JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

IN THIS ISSUE:

MISSISSIPPI REFUSES MEDICAL MONITORING REMEDY ABSENT PHYSICAL INJURY

***Paz v. Brush Engineered Materials, Inc.*, 949 So.2d 1 (Miss. 1/4/07);**
***Paz v. Brush Engineered Materials Inc.*, ___ F.3d ____, 2007 WL 926818 (5th Cir 3/29/07)**

Medical monitoring – the establishment of a judicially administered fund to pay for medical tests for healthy individuals who have been exposed to a hazardous substance – has, for the past two decades, been the subject of judicial controversy. In its heyday, it seemed that one state after another rushed to embrace the facially attractive concept that one who unleashes a potentially dangerous substance should pay for exposed persons to be medically tested on a regular basis – either to reassure themselves that nothing is wrong, or to uncover latent disease in its earliest stages. However, more recently a number of states have, after a closer look, rejected medical monitoring as a legal remedy. In the *Paz* cases, Mississippi joins the column of states that require that a person who has been exposed to a hazardous substance *must demonstrate a present physical injury* before a defendant will be required to pay for the cost of future medical check-ups.

Paz began in the Southern District of Mississippi when employees of John C. Stennis Space Center in Stennis, Mississippi, brought suit claiming that during the course of their employment they had been exposed to respirable beryllium dust, fumes and particulate matter from products manufactured by the defendants. In their suit they asked that the product manufacturers establish a medical monitoring trust fund to pay for diagnostic tests, and treatment in the event that the tests revealed disease or illness resulting from the exposure. Judge Guirola of the Southern District of Mississippi dismissed the case holding that Mississippi law would not recognize a claim which alleged only *prospective* physical and economic harm. *Paz v. Brush Engineered Materials, Inc.*, 351 F.Supp.2d 580 (S.D.Miss. 1/7/05).

The plaintiffs appealed to the United States Fifth Circuit which held that the issue of medical monitoring under Mississippi law was not so clear-cut. The Fifth

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

Circuit asked the Mississippi Supreme Court to resolve the question setting forth the factual background of the case as follows:

> According to the appellants, exposure to airborne beryllium can cause Chronic Beryllium Disease ("CBD"), an irreversible scarring of the lungs that can lead to lung failure and death. However, initial symptoms of the disease do not typically appear until many years after the exposure. Early detection of the disease during its long latency period can delay and diminish the debilitation caused by the disease. However, many who have been exposed to beryllium and are at risk for CBD never show any signs of the disease and ultimately experience no ill-effects whatsoever from their beryllium exposure.

Paz v. Brush Engineered Materials, Inc., 445 F.3d 809 (5th Cir. 4/7/06).

In *Paz v. Brush Engineered Materials, Inc.*, 949 So.2d 1 (Miss. 1/4/07), the Mississippi Supreme Court sitting *en banc* agreed with the trial judge, Judge Guirola, and held that the current law of Mississippi would not recognize medical monitoring in absence of a present injury. Further, the Mississippi Supreme Court declined to expand present Mississippi law to include medical monitoring.

The Mississippi Supreme Court explained that mere exposure to a dangerous substance does not constitute an injury under Mississippi law. The court cited competing cases from other states – referring to approximately twelve that had either recognized medical monitoring or predicted that it would be recognized and seventeen that had refused to recognize medical monitoring. The court stated that cases from other states might have some persuasive value but were not binding, and it was free to disregard them. The court refused to engage in a detailed analysis of that case law, but instead simply stated that it would not create a new category of "potential illness actions", which would include medical monitoring actions.

The Mississippi Supreme Court concluded with the following answer to the Fifth Circuit's certified question:

> [I]n response to the question from the Fifth Circuit as to whether Mississippi recognizes a medical monitoring cause of action without a showing of physical injury, this Court has previously refused to recognize such an action and in accordance with Mississippi common law continues to decline to recognize such a cause of action.

Following this instruction from the Mississippi Supreme Court, the United States Fifth Circuit affirmed Judge Guirola's dismissal of the beryllium-exposed employ-

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

ees' case for failure to state a claim upon which relief could be granted.

