Dallas Quadriplegic Crash Victim Wins $37.6 Million in Seat Belt Suit

A jury has awarded $37.6 million to a Dallas woman who was left paralyzed from injuries caused by a poorly designed seat belt system in a Honda minivan that rolled over in a collision in Dallas in 2015, according to a post on the website of **Androvett Legal Media**.

Sarah Milburn, 27, was a passenger in a Honda Odyssey that was hit broadside by a pickup truck on Nov. 15, 2015, causing the van to roll over onto its side and top. Milburn, who was a passenger in the third-row middle seat, suffered a broken neck and was left a quadriplegic, with very limited use of her arms and hands.

Milburn sued American Honda Motor Co. Inc. of Torrance, California, a subsidiary of Honda Motor Co., Ltd., claiming Honda's design for the seat belt in the third row's middle seat is defective. Specifically, the seat belt is a two-part system requiring the user to grasp a detachable shoulder strap from the van's ceiling, anchor it to the seat and then pull the belt across the user's hips and buckle it.

In independent testing, an expert showed the jury that fewer than 10 percent of people who were unfamiliar with the van's two-part seat belt system were able to use it properly.

"What the jury understood is that it's not enough to just equip a car with seat belts. The carmaker also has to make sure people can and will use them safely," said attorney **Charla Aldous** of **Aldous\Walker** in Dallas, who along with **Brent Walker** represented Milburn at trial. "Sarah put the seat belt on the same way 50 out of 53 people in our studies did and wearing it that way was actually more dangerous than having no

seat belt at all."

Milburn also was represented by attorney **Jim Mitchell** of the PayneMitchell Law Group in Dallas.

The jury verdict includes a finding that the regulations governing seat belts in passenger cars were inadequate to protect the public from harm. The family is hopeful the finding will lead to the creation of "Sarah's Law," which would forbid automakers from using this seat belt system in the future, according to the Androvett post.

The case is *Sarah Milburn v. American Honda Motor Co. Inc.*, number DC-16-16470 in the 116th Civil District Court in Dallas County, Texas.

Opioid Epidemic Lawsuits Take Strategy from Epic Big Tobacco Litigation

Thousands of lawsuits against pharmaceutical companies, prescription drug distributors and pharmacy retailers for their role in causing the opioid epidemic are based on the legal strategy honed 20 years ago in epic litigation against the tobacco industry, said **Fears Nachawati Law Firm** trial lawyer **Jonathan Novak** in a special appearance on the Lawyer 2 Lawyer podcast.

Trial lawyers are demanding that manufacturers and companies

along the prescription drug supply chain pay sweeping economic penalties for damages caused by opioid drugs. Attorneys for those harmed by opioids are working to force the companies to pay to stop the scourge of opioid addiction going forward, a course similar to the tobacco litigation in the 1990s, said Novak, who is a former lawyer for the Drug Enforcement Administration with experience investigating abuses by pharmaceutical companies.

“What we’re looking to do is similar to what was done in the tobacco litigation,” Novak said in an appearance on the Legal Talk Network’s Lawyer 2 Lawyer podcast. “We want to hold these parties responsible, and then we want them to pay to fix the problem that they deliberately caused.

“Because of the nature of what these companies did – the ignoring of federal law and state law, the malicious, heartless, thoughtless way these companies pushed opioids, which they knew were addictive – we need to hold them accountable,” he said. “In my work at DEA, one thing I found every single time is that these companies do not have any interest in altruism. They are not going to do what’s right. We need to make them do that.”

Courtroom Reference Book ‘On the Jury Trial’ Tops UNT

Press' Best-Sellers List

The guide to courtroom preparation and trial strategy co-authored by **Winston & Strawn** Dallas Managing Partner Tom Melsheimer and Texas Judge Craig Smith that spent more than a year as the University of North Texas Press' best-selling book, has consistently ranked among the publisher's top-selling titles since its release in October 2017.

