

# OF COUNSEL

A report  
to clients  
and attorneys.

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## \$4.25 MILLION SETTLEMENT FOR REPEATED FAILURES TO DIAGNOSE PANCREATIC CANCER

**Medical experts' failures to find and treat cancer results in death of 45-year-old**

In 2002, John Doe was a 45-year-old man with a loving wife, three children, and a very exciting corporate career. As a young boy, he had immigrated to the United States from Communist Cuba and, with hard work and determination, had achieved an extraordinary level of success in both his personal and professional life. After holding executive positions at several companies, John accepted a position at a large corporation that eventually led to a promotion that would involve moving overseas and taking responsibility for the company's operations in Europe, the Middle East, and Africa. By all standards, John was in the prime of his life, in apparent good health, and looking forward to continued enjoyment in both work and family life.

In July 2002, John visited a medical clinic in Florida for a routine annual examination by Dr. X. John was concerned about his health and health history, and made every effort to live a healthy lifestyle. During the examination, John told Dr. X that both his mother and father had been diagnosed with colon cancer and this fact was clearly documented in the doctor's records. A month later, on August 18, John visited the medical clinic's emergency department complaining of abdominal pain, nausea, and vomiting. He was examined, diagnosed with gastritis, and discharged. Because of a trace amount of blood found in his urine, he was advised to return to Dr. X for further examination. John scheduled an appointment with Dr. X and, on September 4, the doctor began a workup to determine if John was suffering from kidney stones.

John's medical records at the clinic reflected a concern by the clinic's physicians *(Continued on page four.)*

## PERMANENT DAMAGE CAUSED BY KAVA PRODUCT

**Manufacturer fails to use FDA warnings on dangerous herbal supplement, resulting in total liver destruction for woman.**

Jane Doe was a very healthy 42-year-old woman employed as a bookkeeper at a local herbal supplement supplier in Jupiter, Florida. The supplier sold various natural food supplements, many of which were touted to be made from the best medicinal herbs in the world. Jane's employer regularly permitted employees to purchase these items at a discounted price. One of the items sold by her employer was kava, a natural food supplement that was, according to both the manufacturer (located

in North Carolina) and the supplier, an excellent supplement for relaxation and stress relief. The product was presented to Jane and other purchasers as totally safe. In fact, she was told pharmacological substances used for relaxation could put her health at risk and the herbal supplements were far safer. *(Continued on page five.)*



## Permanent damage to liver caused by kava supplement

*(Continued from page one.)*

In November 2006, Jane began taking the kava products manufactured by the North Carolina company and sold in her employer's store. She took a single pill each day, well within the stated recommendations on the product's packaging. During the last six weeks of her use of the product, she noted a lack of energy. Routine blood tests taken during a visit to her local physician revealed that her liver enzymes were dangerously skewed. Jane immediately stopped taking the kava supplements. Unfortunately, it was too late. Further tests revealed that Jane's liver function was highly abnormal and in danger of imminent failure. She was admitted to a hospital and then transferred to a Miami hospital that specialized in liver transplants.

Tests performed at the transplant center revealed the total destruction of Jane's liver. She required an immediate transplant just to survive. She was, by now, swollen and jaundiced, and had no choice but transplant. According to her doctors, failure to obtain a liver transplant would, in all likelihood, result in her death. In April 2007, Jane underwent a liver transplant.

Unknown to Jane Doe, and contrary to allegations by the manufacturer and supplier that the supplement was safe, kava and kava products are well known to cause liver damage. One country, Great Britain, has outlawed the substance and banned its sale because of this danger. Several years earlier, the U.S. Food and Drug Administration (FDA) issued a consumer advisory warning stating:

*"Kava-containing products have been associated with liver-related injuries – including hepatitis, cirrhosis, and liver failure – in over 25 reports of adverse events in other countries. Four patients required liver transplants. In the United States, FDA has received a report of a previously healthy young female who required liver transplantation, as well as several reports of liver-related injuries."*

Further, FDA had recommended a warning label for all kava products, to state as follows:

*"FDA advises that a potential risk of rare, but severe, liver injury may be associated with kava-containing dietary supplements. Ask a healthcare professional before use if you have or have had liver problems, frequently use alcoholic beverages, or are taking any medication. Stop use and see a doctor if you develop symptoms that may signal*

*liver problems, including jaundice (yellowing of the skin or whites of the eyes) and brown urine. Other non-specific symptoms can include nausea, vomiting, light-colored stools, unexplained tiredness, weakness, stomach or abdominal pain, and loss of appetite. Not for use by persons under 18 years of age, or by pregnant or breastfeeding women. Not for use with alcoholic beverages."*

Despite substantial evidence of the possibility of injury, the manufacturer in North Carolina and the supplier in Florida continued to process, manufacture, market, and sell the kava products to an unsuspecting public, claiming the supplement had significant health benefits far superior to pharmacologically-tested medications.

*Unknown to Jane Doe, and contrary to allegations by the manufacturer and supplier that the supplement was safe, kava and kava products are well-known to cause liver damage.*

Because of the substantial injury Jane suffered from her use of the kava supplement, she will require anti-rejection medication for the rest of her life. At present, the cost for this medication is nearly \$3,000 each month. While the medication is necessary to sustain Jane's life, it is also slowly poisoning her. She lives each day with the realization, confirmed by her physicians, that she has a shortened life expectancy. Jane frequently must change her day-to-day activities to avoid contact with people who are ill. Germs and diseases, which healthy people need not fear, pose serious risk to Jane. Jane's doctors have even recommended she limit contact with her daughter and two-year-old grandson – two of the most important people in Jane's world. Because of her surgery, Jane suffers from constant pain and substantial physical scarring. Her ability to work is substantially limited due to her persistent pain and risk of infection.

In June 2007, Jane asked SDSBS attorney David Kelley to represent her in a product liability action against the manufacturer. Mr. Kelley submitted a demand on Jane's behalf for the defendant's policy limit of \$2 million, and in January 2008 that amount was paid in full. This payment was considered partial settlement of the issue. Mr. Kelley is now pursuing a legal action against the supplier. ■

**\$2 Million Settlement:**  
**PRODUCT LIABILITY**