In contrast to Mississippi's relatively efficient disposition on this issue, our Louisiana readers may recall the checkered history of the medical monitoring issue in Louisiana. The Louisiana Supreme Court recognized the medical monitoring issue in *Bourgeois v. A.P. Green Industries, Inc.*, 1997-3188 (La. 7/8/98), 716 So.2d 355 ("*Bourgeois I*"), a case brought by former employees of Avondale Shipyard who claimed they had been "significantly exposed" to asbestos at Avondale but as yet had no asbestos-related disease. Within a year, the Louisiana Legislature had put into place an amendment to Louisiana's Civil Code that prohibited the award of damages for "costs for future medical treatment, services, surveillance, or procedures of any kind unless … related to a manifest physical or mental injury or disease." However, a riled Louisiana Supreme Court held that the amendment could not be applied retroactively and held that the abolishment of medical monitoring in Louisiana only applied to exposures occurring on or after July 9, 1999. *Bourgeois v. A.P. Green*, 2000-1528 (La. 4/3/01), 783 So.2d 1251 ("*Bourgeois II*").

The *Bourgeois* case itself continued to a class certification hearing in the summer of 2004. However, the Louisiana trial court, after considering the evidence and extensive post-hearing briefing, denied class certification. The Louisiana court of appeal affirmed this decision. See LA. FIFTH CIRCUIT DENIES CLASS CERTIFICATION IN ASBESTOS MEDICAL MONITORING CASE, *Bourgeois v. A.P. Green Industries, Inc.*, 2006-0087 (La.App. 5 Cir. 7/28/06), July 2006 issue. The Louisiana Supreme Court declined to review this decision. See PLAINTIFFS SEEKING MEDICAL MONITORING DENIED CLASS ACTION STATUS, *Bourgeois v. A.P. Green Industries, Inc.*, 2006-2159 (La. 12/8/06) (denial of writs), January 2007 issue.

In refusing to allow the *Bourgeois* case to proceed as a class action, the Louisiana courts appear to be following a developing trend in which many courts in other states find that, even if medical monitoring is a recognized legal remedy, multiple individual questions must be answered as to whether each person in the proposed class is entitled to be medically monitored. Because questions of individual exposures cannot be decided on a class-wide basis, class action treatment of medical monitoring cases is inefficient and inappropriate.

This e-zine will continue to report on developments on the interesting issue of medical monitoring.

– Madeleine Fischer

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

LA. 4TH CIRCUIT REBUFFS ASBESTOS SUPPLIER & INSTALLER IN HOUSEHOLD EXPOSURE CASE

***Grant v. American Sugar Refining, Inc.*, 2006-1180 (La.App. 4 Cir. 1/31/07), ___ So.2d ____**

From approximately 1979 to 1983, Thelonius Grant would launder his father's clothing following his father's return home from his position at the Domino Sugar Refinery in Arabi, Louisiana. Eagle Asbestos & Packing Company performed the insulation work at Domino during the time period of his father's employment. Years later, Grant developed malignant mesothelioma. Grant filed suit against Eagle Asbestos & Packing Company in addition to six other defendants alleging that he contracted the disease as a result of exposure to asbestos brought home on his father's clothing, which Grant laundered. Grant further alleged that Eagle was the supplier, installer and removal contractor of asbestos-containing insulation used at Domino.

Eagle filed a motion for summary judgment arguing Grant had not offered evidence that Eagle supplied or used products containing asbestos at Domino during the relevant time period nor that second hand exposure to Eagle's product was a substantial factor in Grant's disease. In opposition, Grant advanced evidence regarding the insulation projects Eagle performed at Domino during that time, depositions, his father's work records, and the affidavit of Frank Parker, Grant's industrial hygienist expert witness. During the hearing on Eagle's motion, trial judge Yada Magee asked whether Frank Parker was present at the Domino refinery at the time Grant's father worked there and questioned the fact that Parker had no personal knowledge regarding the state of the asbestos insulation at the refinery during the period of 1979 to 1983. Judge Magee subsequently granted Eagle's motion for summary judgment and dismissed Grant's claims against Eagle. Grant appealed this decision.

On appeal, in an opinion written by Judge Michael Kirby, the Fourth Circuit noted that the deposition testimony offered by Grant contained references to the use of asbestos insulation at Domino as well as Eagle's presence, installation and removal of insulation there and thus created questions of fact as to whether Eagle worked with asbestos insulation while at Domino. The Fourth Circuit then addressed the propriety of the trial court's treatment of Parker's affidavit. It opined that the lower court made credibility determinations regarding Parker's opinions which were improper at the summary judgment stage of litigation. Thus, the Fourth Circuit reversed Judge Magee's grant of Eagle's motion for summary judgment.