Almost immediately upon its release, "On the Jury Trial: Principles and Practice for Effective Advocacy," vaulted to the top of UNT Press' best-sellers list, holding that distinction from September 2017 through August 2018. According to UNT Press, the book remains solidly among the top 10 best-selling titles in its catalog through the beginning of 2019.

Described as the "senior law partner's memo to associates on how to really try a case," "On the Jury Trial" also represents a literal investment in the next generation of trial lawyers. Melsheimer and Smith have donated all profits from the sale of the book to the UNT Dallas College of Law, the only public law school in Dallas. The pledge has grown in significance with the continued strong combined physical and digital sales of the book.

"We are at a point where the number of jury trials is diminishing. As a result, too few lawyers are getting the experience they need to be effective advocates for their clients when they do end up before a jury," said Melsheimer. "It is through the sharing of knowledge and experience that we can help prevent the loss of these important skills."

The book has earned praise from preeminent trial lawyers across the country as an invaluable resource. Providing advice, examples, and commentary, "On the Jury Trial" offers an insider's view into high-level trial preparation and strategy, focusing on jury selection, witness preparation,

jury research, effective opening statements, and more.

Nationally renowned for his trial skills, Melsheimer has tried cases for more than 30 years. He has been honored as a Trial Lawyer of the Year by the Texas chapters of the American Board of Trial Advocates (ABOTA) as well as the Dallas Bar Association. Smith was an accomplished trial lawyer for more than 25 years before his election to the 192nd District Court in Dallas County in 2006.

Houston Federal Judge Bars Female Prosecutor From Trial, Sparking Standoff With U.S. Attorney's Office

U.S. District Judge Lynn N. Hughes.

A federal judge banished a female prosecutor from his Houston courtroom last month, sparking a rare standoff between the new

U.S. Attorney and a jurist with a history of sniping at lawyers, government officials and litigants, **reports** the *Houston Chronicle*.

"U.S. District Judge Lynn N. Hughes, a 77-year-old appointed by President Ronald Reagan, has been criticized in the past for making comments perceived as racist or sexist in court, write the *Chronicle*'s **Gabrielle Banks** and **Lise Olsen**.

Hughes has twice ejected Assistant U.S. Attorney Tina Ansari before trials, claiming she lacked ability and integrity, records show.

Ansari was involved in a 2017 court session in which Hughes said, "It was a lot simpler when you guys wore dark suits, white shirts and navy ties… We didn't let girls do it in the old days." The 5th U.S. Circuit of Appeals found his remarks to be "demeaning, inappropriate and beneath the dignity of a federal judge."

Read the *Houston Chronicle* article.

Former Football Players Ran Out of Time to Sue NFL, 9th

Circuit Says

A panel of the 9th U.S. Circuit Court of Appeals has rejected a class action seeking to hold National Football League teams liable for conspiring to push painkillers on hurt athletes to get them back on the field, finding the claims time-barred, **reports** Courthouse News Service.

Reporter **Nicholas Iovino** writes that the players failed to explain adequately why they lacked the essential knowledge to file their lawsuit within the four-year statute of limitations.

"In this case, plaintiffs knew of their injury – that their careers had been 'cut short' – as soon as their careers ended due to physical injuries," the panel wrote.

Read the Courthouse News Service article.

Overbroad Geographic Restriction Dooms Covenant Not to Compete

A recent Texas court decision highlights the requirement that any covenants not to compete, including geographic restrictions, must be reasonable to be enforceable, according

to **a report** on the Ogletree Deakins website.

Lawrence D. Smith writes about *Fomine v. Barrett*, which involved a non-compete agreement for a case manager in a chiropractic clinic. The agreement prohibited the employee from being involved in any competitive business within a 500-mile radius of the employer's clinic.

The Houston appellate court found the 500-mile radius to be "significantly broader than the geographic scope" of the former employee's actual employment activities on behalf of the clinic. It is therefore "broader than is reasonably necessary" to protect the employer's business interests.

