

A report to clients and attorneys.
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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.)*

Negligence by Hotel and Contractor Causes Deadly Carbon Monoxide Poisoning

(Continued from page one.)

Immediately following the incident, the local fire marshal shut down the hotel and a comprehensive investigation involving several government agencies was begun. The results of that investigation were shocking. Tests conducted by the fire marshal and SDSBS experts revealed that quantities of carbon monoxide were being produced by a liquid propane boiler in a room adjacent to their room. The elevated levels of carbon monoxide were created by incomplete combustion due to improper ventilation of the boiler exhaust located on the roof. The carbon monoxide then made its way into the room through a heating, ventilation, and air conditioning (HVAC) closet that had been improperly constructed. The investigation further revealed that the original exhaust had blown off during the 2005 hurricane season and had been replaced with a 90° elbow-exhaust that pointed into prevailing winds, forcing the fumes back down into the boiler. Incredibly, the hotel had failed to pull any permits, call any experts, or take any measures to ensure that the 90° elbow-exhaust was appropriate.

The attorneys also discovered that the hotel had been faced with previous incidents involving the same room. Just six days earlier, another family staying in that same room had been overcome with carbon monoxide poisoning. They sought medical attention and were treated in hyperbaric chambers. The family went back to the hotel the following day and told the hotel's general manager that they had been diagnosed with carbon monoxide poisoning which they felt certain had been leaking into their room.

Investigations conducted by the fire marshal and by SDSBS attorneys **Chris Searcy, Greg Barnhart, and Brian Denney** revealed that the wall separating their room from the boiler room allowed the build-up of toxic carbon monoxide gas which then seeped into their room through the HVAC system. Following these investigations, a lawsuit was filed in Florida against the hotel entities and the contractors responsible for constructing the defective wall.

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In 2006, a father and son arrived in Florida, checking into a local hotel. They were unaware that a deadly carbon monoxide gas was being produced in a nearby boiler room, venting directly into an improperly-constructed air handling system. By the next morning, the son was dead and his father was suffering brain damage. As a result of this tragedy, and others like it, Florida passed a law requiring public lodging establishments to install carbon monoxide detectors.

the following day and told the hotel's general manager that they had been diagnosed with carbon monoxide poisoning which they felt certain had been leaking into their room. The family pleaded with the manager to shut down the room until the problem was fixed. Instead of closing down the room so a full investigation could be completed, the hotel sent untrained handymen to a local hardware store to purchase an over-the-counter carbon monoxide alarm. The hotel personnel proceeded to test for deadly carbon monoxide in the room while the room was being rented out to unsuspecting customers. The hotel personnel would knock on the door, make sure no one was in the room, and then walk through it with the carbon monoxide alarm. Because of this reckless conduct, SDSBS attorneys were able to successfully amend the complaint to include a claim for punitive damages.

Due to the catastrophic damages suffered by Tim's parents, John and Mary, for the loss of their only son, as well as the brain damage suffered by John as a result of his prolonged exposure to poisonous carbon monoxide gas, the parties participated in mediation and reached a confidential settlement.

The parents honored the memory of their son by advocating for legislation that would require the installation of carbon monoxide detectors in public lodging establishments. Their efforts were very successful, and in 2007 Florida Governor Charlie Crist signed this bill into law. ■

