

A report to clients and attorneys.
VOLUME 09 - NUMBER 1

OF COUNSEL



Defective Product Case in New Jersey - Partial Settlement In Excess of Eight Figures

Sometimes tragedy appears to happen in a horribly abrupt way. But when surviving victims try to piece

together their disrupted lives, one can often see that, in fact, the tragedy was not an accident and instead was the direct result of a series of failures in design, production, and care by corporations which failed miserably in their duty to the public. A number of these catastrophic failures converged all on one day for the Smith family from New Jersey.

As the Smiths drove through Florida on a family vacation, the driveshaft of the Smiths' new van fractured suddenly, pierced the fuel tank and caused a fuel-fed fire which killed Johnny, the youngest son, and horribly burned several other members of the family. A lawsuit was filed against a total of five defendants, each of whom had a part in the tragic failures that led to Johnny's death and the injuries of the other family members. Shortly before an April 2009 trial date, some of the parties reached a settlement in excess of eight figures for the family. But not all. The case continues and will be tried against the remaining defendants in Newark, New Jersey, in April 2009.

In September 2003, the Smith family began an effort to find an easier and better way to care for their son, Johnny, who had been born with cerebral palsy. At nine years of age, Johnny's motor skills were limited and he was wheelchair bound. Despite his disability, he was a bright, funny, warm little boy and an avid sports fan. His father and mother, Michael and Mary Smith, began shopping for *(Continued on page six.)*

In 2004, a family traveling through Florida was suddenly faced with horror as their new van, modified with handicap-accessible equipment for their youngest child, became engulfed in flames. Five members of the family escaped with severe burns. The youngest child, confined to a wheelchair, was trapped in the burning van and died. SDSBS attorneys Chris Searcy and Greg Barnhart filed product liability and negligence actions against the van dealer, the handicap equipment and drive shaft installer, the equipment supplier, and the drive shaft manufacturer. Partial settlement has been reached. The remainder of the case will go to trial April 2009.

Negligence by Hotel and Contractor Causes Deadly Carbon Monoxide Poisoning

In December 2006, John Doe and his son, Tim (not their real names), checked into a hotel in Florida. They were in town for a father and son weekend. They were assigned a room located on the fourth floor. After checking in, they left the hotel and toured the downtown area. Upon returning to the hotel, they set the alarm for 9:00 a.m. and went to bed.

When the alarm went off the next morning, Mr. Doe and his son woke up and began getting ready for their day. Mr. Doe went into the shower and closed the door. His son Tim was on the bed reading a book. Approximately three minutes later, John Doe suddenly became weak

and disoriented and collapsed in the shower. He heard his son yell, "Dad, are you okay?" He then passed out and woke up about 10 hours later in a Florida hospital. He then learned that he and his son had been overcome by deadly carbon monoxide gas that had filled their hotel room. Tragically, John Doe was then given news which no parent ever should hear: his only son, Tim, did not survive.

Suspecting negligence, the Doe family contacted SDSBS attorneys Chris Searcy and Greg Barnhart and asked that they investigate the cause of this tragedy, and represent them in an action against the hotel. *(Continued on page three.)*

Defective Product Case in New Jersey - Partial Settlement In Excess of Eight Figures

(Continued from page one.)

a wheelchair-accessible van to make trips to therapy, school, and sporting events easier for Johnny. Johnny's older brother, Nicholas, was 11 years old, loved his brother and parents, and was a gifted athlete. Their father, Michael, worked for a wholesale company filling orders and delivering goods, and Mary did office work.

After doing research on the internet, Michael located a company not far from their home in New Jersey that modified vans to make the vehicles accessible for wheelchair-bound passengers. Michael called Drive-Master Company and then paid them a visit to look at vans. The company showed the couple the equipment that they installed which included a lift mechanism and power cargo doors. The Smiths were impressed with the possibilities. Although there were two vans on the lot at that time, they were both more expensive than the Smiths could afford. Drive-Master often used Ford vans for their modifications, and routinely got these vans from a local Ford dealer. In fact, Drive-Master and the Ford dealer had collaborated 20 to 30 times in providing handicap-accessible vans for buyers. In a short while, a new van was delivered to Drive-Master so that they could install the Braun under-vehicle lift, a form of elevator that would lift a wheelchair up and down so it could be moved in and out of the van, as well as Braun power doors. The power door system was an option, a dangerous option it turned out, that disabled the Ford door handles and opened the side doors of the van hydraulically. The power doors were operated with controls that look like a TV remote control.

There had been no vibrations or other indication of any problem, and the driving up to that moment had been normal. Michael and Mary later said that it sounded as if the lift had fallen. The van lost power, and Michael immediately pulled over to the emergency lane by the highway median. Michael opened his door and ran out. To his horror, he saw flames and smoke starting to come up from the floor of the van. The van's driveshaft had fractured completely and the rotating remnant gashed a hole in the fuel tank. As gasoline vapor was released, it was ignited.

The Braun under-vehicle power lift would slide in and out under the floor of the van, and lower itself to the ground and then back up to the floor of the van to provide accessibility for a person in a wheelchair. The van's original Ford drive shaft had to be replaced with a narrower

driveshaft to make room for the lift. The power cargo doors were installed on the passenger side of the van, and swung outward in a saloon-door fashion. Both the lift and the cargo doors were operated by electronic controls. Inside the van was a control mechanism wired directly to the motor assembly operating the equipment. Passengers and operators could use this control to operate the doors and the lift or, alternatively, they could use an extra feature: a remote control device that allowed users outside the van to open the side doors of the van and operate the equipment.