Read the article.

Fired Hershey IP Attorney Sues Alleging Race, Age, Sex Bias

Kurt Ehresman, 52-year-old former senior counsel for global intellectual property at Hershey Co., has sued his ex-employer, claiming he was replaced with a younger, black, female lawyer in a case of race, age and sex bias.

Ehresman, who is white, filed suit Feb. 6 with the U.S. District Court for the Western District of Pennsylvania, according to a Bloomberg Law **report**.

Bloomberg's Patrick Dorrian writes:

"The move came roughly five years after Hershey recruited him to be 'the first licensed practice attorney' in the candymaker's more than 100-year history, Ehresman charges in the complaint. And it required him to give up his 'entire portfolio of clients' and private practice as a condition of joining Hershey, Ehresman says."

Read the Bloomberg Law article.

Safety Questions Arise After Multiple Vape Pen Explosions

A 24-year-old Fort Worth electrician is yet another victim of an exploding vape pen or e-cigarette, and in this case it was fatal. Sitting in a parked car on Jan. 27, the young man died after a piece of the exploding pen severed his carotid artery, according to a post on the website of Androvett Legal Media & Marketing.

According to a study published by Tobacco Control, more than 2,000 vape pen explosions and burn injuries occurred in the U.S. between 2015-17.

"If these dangerous explosions and fires are shown to be the

result of an inherent design defect that could have been avoided, the companies that designed these products may have significant legal exposure," says attorney **Joel Simon**, who focuses on personal injury litigation at Houston-based **Fernelius Simon Mace Robertson Perdue, PLLC**.

"Moreover, if these companies knew that the interaction of the vape pen's body and battery posed a significant safety risk, but they did nothing, they could face allegations of gross neglect, which could lead to punitive damages."

E-cigarettes rely on lithium-ion batteries to operate, but officials are advising users to be aware of the volatile nature of these batteries, according to the Androvett website.

The Trump Supreme Court Contingency Plan

A Bloomberg columnist sees seven leading **contenders** for President Donald Trump to consider for appointment to the U.S. Supreme Court, should the need arise.

"The four candidates under most serious consideration are all appeals-courts judges who were placed on the bench by Trump," writes opinion columnist **Ramesh Ponnuru**.

Among the prospects is Amy Coney Barrett, whose confirmation to the 7th U.S. Circuit Court of Appeals became a national

news story in September 2017 when Democratic Senator Dianne Feinstein and a few other critics made an issue of the nominee's religious views.

The list of seven contenders also includes two judges who were considered for previous Supreme Court vacancies.

Read the Bloomberg article.

BigLaw Partner Files $20M Suit Claiming Rape By Bartender

The ABA Journal **reports** that a partner at a large international law firm in Houston has filed a $20 million suit claiming a bartender at Brennan's of Houston spiked her drink with a drug and later raped her at her home.

The woman and her law firm are not identified in the lawsuit, according to the *Journal*'s **Debra Cassens Weiss**. The suit names the bartender, Sean Kerrigan, and a restaurant manager who accompanied Kerrigan to the plaintiff's home.

Kerrigan was criminally charged in July with raping the plaintiff and another woman in a later assault, but he died in November.

The plaintiff is in treatment for post-traumatic stress disorder, according to the lawsuit.

Read the *ABA Journal* article.

Record Multimillion-Dollar Settlement Reached for Susman Godfrey Partner's Traumatic Brain Injury

Seattle and its insurers have agreed to pay $65.75 million to the family of Brooke Taylor, an amount representing the largest individual personal injury settlement in the city's history, likely the largest in Washington state and among the largest ever in the country, reports **Crosscut**.

"The enormous sum is the result of a confluence of circumstances," explains Crosscut's **David Kroman**. "Taylor was 38 at the time of the crash and in the early part of what was an already decorated career with the law firm Susman Godfrey as an intellectual property litigation attorney. When she was still working, she was being showered with praise, and several industry publications had counted her among the country's best lawyers."

