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Is Your Medicine Cabinet Safe?

By Greg Martin

Walk into your bathroom. Open your medicine cabinet and take a look. What do you see? Robitussin? Advil? Dimetapp? Do you know who makes these products? More important, do you know whether or not they're safe?

All of these products are manufactured by American Home Products — a giant pharmaceutical company which last year changed its name to Wyeth, Inc. Wyeth makes a heck of a Chap Stick, but they also made a number of products whose side effects were more problematic. Products like the Dalkon shield IUD (withdrawn from the market after it caused infertility in thousands of women); RotaShield rotavirus vaccine (the only childhood vaccine ever withdrawn from the market); Cordarone (an anti-arrhythmic heart medication which caused blindness in some users); and most recently, Pondimin or fenfluramine (half of the infamous "fen-phen" diet drug combination). Pondimin was recalled from the market after Dr. Heidi Connolly and others at the Mayo Clinic reported serious valvular heart disease among patients using the drug for weight loss.

In fact, more drugs have been withdrawn from the market over the last decade than during the entire history of the FDA prior to that time.

This is not intended to single out Wyeth in particular; Wyeth comes to mind because we recently completed a group of cases on behalf of North Carolina residents injured after taking fen-phen. Other major pharmaceutical companies have track records that are nearly as bad. Hoffmann-La Roche's acne drug Accutane, for ex-

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ample, has been implicated in causing birth defects; Warner-Lambert's diabetes drug Rezulin caused severe liver damage in some users; and Bayer's anti-cholesterol drug, Baycol, caused a rare muscle disease called rhabdomyolysis. The list goes on. In fact, more drugs have been withdrawn from the market over the last decade than during the entire history of the FDA prior to that time.

So how can you be sure that the drugs in your medicine cabinet are safe? Well, one thing that can help is to *read the label*. Under federal regulations, drug companies must label their products with instructions for proper usage and warnings about any significant side effects. The drug's label is printed on the "package insert" (the flyer the pharmacist gives you along with your medication) and is also published in a reference book called *The Physicians' Desk Reference*, or PDR, which is available at your public library. You should thoroughly read the drug's label each time you begin taking a new medication, and discuss any questions with your doctor.

The Truth About the McDonald's Coffee Case

By Elizabeth Todd

There is a nationwide call for "tort reform," which is the movement to limit the rights of individuals to justice when they are injured by the negligence of another person or a company.

When proponents of "tort reform" cite runaway jury verdicts, they often cloud certain facts and omit others to persuade Americans of the soundness of their cause. The decade-old McDonald's coffee case is a prime example. When the verdict was reported in 1994, talk show hosts like Paul Harvey jumped on the story and railed against the verdict as evidence of a system gone mad. The facts paint a much different picture.

In September 1992, then 79-year old Stella Liebeck was a passenger in her grandson's car when they went through the drive-thru at an Albuquerque, New Mexico McDonald's. (Contrary to reports, Ms. Liebeck was not driving the car, nor was the car moving at the time her coffee spilled.) Without another surface to put her cup on, Ms. Liebeck placed the coffee cup between her knees to put cream in it, and when she tried to remove the plastic lid, the entire cup of coffee spilled into her lap.

The sweatpants Ms. Liebeck was wearing absorbed the coffee and held it next to her skin. A vascular surgeon determined that Ms. Liebeck suffered third-degree burns over six percent of her body. She was hospitalized for eight days and underwent skin grafting and painful surgical treatments to remove dead and dying tissue. She had permanent scarring over the burned areas. Ms. Liebeck asked McDonald's to pay her \$20,000 in medical expenses. McDonald's flatly refused.

McDonald's produced documents showing more than 700 other customers had complained of being scalded by McDonald's coffee during the years 1982 - 1992. Some of those scalded were children and infants. Many of the 700 cases resulted in out-of-court settlements in amounts as high as \$500,000. McDonald's also confessed that it based its coffee temperature on a consultant's recommendation, and that the company had never considered the safety issues related to coffee that is served between 180 and 190 degrees Fahrenheit. Similar restaurants serve their coffee at approximately 135 - 140 degrees.

During trial, the McDonald's quality assurance manager testified that he knew that a burn hazard exists with any food product served at more than 140 degrees, and that McDonald's coffee, being at least 40 degrees hotter, was unfit for human consumption because it would burn the mouth and throat. He also testified that he had no intention of lowering the temperature, even when reminded of the 700 known instances of customers being burned by McDonald's coffee.

An expert testified that at 180 degrees, McDonald's coffee would cause third-degree burns in two to seven seconds. Had the coffee been 155 degrees - still 15 degrees hotter than the average fast-food restaurant's coffee - it could have cooled sufficiently to avoid a serious burn. McDonald's admitted that it did not warn customers that its coffee could produce third-degree burns, and offered no reason for its failure to warn.

The jury found that Ms. Liebeck suffered \$200,000 in damages for her medical expenses and disability, however the amount was reduced by 20 percent (\$40,000) because the jury determined that Ms. Liebeck was 20 percent at fault for spilling the coffee. Such a reduction is not available in North Carolina, where, if a person is at all responsible for his or her own injury, he or she recovers nothing.

The jury determined that McDonald's had engaged in conduct that should be punished, and included \$2.7 million in punitive damages in its verdict. The amount represents *two days'* profit for McDonald's coffee sales only. Since a corporation cannot be jailed, punitive damages are meant to punish. To punish a global corporation effectively the damages amount must be large enough for the corporation to feel an impact. The trial court refused to order a new trial for McDonald's, stating that the company's conduct was "callous." The court eventually reduced the total verdict to \$480,000.