The Ford van door handles were left in place on the inside and outside of the cargo doors, but had been disabled because the door opening mechanism was now part of the new power door system. These original handles were left for cosmetic appearance. The van also was equipped with two black knobs, one on each of the side cargo doors. The Braun Corporation referred to these knobs as emergency release mechanisms in the manual. When the knobs were turned in a certain sequence, and only when turned in that sequence, the cargo doors would open. The knobs were not labeled "emergency" or "open," nor did they have any instructions indicating which way to turn or what sequence to use. The video provided by the Braun Corporation for demonstrating use of the equipment in the van did not even include a display of the operation of these knobs. In fact, the only reference to the operation of the emergency escape system was a footnote on the use of the knobs in the combined installation and owner's manual.

In the summer of 2004, the Smith family decided to take the van on their first long trip. They headed south to Miami, Florida, to visit relatives and then planned to fly out of the country. Because their van was large and roomy, the Smiths invited Mary's mother, Beth, and brother, Reggie, along on the trip. Beth was an active 59-year-old lady working full-time for the maintenance department in the Newark airport. Reggie, 39 years old, worked at a printing company and attended college at night, working on a degree in electrical engineering.

On the second day of the trip, the family made a stop at a McDonald's just off I-95 near Titusville, Florida. Shortly after they got back on the road, they heard a loud noise. There had been no vibrations or other indication of any problem, and the driving up to that moment had been normal. Michael and Mary later said that it sounded as if the lift had fallen. The van lost power, and Michael immediately pulled over to the emergency lane by the highway median. Michael opened his door and ran out. To his horror, he saw flames and smoke starting to come up from the floor of

the van. The van's driveshaft had fractured completely and the rotating remnant gashed a hole in the fuel tank. As gasoline vapor was released, it was ignited. Later, witnesses reported seeing flames from under the van.

Michael ran to the back of the van and tried to open the back doors. At the same time, Mary opened her passenger door and ran to the side cargo doors to try opening them with the door handle. With both front doors open, and the gasoline now pooling under the van, the fire intensified and entered the interior of the van through its floor and the open front doors. Inside the van, Nicholas and Reggie were trying to get the side doors open. Beth put her arms around Michael, who was crying with fear. As time went by, Nicholas used the wired control and tried it repeatedly, but the fire had damaged the wiring so the doors would not open. Reggie tried kicking the doors in the rear and the side cargo doors, but was not able to budge them.

With the fire spreading inside, and frantic to make something work, Mary raced back to the front passenger door and heroically reached into the burning van for the remote control device. After she was able to find it, she ran back to the side cargo doors, operated the remote and the doors finally opened. Nicholas jumped out through the flames, then Reggie who had Beth in his arms. Mary and Michael tried to reach inside to pull Johnny to safety, but by this time the van was burning heavily, and the whole family watched in unimaginable horror as Johnny burned to death.

Reggie, the uncle, suffered burns on 49% of his body's surface. He spent six months in a Florida hospital. He had serious, almost daily, life-threatening complications including a cardiac arrest and significant pulmonary damage. He has endured, and will continue to endure, multiple skin grafts and other surgeries. He is unable to use his hands properly because of scar tissue and suffers some memory loss. His mother, Beth, received burns on 39% of her body, but suffers even greater damage. Her face was burned away. During hospitalization, her system suffered so greatly that she had a stroke. She is covered with skin grafts, and must take morphine medication daily to endure the constant pain. Her scarring is so disfiguring that she rarely leaves the house.

Nicholas, the first one to get out of the rear compartment, had fewer burns than his uncle or grandmother, but still endured burns over 29% of his body. After care in a children's hospital in Florida, he was sent to a children's burn specialty hospital in Ohio for further surgical procedures. His scarring has developed into keloid scarring which



means that it is upraised and discolored. Mary, the mother, suffered burns to her face, neck, feet and arms. She has significant scarring. Michael has burn scars on his face and arms, though not as many external scars as the rest of the family. The entire family suffers from post-traumatic stress disorder and lives daily with the horror of knowing that their youngest son burned alive in front of them.

Following their physical, emotional, and mental efforts to heal, the family sought legal representation. They finally chose **Chris Searcy** and **Greg Barnhart** to help them. Because the family lived in New Jersey and many of the defendants were New Jersey corporations, Mr. Barnhart decided that the case should be brought in New Jersey and selected Alan Medvin, of Medvin and Elberg, Newark, New Jersey, to be local co-counsel. Product liability and negligence actions were filed against five defendants: the dealer that sold the van, Drive-Master, the handicap equipment installer that modified the van and the drive shaft, the Braun Corporation that designed and supplied the handicap equipment and the company that manufactured and supplied the drive shaft. After several years of intense litigation, Greg Barnhart and Alan Medvin partially settled the case for a figure in excess of eight figures with the Ford Dealer and the manufacturer of the driveshaft. The modifier of the van offered its full policy of insurance and tendered that money into the registry of the court when it was not accepted.

In April 2009, the case will proceed to trial in Newark, New Jersey, against the manufacturer of the power door system and its modifier on the basis that the manufacturer of the lift equipment, Braun Corporation, and its installer created a death trap by their failure to properly label and provide a practical way to manually override the power doors and escape in an emergency. ■