SUMMER 2005

A NEWSLETTER FROM THE LAW OFFICES
OF MARTIN & JONES

MJ notes

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Martin & Jones
TRIAL LAWYERS

Workplace Hazardous Substances: Workers Have A Right To Know

by Chris Olson

The Occupational Safety and Health Administration (OSHA) made clear, almost 20 years ago, that workers have a right to know about hazardous substances to which they might be exposed. Still, many workers are not properly advised about hazardous substances in the workplace. Employers have an obligation to tell workers about hazardous substances and how workers should take precautions to protect themselves from injury while working with and around those materials. Workers should feel free to ask questions to ensure that they are properly informed as to all hazards and how to take proper safety precautions.

In 1987, OSHA amended the Hazard Communication Standard to require all businesses, regardless of classification or size, to communicate the hazards and precautions to workers about chemicals at the workplace. Prior to 1987, the OSHA Hazard Communication Standard had applied only to manufacturers. The Hazard Communication Standard is intended to provide workers knowledge of the identities and hazards of the chemicals they are exposed to when working. The Standard is also meant to provide workers information about protective measures available to prevent adverse health effects resulting from exposure to those chemicals. The amended OSHA Hazard Communication Standard establishes uniform requirements to ensure that hazards of all chemicals manufactured, imported to, or used in workplaces in the United States are evaluated for physical and health hazards and that hazard information is transmitted to affected employers and exposed employees.

Manufacturers and importers of hazardous substances are required to provide hazard information to downstream employers through use of container labels and Material Safety Data Sheets (MSDS). Additionally, employers are required to implement a hazard communication program to provide hazards and precaution information to their workers through MSDS, container labels, and training.

The Hazard Communication Standard requires that employees be provided a hazard assessment, labeling program, and MSDS for each chemical used in the workplace, as well as an inventory of all chemicals. The employer must provide a written program describing the Hazard Communication Standard to all employees and must demonstrate that all employees are trained on the Hazard Communication Standard, including MSDS for chemicals in the workplace.

Pursuant to OSHA regulations, employees are entitled to see and copy their own medical records and records of their own exposure to toxic substances, as well records of exposure to toxic substances of employees who have similar jobs or working conditions. Employers are required to maintain exposure records and medical records for at least 30 years. Employers must also provide information about workplace substances listed in the most recent National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances.

Both employers and their workers benefit when employers comply with state and federal "Right-to-Know" laws. Workers exposed to hazardous substances in the workplace have an absolute right to know what those substances are and what precautions they can and should take to protect themselves. Employers must insist that their upstream suppliers transmit the appropriate hazard information with all shipments of hazardous substances. Employers must then ensure that proper hazards and precaution information are passed along to their employees. Workers should educate themselves about exposure risks and monitoring records.

Computer Program Used to Evaluate Insurance Claims

Most insurance companies evaluate your claim by a computer program called Colossus. Colossus is a sophisticated program created for insurance companies to calculate the payout on auto claims.

Colossus determines value by the format of the information. Although an attorney can manage the process and evaluate your claim, you need to make sure that your medical provider documents your medical situation and treatment. For Colossus, if it is not in writing, it does not exist. It is very important that your healthcare provider document any of the following symptoms: muscle spasms, dizziness, radiating pain, headaches, restrictions of movement, nausea, vision disturbances, neuroses, depression, anxiety, bruises, contusions, or lacerations.

Healthcare providers must accurately and plainly state symptoms in your medical notes. Colossus assigns a numerical code to each symptom. After assigning a numerical code, Colossus calculates its value of your claim.

Various medical treatments are recognized and valued differently. Colossus limits the number of visits for chiropractic care and considers such care a sprain or strain of the neck and back. Colossus adjusters will not accept a diagnosis of subluxations by a chiropractor. They will interpret these only as sprains and strains. However, when a medical doctor diagnoses a subluxation, they are classified as medical subluxations and recognized as more serious and more valuable.

Visits to specialists have separate value. Specialists are orthopedic surgeons, neurosurgeons, neurologists, psychiatrists and psychologists. Colossus generally treats physical therapy, massage and acupuncture the same way. Colossus factors in frequency and duration of this type treatment.

Colossus considers delays and gaps in treatment. If there is a gap or delay, the provider must explain the gap or delay in the records. Colossus also inquires about hospital visits or stays and what types of aids are used such as neck braces, walking aids, etc.

A significant factor in the Colossus assessment of a claim is referred to as "duties under duress." This refers to an injured person having to continue working, performing household chores or attending school even though doing so causes increased pain and discomfort. Inform your medical provider about how you continue to perform duties under duress.