Although this case focused on the question of proof of substantial exposure, the significance of this case is its relative novelty as a second-hand or household asbestos exposure case. These cases involve claims made by individuals who, although not present at worksites or other premises where asbestos may be present, nevertheless have contracted an asbestos related disease after being exposed to asbestos dust or fibers brought home on the clothing of household members who worked at these locations. Cases such as this one are appearing with more frequency and are indicative of a new trend – and a new class of plaintiffs – in asbestos litigation. In this case Grant (the launderer) brought suit against a supplier, installer, and removal contractor of asbestos-

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

containing insulation, but product manufacturers, premises owners, and other types of contractors who do not deal directly with asbestos-containing materials are also being named as target defendants in such suits.

Readers may be interested to know that, while this case did not address the issue of whether Eagle owed a duty to protect Grant –a person with whom it had no direct relationship and who was exposed away from the workplace – a recent household exposure decision of the Fourth Circuit, also written by Judge Kirby, determined that a construction contractor who did not work directly with asbestos-containing insulation, but who merely worked on premises where old asbestos-containing insulation existed and was being removed by someone else, owed a duty to the wife of its employee when she contracted mesothelioma two and a half decades later. *Chaisson v. Avondale Industries, Inc.*, 2005-1511 (La.App. 4 Cir. 12/20/06), 947 So.2d 171 (*writ applied for*). The defendant in that case has sought a writ to the Louisiana Supreme Court. If the Louisiana Supreme Court decides to accept the writ, we may have a definitive decision on the household exposure duty issue *vis a vis* construction contractors in the future.

– Jana M. Montiel

MOBILE HOME MANUFACTURER & SELLER BOTH RESPONSIBLE FOR DAMAGES DUE TO DEFECTS

***Aucoin v. Southern Quality Homes, LLC*, 2006-0970 (La.App. 3 Cir. 2/28/07), ___ So. 2d ___**

Kelly Aucoin and his wife purchased land and a mobile home from Southern Quality Homes, LLC. The mobile home was manufactured by Dynasty Homes. The Aucoins experienced problems with the home primarily due to the proliferation of mold, which was attributed to defects in construction and installation. The Aucoins sued both the mobile home seller (Southern Quality) and the manufacturer (Dynasty) for damages. The trial court awarded judgment to the Aucoins against both defendants, awarding return of the purchase price of the home and land, closing costs, dirt work, mental pain and suffering, medical bills, prescription bills, insurance and taxes, expert fees, costs, and attorney fees. Dynasty, the manufacturer, appealed arguing that it should not have been held liable along with the seller for many of these items which it contended were not caused by manufacturing defects but arose due to problems caused by the seller. The Third Circuit Court of Appeal found no error and affirmed all of the lower court's findings.

Louisiana utilizes the civil law term "redhibition" to refer to the legal remedy available to a purchaser who buys a thing that is so defective he would not have purchased the product had he known of the defects. As regular readers of this e-zine will probably remember, in Louisiana the liability of a manufacturer for damages caused by its products is normally limited to four legal theories set forth in the Louisiana Products Liability Act ("LPLA"). The LPLA contains one exception to this rule of exclusivity. While the LPLA is the proper vehicle to recover damage to property other than the product itself, the LPLA reserves to plaintiffs the remedy of redhibition for damage to the product itself and economic loss arising from a deficiency in or loss of use of the product.

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

The Third Circuit noted that when a thing sold contains a redhibitory defect, there is a presumption that both the seller and the manufacturer are solidarily liable to the purchaser. In order for Dynasty to rebut this presumption, Dynasty had to show that it was free from fault in causing the redhibitory defects. The trial court found that the principal redhibitory defect was a moisture problem which caused mold to proliferate. The court cited opinion testimony from two expert witnesses who opined that manufacturing defects contributed to the overall moisture problem. Absent manifest error, the Third Circuit would not disturb the lower court's finding of fact on this issue. The Third Circuit wrote that if both the manufacturer and the seller created redhibitory defects, then each party should be fully responsible for the entire debt of return of – or reduction in – the purchase price. Consequently, both Dynasty and Southern were responsible for defects in the home sold to the Aucoins, and both would be solidarily liable for the purchase price.

Regarding damages for the land and installation costs, the court again found Dynasty solidarily liable with the seller for the damages. The Aucoins testified that the land and mobile home were sold together, and they would not have bought one without the other. The court noted that under Louisiana law both manufacturer and seller are responsible for the whole performance and found this to include the land, the installation, and the mobile home.