Taylor has a full-time medical attendant and currently lives in an assisted-care facility near her family's home.

Read the Crosscut article.

Job-Seeking Lawyer Loses Age Discrimination Case Based on Experience Cap

Dale Kleber was 58 years old when he applied for a senior staff attorney position with CareFusion Corporation. On paper, his 25 years of legal experience, including serving as general counsel for a large corporation, showed he was qualified for the job.

But the position sought someone with three to seven years of legal experience. Kleber didn't receive an invitation for an interview, but a 29-year-old lawyer was hired instead. Kleber sued under the ADEA, arguing that the seven-year experience cap on the position discriminates against older workers by automatically disqualifying them for the job.

Courthouse News Service **reports** that Kleber's age discrimination suit failed when the en banc Seventh Circuit ruled Wednesday that the protections of the Age Discrimination in Employment Act apply only to current employees, not to job applicants.

Read the Courthouse News article.

No Fees for You: Non-Class Counsel Get Stiffed in VW Diesel Litigation

Volkswagen AG is paying out $175 million to plaintiffs' attorneys in the $10 billion settlement over the "clean diesel" litigation. But many who say they worked on those cases won't be getting any money, according to **Bloomberg Law**.

"Only attorneys chosen as class counsel in the consolidated litigation, and attorneys working on assignments from class counsel, are entitled to attorneys' fees, the U.S. Court of Appeals for the Ninth Circuit said Jan. 22," reports Bloomberg's Martina Barash.

"That means numerous attorneys who worked on suits before the appointment of class counsel won't get paid," she adds. "That includes for work they did filing complaints, attempting to negotiate early settlements, and fielding calls with clients and other attorneys."

Read the Bloomberg Law article.

Yelp Doesn't Have to Take Down Libelous Post About Lawyer, Supreme Court Rules

The U.S. Supreme Court rejected a San Francisco attorney's request Tuesday to order Yelp to take down an online denunciation by a former client, leaving intact a California Supreme Court ruling that said the online review company can't be ordered to remove libelous or offensive content, the *San Francisco Chronicle* **reports**.

At the trial level, a judge had found the client's attack on San Francisco attorney Dawn Hassell to be libelous and ordered Yelp to remove it. Later the state's high court found that the removal order conflicted with a federal law that shields internet service providers from legal responsibility for statements posted by others, writes the *Chronicle*'s **Bob Egelko**.

The suit resulted from a one-star review on Yelp that described the plaintiff's firm as incompetent and advising others to avoid it.

Read the *SF Chronicle* article.

Download: Zapproved's Winter 2019 Volume of Ediscovery Case Law Summaries

Zapproved has published its Winter 2019 Volume of Ediscovery Case Law Summaries, featuring – as the company says in a release – "some heart-pounding tales of egregious misconduct by corporate and individual litigants."

The quarterly publication **can be downloaded** from Zapproved website at no charge.

This volume covers a wide range of topics, from spoliation and sanctions to proportionality, scope, and technology. It includes cases where deleted evidence isn't, in fact, spoliation; disparate outcomes regarding the form of production; and a brief discourse about how clowns are scary, but ESI is not.

Download the publication.

Jury Awards $21 Million to Hotel Dishwasher After She Was Forced to Work on Sundays

A federal jury in Miami set a $21.5 million verdict for a Haitian immigrant in a religious accommodation case who lost her job at a Conrad Hotel because she would not work on Sundays because of religious beliefs.

The Washington Post **reports** that Marie Jean Pierre informed the hotel when she was hired about a decade ago that she was a missionary for the Soldiers of Christ Church. Most of the time the hotel allowed her to have Sundays off, but in 2015 a kitchen manager started insisting that she work on Sundays.

"Pierre's attorney, Marc Brumer, said the hotel had an obligation to 'reasonably accommodate' their employees' religious beliefs — and argued they could have easily done so for Pierre. Instead, he said, they charged her with absenteeism and fired her," writes the *Post*'s **Amy B. Wang**.