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The McDonald's coffee case was not an example of the jury system run amok. In fact, it shows that cases such as Ms. Liebeck's against corporations demonstrate the power that one lone consumer can have. A post-verdict investigation showed that the Albuquerque McDonald's lowered the temperature of its coffee to about 158 degrees.

The next time you hear someone bemoaning the litigation "crisis" facing our nation, be wary of the stories about runaway juries and frivolous lawsuits. There may be a real "rest of the story" you're not being told.

Asbestos Exposure Still Poses a Serious Health Threat

Although it is commonly believed that asbestos exposure and asbestos diseases are mainly problems of the past, a new study shows that the asbestos public health tragedy will continue to affect thousands of Americans into the next decade. The results of the study were released by the Environmental Working Group after the organization examined industry data obtained through the Freedom of Information Act.

According to the study, more than 43,000 Americans have died from asbestos-related diseases since 1979. Surprisingly, the study estimates that 100,000 Americans will die over the next decade from asbestos-related diseases, an average of 10,000 per year. Asbestos exposure is responsible for approximately one in every 125 deaths of men more than 50 years old. Most of these diseases are caused by exposure to asbestos from 20 to 40 years ago, since asbestos diseases typically occur many years after the asbestos exposure takes place. Read more about the study at:

www.ewg.org/reports/asbestos/facts/

SPENCER PARRIS PROTECTS EQUAL ACCESS TO JUSTICE

Spencer took a relatively small case to the North Carolina Supreme Court against the resources of Nationwide Insurance to settle an important question regarding equal access to justice. North Carolina law allows a judge to make the insurance company pay for an injured party's legal fees in cases where the judgment is \$10,000 or less. The reason is to allow injury victims with claims of less value equal access to the courts. Without such a law, large insurance companies would beat down these claimants.

The insurance companies tried to change the intent of the law, so Spencer took the case to the North Carolina Supreme Court. The North Carolina Supreme Court adopted Spencer's approach that the amount of the offer of judgment was to be compared not to the verdict, but instead to the final judgment received by the plaintiff (which would include interest, costs and fees) to determine whether the plaintiff could receive legal fees. This case helped level the playing field against the most powerful corporations in the world.

Since the late 1960s, hundreds of thousands of American workers have become sick and many have died as a result of asbestos diseases. These diseases could have easily been prevented if the companies making the products had simply placed warnings on them, or eliminated the asbestos from the products. They chose instead to put profits first and the health of the people who worked with their products last.

The companies which made these deadly products, and their insurance carriers, are now asking the United States Congress to protect them from lawsuits brought by asbestos victims in a bill entitled the "Fairness In Asbestos Injury Resolution Act of 2003" (Senate Bill 1125).

The proposed legislation is being sponsored by Senate Republicans who have been lobbied by the asbestos companies and the insurance industry which has paid many of the claims of asbestos victims. These companies believe that with the current White House Administration, this is their best chance to avoid responsibility for what they have done by setting up a compensation system for asbestos victims which is anything but fair.

Senate Bill 1125 misleads the public and asbestos victims by claiming to offer more than one hundred billion dollars in compensation to those with asbestos diseases. What the bill doesn't state is that most victims will never qualify for compensation, and those who do have no guarantee as to when, whether, or how much they will actually receive. The legislation will eliminate many rights of asbestos victims by:

- Abolishing the more than two hundred thousand lawsuits currently pending in courts throughout the United States;
- Eliminating asbestos victims' constitutional rights to trial by jury and replacing those rights with a federal compensation system run by bureaucrats;
- Providing for payment to asbestos victims only if they meet very stringent exposure and medical criteria. Even then the amount of compensation will be less than historically available in our court system;
- Eliminating the responsibility of bankrupt companies to pay full value for claims already filed on behalf of asbestos victims; and
- Permitting the asbestos companies to pay the money to fund the plan over a 27-year period without any guarantee that claims will be paid, or that the companies will put in more money in the event more people get sick as a result of asbestos exposure in the future than was expected.

This bill, if passed, would take away most of the rights of asbestos victims. Without these rights, these victims will become "statistics with the tears wiped off."

Contingency Fees: Leveling the Playing Field for You

There are basically two ways attorneys are paid. Attorneys can bill an hourly rate and charge by the hour, or attorneys can work on a contingency fee basis. A contingency fee is one where the lawyers get paid only if money is recovered for a claim. Payment for services is "contingent" upon recovery. The contingency fee is a percentage of that recovery.

Most attorneys who defend insurance companies and big businesses charge their clients by the hour. These defense attorneys bill their clients on a regular basis, and they get paid on a regular basis, regardless of whether they win or lose their cases. While insurance companies and big businesses can afford to spend money on both the attorney's fees and the thousands of dollars necessary to finance a case from beginning through trial, most ordinary citizens would be unable to afford to bring a lawsuit if they were required to "pay as you go."

To keep the courthouse doors open for everyone, many trial lawyers agree to get paid only when a successful result is achieved for their clients. The contingency fee is based on a percentage of the recovery. A contingency fee can be any percentage as long as it is fair. Fairness is determined by the complexity of the individual case. Typically, contingency fees range from 25-40 percent of the total recovery.

The contingency fee levels the playing field. It allows anyone to walk into a law office and say, "I have been wronged, and it is not right." If it weren't for contingency fees, only the very rich would be able to challenge a wrong.

These materials have been prepared by Martin & Jones for informational purposes only and are not to be considered legal advice.

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