Dynasty also asserted that awards for mental pain and suffering damages can only be recovered against a manufacturer under the Louisiana Products Liability Act (LPLA). The Third Circuit disagreed and found that damages for such non-monetary losses may be recovered when the nature of the sales contract is intended to gratify a non-monetary interest. In this case, the court cited testimony by the Aucoins that the purchase of this mobile home and the land would fulfill, to them, the American Dream, as well as satisfying other non-monetary interests.

The Third Circuit's holding affirms Louisiana law solidarily binding the manufacturer and the seller for damages in the case of redhibitory defects. A manufacturer can overcome this presumption but only through an affirmative showing that the redhibitory defects in the product were solely caused by the seller. The Third Circuit's holding that a product manufacturer can be liable in redhibition for *non*-pecuniary damages like mental pain and suffering is somewhat questionable, given the language of the LPLA which reserves to purchasers the redhibition remedy only for damages to the product itself and economic damages caused by the product's defects. It also seems somewhat illogical that a mobile home manufacturer could be held liable for the purchase price of the land on which the mobile home was placed.

Cases concerning the interaction of redhibition and product liability are few and far between in Louisiana, and this case sets a negative precedent for manufacturers who normally are entitled to avail themselves of the exclusivity provisions of the LPLA. We will wait to see whether Dynasty seeks review of this decision with the Louisiana Supreme Court.

– Bernard H. Booth

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

TRIAL EVIDENCE SUFFICIENTLY PROVES EXPOSURE TO ASBESTOS CAUSED PLAINTIFF'S DEATH

***Graves v. Riverwood Intern. Corp.*, 41,810 (La.App. 2 Cir. 1/31/07), ___ So.2d ____**

On April 24, 2000, Walter Graves filed suit against both manufacturers of products containing asbestos and numerous present and former owners of the paper mill in West Monroe, Louisiana, where Graves worked from 1943 to 1986. In his petition, Graves alleged that he was excessively exposed to asbestos while employed at the paper mill. In June of 2000, upon Graves' death from mesothelioma, a long-latency asbestos-related disease, his widow and two daughters substituted themselves as parties and added as a defendant Olin Corporation.

After trial, the jury found that: a) Graves had sustained an asbestos-related injury; b) Olin was negligent; c) a defective condition existed in the premises owned by or in the custody of Olin; d) the defective condition was a substantial contributing factor to the development of Graves' asbestos-related injury; e) these findings were also applicable to the Brown Paper Mill, from whom Olin purchased the mill; f) Olin had assumed the liability of the Brown Paper Mill; and g) none of the manufacturers or other defendants were at fault. The plaintiffs were awarded damages in excess of $4,500,000, which the trial court later reduced to slightly more than $3,000,000. Olin appealed from this judgment to Louisiana's Second Circuit Court of Appeals.

In its appeal, Olin argued that neither it nor Brown Paper Mill manufactured the asbestos containing products used in the paper mill and that the jury's failure to hold the manufacturers liable was clear error. In Louisiana, to establish liability on the part of a manufacturer or distributor, it is insufficient to simply show that a product contained asbestos; rather, the burden is to show that the product released asbestos dust or fibers that were inhaled by the plaintiff and that this exposure was a substantial factor in bringing about the injury. Evidence of the mere presence of an asbestos-containing material or product is insufficient to prove a manufacturer liable to a plaintiff. The Second Circuit held that Olin failed to establish the causal prerequisites necessary for a finding of liability on the part of any of the other alleged jointly responsible parties.

Olin also argued that the plaintiffs should not have been allowed to present evidence of the historical development of knowledge of any asbestos-related disease other than mesothelioma. The Second Circuit disagreed, holding that evidence of the development of scientific knowledge concerning all of the health risks posed by asbestos exposure was directly relevant to the issue of the foreseeability of harm. The Court, in essence, held that a plaintiff can present evidence showing that the manufacturer was aware of a potentially dangerous characteristic of its product, even if the injuries actually sustained by the plaintiff were completely different from those of which the manufacturer was aware.

