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As "vaping" continues to grow in popularity, defects in lithium-ion batteries used for electronic cigarettes is a growing hazard. In a July 2017, the United States Fire Administration reported that between 2009 and 2016 there were 195 separate incidences of explosions and fires involving electronic cigarette batteries. These incidences resulted in 133 acute injuries. The battery fires and explosions typically occurred when the device was in use or in the user's pocket. The internet is replete with surveillance videos in public places capturing the "flaming rocket" type explosions when the batteries fail.

In 2016, Martin & Jones client was carrying his Chinese made spare lithium-ion e-cigarette battery in his front pants pocket. The battery was less than four months old and our client had followed the seller's and manufacturer's instructions not to carry the battery in a pocket with keys, coins or other metal objects. As our client was driving down the road, the battery spontaneously exploded in his pocket causing an intense fire. Our client was able to safely pull to the side of road and in an attempt to remove the flaming battery from his pocket, suffered extensive burns to his hand, with his pants still on fire he exited his vehicle and pulled his burning pants off on the side of the road. Our client suffered second and third degree burns to his thigh and hand. While his hand healed, he was required to undergo multiple skin grafting procedures on his thigh which required the removal of skin from an undamaged part of his leg and surgically attached to the area where he suffered second and third degree burns. Fortunately, our client had an excellent recovery.

We brought suit against the retail vaping shop and subsequently the battery distributor, but did not bring suit against the Chinese manufacturer who had no US presence and based on other lawsuits, would not have responded to litigation. China does not recognize the full faith and credit of a judgment in the United States courts. The defense contended that the Chinese manufacturer was subject to the jurisdiction of the North Carolina courts, and therefore, the protections of the North Carolina Product Liability Statute applied to the seller and distributor. The retailer, however, made representations to our client about which batteries to use and represented to him that they were the best batteries for vaping. Further, the vape shop never informed our client that exploding e-cigarette batteries was not an uncommon phenomenon and therefore failed to warn our client about a known danger.

Suit was filed and after depositions of the parties and expert examinations of the batteries, the charger and vaporizer were conducted, the case was mediated. The defense contended that the plaintiff should have carried the battery in a container in his pocket and further that the two most likely causes of the battery explosion and fire were: (1) contact with metal, and (2) the battery was likely damaged which should have been apparent to the plaintiff. Our client denied that he had anything other than the battery in his pocket and further testified that the battery was only 4 months old, was not damaged, and was charged as instructed.

The case settled before trial at mediation for $175,000, which settlement was based on our client's medical expenses, lost wages, pain and suffering, and the scarring to his leg. Fortunately, our client had a very good recovery, the scarring was in a location that was not all that noticeable and further, he had no ongoing problems or need for future medical treatment.

Exploding lithium-ion e-cigarette batteries, manufactured primarily in China, appears to be a growing phenomenon due to the proliferation of e-cigarettes and the importation of defective batteries. The Food and Drug Administration and the Consumer Product Safety Commission, should take actions to protect United States consumers from this hazard.

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