A cap on punitive damages will limit the payout to about $300,000 if the verdict is upheld.

Read the *Post*'s article.

Border Wall Needs Private Property. But Some Texans Won't Give Up Their Land Without a Fight.

Image by U.S. Customs and Border Protection

Government lawyers have taken the first step in trying to seize private property using the power of eminent domain to build a border wall – a contentious step that could put a lengthy legal wrinkle into President Trump's plans to build hundreds of miles of wall, reports ***The Washington Post***.

Previous eminent domain attempts along the Texas border have led to more than a decade of court battles, some of which date to George W. Bush's administration and have yet to be resolved, according to the *Post*'s **Katie Zezima** and **Mark Berman**. Many landowners are vowing to fight anew.

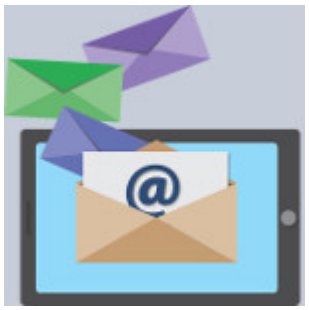
The reporters quoted Gerald S. Dickinson, an assistant professor of law at the University of Pittsburgh, who said this newest fight will be different because the earlier effort mostly included federal government land.

"If it's going to be a contiguous wall across the entire

southwest border, you're talking about a massive land seizure of private property," he said.

Read the *Post* article.

A Quick 'Yes' Can Create a Binding Contract, Even If There Has Not Been Agreement on All Terms



Even an informal email can constitute acceptance of a contractual offer, warns **The In-House Advisor**.

"Moreover, just a few months ago, Judge Timothy Hillman took this principle one step further by ruling, in *Witt v. American Airlines,* that an exchange of emails can form a binding settlement agreement, even if the parties have not agreed to all of the terms of that settlement," explains author **Shepard Davidson**, a Burns Levinson partner.

The judge found that both sides had agreed to a settlement in an email exchange. When the plaintiff later tried to reopen discussions, American Airlines filed a motion to enforce settlement agreement. The court allowed the motion.

Read the article.

Why Johnson & Johnson May Not Have to Pay Its $4.7 Billion Court Verdict

While a $4.7 billion jury verdict in a talc case against Johnson & Johnson in July was eye-popping – the sixth-largest ever in a product-defect case – J&J may pay far less, or nothing, reports **Bloomberg**. No verdict of that size has survived appeal.

"Indeed, of the 25 largest U.S. jury awards, 23 were reversed, drastically cut or against defendants with few or no assets who couldn't pay, according to data compiled by Bloomberg. The remaining two, including the one against J&J, are being appealed. Most such revisions are by judges overruling angry jurors or enforcing court-imposed limits on punitive damages," writes Bloomberg's **Margaret Cronin Fisk**.

But even if the award is cut or reversed, a large verdict can draw other cases.

Read the Bloomberg article.

Syngenta MDL Judge Tears Up Lawyers' Contingency Contracts in $500 Million Fee Ruling

Reuters **reports** that U.S. District Judge John Lungstrum of Kansas City has set aside individual contingency fee contracts that some plaintiffs' lawyers had in place for clients in a multidistrict litigation.

The ruling rejected the claims of Watts Guerra, a Texas firm that had signed up tens of thousands of farmers to bring individual cases in state court, accusing the agricultural giant Syngenta of peddling genetically modified seeds that produced corn China refused to import. The case led to a $1.5 billion global settlement for the U.S. farmers, according to Reuters' **Alison Frankel**.

"This court has the authority and duty to determine the amount of reasonable fees paid to attorneys from the settlement fund, and because any further contingent fee payments would necessarily come from proceeds from the settlement fund, the court can and does prohibit any such additional payments," Lungstrum wrote in the opinion.

Read the Reuters article.