Finally, Olin argued that the trial court erred in finding that Graves developed mesothelioma as a result of exposure to asbestos materials during his employment at Brown Paper Mill from 1943 to 1955 and/or with Olin from 1955 until the 1970's. Prior to 1952, Louisiana did not provide workers' compensation coverage for any occu-

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

pational disease, including asbestos related diseases. Thus, an employee such as Graves who contracted an occupational disease from exposure during this time period is free to sue in tort. Graves presented evidence sufficient to show that his asbestos exposures between 1943 and 1952 were "significant" and that such exposures later resulted in the manifestation of his damages. "Significant exposures" occur and the related cause of action accrues when asbestos dust has so damaged the body that the fibrogenic effects of its inhalation progress independently of further exposure. Several former coworkers testified that Graves was exposed to large amounts of asbestos at the paper mill prior to 1952. Doctors testified that such exposures would have been a substantial contributing factor to the development of Graves' mesothelioma. The Second Circuit held that the plaintiffs presented sufficient evidence to show that Graves had significant exposures to asbestos while working at the paper mill prior to 1952.

This case illustrates that manufacturers and distributors are not subject to a strict liability standard simply because their products contained asbestos. Plaintiffs, and/or co-defendants seeking to reduce their liability, must show that the product released asbestos dust or fibers that were inhaled by the plaintiff and that this exposure was a "substantial factor" in bringing about the plaintiff's injury. This case may prove beneficial to manufacturers in products liability cases because it strictly enforces the plaintiff's burden of proof.

– Don A. Rouzan

LA SUPREME COURT REFUSES TO REVIVE CASE VS. CAR MAKER FOR ALLEGED ILL PRACTICES

Wright v. Louisiana Power & Light, 2006-1181 (La. 3/9/07), ___ So.2d ____

On the afternoon of October 16, 1988, Ned Wright drove his 1982 Mercedes-Benz SL open-topped convertible up a guy wire anchoring a light pole in Monroe, Louisiana, causing the car to overturn. Mr. Wright, who was unbelted, died minutes after the accident. His wife, Betty Jo Wright, survived. Mr. Wright, who had a blood alcohol level of 0.19, was indisputably at fault in causing the accident.

Following the accident, Mrs. Wright sold the car, but later brought suit against Mercedes-Benz claiming that defects in the car's design contributed to the injuries. Mrs. Wright's case progressed over a number of years with Mercedes-Benz arguing that Mrs. Wright had prejudiced its case by disposing of important evidence. Mercedes-Benz's motion to dismiss the case on this ground was ultimately denied; however, it was later discovered that counsel for Mercedes-Benz had located and purchased the long-lost vehicle – all the while implying through its motion, that it did not have physical possession of the car.

In the year 2000, the case was tried, and Mrs. Wright lost. In 2003, after having discovered that defense counsel had purchased the car and had had possession of it before trial, Mrs. Wright brought a motion to nullify the judgment and re-open the case.

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

The Supreme Court (with one dissent) agreed with the trial court that plaintiff was not entitled to have the case re-opened. While the court was "concerned" that the defendant's counsel had purchased the car and not made this known to the plaintiff, the court did not, "find that it deprived plaintiffs of a legal right or render[ed] the enforcement of the judgment unconscionable or inequitable. Simply put, nothing defendants did prevented the plaintiffs from locating the car in the 12 years before trial."

Preservation of evidence in a products liability case is of the utmost importance, whether within the control of the plaintiff or the defendant. Plaintiffs contemplating litigation or defendant manufacturers anticipating a possible lawsuit should take all necessary steps to safeguard the product involved in order to insure a fair and complete outcome of the dispute and avoid allegations of spoliation of the evidence such as occurred in this case.

– Madeleine Fischer

FEMA TRAILER FORMALDEHYDE CASE THEORIES LIMITED FOR LOUISIANA PLAINTIFFS

***Hillard v. U.S.*, 2007 WL 647292 (E.D. La. 2/28/2007)**

This matter was brought as a class action on behalf of the named plaintiffs and those similarly situated in Texas, Louisiana, Mississippi, and Alabama, against the United States and various manufacturers and distributors of travel trailers. Specifically, plaintiffs alleged that FEMA trailers distributed in the wake of Hurricanes Katrina and Rita contained hazardous levels of formaldehyde. Their claims included a variety of theories of fault on the part of the defendants. In this opinion, Judge Mary Ann Vial Lemmon addressed motions to dismiss brought by various parties.

Judge Lemmon granted the United States' motion to dismiss claims under the Stafford Act, the authority under which the government provided disaster relief to hurricane victims. Judge Lemmon found that the allegations of negligence on the part of the government under the Stafford Act involved matters committed to FEMA's discretion and that therefore, the government was immune from liability for those acts.

