbestos and silica claims -- shows large-scale litigation against single products, known as 'mass torts' and 'class actions,' is on the wane.**"
- Paul Davies, Wall Street Journal, 8/26/06

Vioxx-Like Risks Linked to Another Pain Pill

- "The widely used pain reliever diclofenac poses the same cardiovascular risk as the withdrawn drug Vioxx and should not be used by people with heart disease or high blood pressure, researchers reported Tuesday. Diclofenac, an older drug sold as Cataflam or Voltaren, increased patients' chance of heart attack by 40%, according to an analysis of 23 clinical studies - **the same risk observed in patients who took low doses of Vioxx**. The report was released early by the Journal of the American Medical Assn. because of its health implications."
- Denise Gellene, LA Times, 9/13/06

California Tightens Rules on Emissions

- "California's legislature approved the broadest restrictions on carbon dioxide emissions in the nation yesterday, marking a new stage in the accelerating drive for a more aggressive national response to global warming. The California bill requires a 25 percent cut in carbon dioxide pollution produced within the state's borders by 2020 in order to bring the total down to 1990 levels. In at least eight other states, **political momentum is building to take similar steps to limit emissions** of greenhouse gases linked to climate change, a trend that could increase the pressure for a national system despite the Bush administration's consistent opposition to mandatory caps."
- Juliet Eilperin, Washington Post, 9/1/06

Public Nuisance

*People of the State of California, ex rel. Bill Lockyer,
Attorney General v. General Motors Corporation, et al.*

Declaratory relief action for a public nuisance.

Automobiles produced by the defendants emit 289 million metric tons of carbon dioxide each year, severely and irreparably damaging the environment. USDC, ND CAL (SF) 06-cv-05755 EMC (Filed 9/21/06)

Prescription Drug Traces Found in Recycled Los Angeles-Area Water

"Water quality officials have found traces of resilient prescription drugs in waste water that has been filtered and recycled into a Southern California aquifer for eventual use as drinking water, but the amounts are so small that the health effects are unclear, the Los Angeles Times reported Monday. **Drugs including antibiotics, antipsychotics, birth-control hormones, Viagra and Valium routinely turn up in wastewater all over the world because people flush them down their toilets. But medications have also ended up in Los Angeles County's water supplies because of the region's aggressive efforts to turn treated sewage into drinking water.**"

Associated Press, The Mercury News, 1/30/06

California Classifies Second-Hand Smoke a Toxic Risk

"A California environmental agency voted on Thursday to classify tobacco smoke as a "toxic air contaminant," a first-in-the-nation move that could toughen state regulations on cigarette smoke. The designation by California's Air Resources Board starts a process that could lead to **further smoking bans in a state that has often led the nation in health and ecological regulation.**"

Reuters, 1/26/06

Flavoring Suspected in Lung Disease Cases

"Federal health officials have launched **a nationwide investigation of working conditions** in flavoring factories after the discovery of a devastating lung disease among two former California workers and possibly three others in the Los Angeles area. At the same time, a group of 21 California legislators and the nation's two largest food-industry labor unions are urging state job-safety regulators to issue an emergency order restricting workers' exposure to vapors from an artificial butter flavoring. The flavoring chemical, called diacetyl (di-As-itle), has been strongly linked to the disease, called bronchiolitis obliterans. The two actions arise in response to recent news of the latest confirmed victim, a 44-year-old woman in the Los Angeles area, and **growing concerns about the safety of America's 3,700 other workers on the flavoring production lines.**"

Its raining * & ^ # % \$

Oklahoma is now suing eight firms -- including Arkansas giant Tyson Foods Inc. -- on the grounds that the chicken waste applied to crops near the river contains hazardous chemicals that are damaging the ecosystem and jeopardizing the region's tourist industry."

Juliet Eilperin, Washington Post, 8/28/06

Tort Reform

ATLA name change - American Association for Justice

Tort Reform's Next Big Push: Tort reformers are looking to introduce proposed amendments as early as December in states with a history of large class certifications or high-dollar settlements and verdicts in consumer class actions, such as Massachusetts, Illinois and the District of Columbia. The new momentum represents continuing fallout from California's Proposition 64, a landmark 2004 ballot initiative that tightened the reins on consumer cases.