To address the trailer manufacturers' motions, Judge Lemmon had to make a preliminary decision as to what law applied to plaintiffs' claims. As noted, the named plaintiffs claimed to represent residents of four different states, including Louisiana. While Judge Lemmon declined to make a choice of law decision for residents of Texas, Mississippi, and Alabama, she found that as to Louisiana residents, the law of Louisiana would apply. Under Louisiana law, because the Louisiana Products Liability Act ("LPLA") is the exclusive remedy available for damages caused by a manufacturer's product (with one exception), all claims of Louisiana plaintiffs under theories outside of the act, such as negligence, negligence per se, gross negligence, recklessness and willfulness, strict liability, and punitive damages were dismissed.

Further, although the LPLA's one exception allows a plaintiff to assert a redhibition claim, Judge Lemmon also dismissed the redhibition claim here. The recipi-

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

ents of the FEMA trailers did not actually purchase the trailers; rather, the trailers were donated to them by the government. Louisiana courts have refused to allow donees to recover in redhibition against manufacturers. Accordingly, although the plaintiffs' redhibition claims were not precluded by the LPLA, the motion to dismiss redhibition was also granted.

The only remaining claim asserted by Louisiana plaintiffs was breach of express warranty. Because the LPLA encompasses a breach of express warranty theory, Judge Lemmon allowed this claim to stand, despite the fact that plaintiffs did not specifically label their express warranty claim as falling under the LPLA.

The court also addressed the issue of whether Louisiana plaintiffs could recover medical monitoring damages if they were successful in their breach of express warranty claim. In accordance with the limitations imposed on medical monitoring by the Louisiana Civil Code, Judge Lemmon granted the motion to dismiss to the extent that plaintiffs' complaint referred to possible future injuries not yet manifested. To the extent that plaintiffs' complaint alleged actual injuries suffered, the dismissal of medical monitoring claims was denied. *See* MISSISSIPPI REFUSES MEDICAL MONITORING REMEDY ABSENT PHYSICAL INJURY, this issue.

The claims of the Texas, Mississippi, and Alabama plaintiffs were not addressed as the court felt it had insufficient facts to determine which law would apply.

– Emily E. Eagan

PHOSPHO-SODA MANUFACTURER NOT SUBJECT TO LOUISIANA UNFAIR TRADE PRACTICES ACT

***Cantu v. C.B. Fleet Holding Co., Inc.*, 2007 WL 689566 (W.D.La. 3/1/07)**

In 2004 and 2005, Cornelio Cantu ingested two packages of C.B. Fleet Phospho-soda in preparation for two separate colonoscopies. Cantu and his wife sued the manufacturer alleging that the Phospho-soda ingested by Cantu caused him kidney failure and a loss of 72% of his kidney function. The plaintiffs brought claims against C.B. Fleet under the Louisiana Products Liability Act ("LPLA"), the Louisiana Unfair Trade Practices Act, and general negligence and breach of duty related to the allegedly defective product.

C.B. Fleet filed a motion to dismiss all of the plaintiffs' non-Louisiana Products Liability Act claims. C.B. Fleet argued that the LPLA is the sole theory of recovery against manufacturers for injury caused by their products. The Court considered both the unfair trade practices claim and the various tort claims and agreed on both counts, granting the motion to dismiss leaving plaintiffs only with the LPLA claims.

– Emily E. Eagan

JONES WALKER

E*ZINES
April 2007 Vol. 75

Products Liability
www.joneswalker.com
productsliability@joneswalker.com

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Leon Gary, Jr.
Jones Walker
Four United Plaza
8555 United Plaza Boulevard
Baton Rouge, LA 70809-7000
ph. 225.248.2024
fax 225.248.3324
email lgary@joneswalker.com

Products Liability Practice Group

Ainsworth, Kevin O.
Allgood, Davis B.
Anseman, III, Norman E.
Balart, L. Etienne
Belter, Sarah B.
Casey, Jr., Thomas Alcade
Collins, Donald O.
Duvieilh, John L.
Eagan, Emily Elizabeth
Eitel, Nan Roberts
Fischer, Madeleine
Gary, Jr., Leon
Geary, Covert J.
Gomila, John G.
Hurley, Grady S.
Jenkins, R. Scott
Joyce, William J.
Leitzelar, Luis A.
Lowenthal, Jr., Joseph J.
Nosewicz, Thomas M.
Ourso, III, A. Justin
Quirk, Aimee M.
Schuette, William L.
Tillery, Jefferson R.
Truett, Amy W.
Tyler, Richard J.
Veters, Patrick J.
Walsh, Robert Louis
Windhorst, Judith V.

To subscribe to other E*Zines, visit www.joneswalker.com/news/ezine.asp