As part of their efforts, tort reformers are circulating model legislation to state lawmakers that **would require consumers to have suffered economic losses or injuries from a company's alleged misstatements in order to file a class action.**"

Former Popcorn Worker Settles Case

"A former popcorn factory worker has settled a lawsuit blaming his lung disease on fumes from a butter flavoring used in a microwave variety. Terms of the out-of-court settlement with Eric and Cassandra Peoples were not released. The settlement ends the company's appeal of a **\$20 million jury verdict awarded the couple**. The agreement, revealed Monday in a court order, was reached with International Flavors & Fragrances Inc. and its subsidiary, Bush Boake Allen Inc. Eric Peoples, 34, was among 30 current or former workers at a Jasper popcorn factory who sued the companies, claiming they suffered lung damage because they breathed fumes from the butter flavoring used to make microwave popcorn."

Associated Press, Seattle Post-Intelligencer, 1/25/06

Maker of Cold Spray Settles Lawsuits for \$12 Million but Denies Claim That Zinc Product Ruined Users' Sense of Smell

"The manufacturer of Zicam Cold Remedy has agreed to pay \$12 million to settle 340 lawsuits brought by consumers who claim the popular over-the-counter zinc nasal gel damaged or destroyed their sense of smell. The Phoenix-based manufacturer, Matrixx Initiatives, says the agreement announced Jan. 19 is not an admission of liability, but rather an effort to end most of the litigation over the homeopathic remedy. **'The company still stands by the product, but this made good business sense,'** said Matrixx spokesman Robert J. Murphy. The agreement was announced jointly by the company and Arizona lawyer Charles S. Zimmerman [ATLA Member], on behalf of a consortium of lawyers representing plaintiffs around the country."

Sandra G. Boodman, Washington Post, 1/30/06

How Safe Are Diet Supplements?

"...The stories raise a host of issues about the safety and quality of products sold by the \$20.3 billion dietary supplement industry and the seeming failure to regulate them. ConsumerLab, which, for a fee, also offers seals of approval for companies whose products pass the tests, has found that **25% of the products it tests fail in some way**. Some lack the claimed ingredients or levels of ingredients. **Others are laced with contaminants. Cooperman has found lead in ginkgo and magnesium supplements, toxic chromium in a weight-loss product**, and lacking active ingredients in others (table). BusinessWeek has learned that key lawmakers led by Senator Dick Durbin (D-Ill.) are near a deal for a new law requiring companies to report to the Food & Drug Administration serious adverse events involving supplements. That would limit harm from a dangerous product."

John Carey, Business Week, 1/30/06

ATLA Weekly E-Newsletter

Recent news:

5. U.S. Report Links Asbestos to Larynx Cancer
7. Drug for Bones Is Newly Linked to Jaw Disease
9. Study Cites Increased Death Risk From Asthma Drugs
13. Plaintiffs Seek \$2 Billion in Massive Toxic Tort Suit Against Ford
14. \$92 Million More Is Sought for Exxon Valdez Cleanup
21. Metabolife Settlements Reached
22. Chemical in Plastics Is Tied to Prostate Cancer
23. Papers Show Guidant Considered Warning Doctors of Hazards
24. 'Absolutely Horrifying': Exposure to Environmental Toxins Left Thousands of 9/11 Responders Suffering from More Severe Health Problems than Officials Anticipated. Will it Get Worse?
25. Air Masks at Issue in Claims of 9/11 Illnesses
26. Justice Dept. Official to Be Questioned in Tobacco Case
27. NE Op-Ed: Bush Using Trial Lawyers as Health-Care Scapegoats
28. FL: Gov. Bush Vetoes No-Fault Bill
29. New Federal ATV Rules Proposed
30. Three Former Railroad Workers Awarded Over \$600,000
31. Study: Immigrant Workers Endure Hazardous Conditions, Abuse Post-Katrina

Sources of Information

- Publications: Mealey's, BNA, Harris Martin, Findlaw, etc
- ATLA, DRI, ABA, Blawgs
- Government Websites: FDA, EPA, CPSC, OSHA, CDC, Department of Health and Human Services
- Recent Filings
- Experts, Independent Laboratories, Advocacy and Safety Groups
- Internet Research
- Academic Organizations
- Understanding Mass Personal -Injury Litigation – Rand Corp.