An impairment rating is also recognized by Colossus. Make sure your doctor documents a prognosis. If you do not have a documented prognosis the adjuster will enter into Colossus "resolution undetermined." Such an entry is not recognized with regard to any future problems.

Remember, Colossus is part of the strategy insurance companies use to minimize the value of your claim. A computer can never accurately determine the value of human loss.

Billion-Dollar Company Wants to Take Away Your Right of Trial by Jury

by Forest Horne

Many people agree with our Constitution's Second Amendment that grants us the "right" "to keep and bear arms." Did you know that the Seventh Amendment to the Constitution also guarantees citizens the "right of trial by jury?" Both amendments provide protection for the individual.

That could change, however, with laws that passed the U.S. House of Representatives on July 28, 2005 and which are being proposed in the U.S. Senate. If this law passes the Senate, then big drug companies, medical device corporations and wealthy medical professionals will have virtual legal immunity from many claims caused by their negligence.

There has been a lot in the news about dangerous drugs and the power of billion dollar drug companies. Laws that hold these drug companies and their executives accountable send a powerful message that they cannot endanger people's lives and get away with it.

The first trial in the country against Merck, the drug company that made the powerful pain-killing drug Vioxx, is underway in Texas. Evidence has shown that the drug company knew Vioxx caused heart attacks and strokes, but Merck continued selling the "Billion Dollar Blockbuster" and chose not to warn the people taking it.

At the same time this trial is underway, the U.S. House of Representatives voted to give drug companies, medical device manufacturers and doctors sweeping immunities. These laws, if passed in the U.S. Senate, will give already hugely profitable companies an enormous windfall and will give their executives multi-million dollar pay raises. The law will do nothing to keep dangerous and deadly drugs like Vioxx off the market, or to allow juries to fully compensate individuals and their families for injury.

In addition, the bill gives complete immunity from punitive damages to any FDA approved drug or medical device unless the victim can prove the company knowingly set out to hurt that particular individual. Punitive damages are intended to deter drug companies from doing the things Merck did with Vioxx and to dole out some amount of punishment so they won't do it again. Without such deterrence, history is bound to repeat itself.

At the same time Merck is defending itself for putting a drug on the market that killed 55,000 people, the big drug companies' friends in Congress passed legislation to loosen oversight and accountability for drug companies like Merck.

According to congressional testimony by Food and Drug Administration scientist, Dr. David Graham, Vioxx caused an estimated 130,000 heart attacks and an estimated 55,000 deaths. Both the Justice Department and the Securities and Exchange Commission have opened investigations into the drug company's actions. Thousands of people who experienced heart attacks and strokes nationwide have filed lawsuits.

There is a reason that since 2000, Merck has spent $21,220,714 (that's right, over twenty-one million dollars) lobbying Congress. If this bill passes the Senate, Merck will save billions of dollars. The courts are the last resort when it comes to protecting the rights of individuals, and without this avenue to hold drug companies accountable, there is no incentive for drug companies to put people before profits. Taking away victims' constitutional rights to trial by jury and imposing limits on what juries can award will not force companies now and in the future to do the right thing and will not deter companies like Merck from doing the same thing again.

Martin & Jones is representing Vioxx victims throughout the Southeast. Our goal is to champion our clients' claims, and promote justice and fairness for injured persons everywhere.

Call your senators today and let them know you are not in favor of laws that take away the rights of people who are injured and killed due to defective drugs, medical devices and medical malpractice.

An Important Message to Our Clients

The lawyers and staff at Martin & Jones work to resolve your case as quickly as possible, while at the same time, making sure that all clients receive the most reasonable and fair compensation for their injuries. In the process of representing our clients to the best of our ability, there may possibly be a time when we require the assistance of co-counsel. When we do this, we share our fee with them. Our clients pay no additional fees. Any cost that co-counsel incurs is a cost we would incur had we been able to do that work ourselves.

Sometimes, we may ask you to get assistance for specific areas of law we cannot address, in order to continue to process your claim. One such area is probate law for wrongful death claims. We are not familiar enough with that part of the law to assist you with your estate's financial matters as it relates to filings and distributions. You and your probate attorney are responsible for such filings and distributions. In North Carolina, there must be a representative to receive wrongful death proceeds. The estate must remain open until all settlement proceeds are received and distributed. With your permission, our attorneys and staff are more than willing to supply any information we have available to your probate attorney, who can handle all such filings. That way, we can concentrate on the claim you hired us to handle.

Martin & Jones Representatives Participate in Nationwide Program

Martin & Jones is pleased to announce that our Social Security Disability Claimants' Representatives have been selected to participate in the Social Security Administration's Non-Attorney Representative Demonstration Project. This new project is in accordance with The Social Security Protection Act of 2004 and allows direct payment to non-attorney representatives, alleviating clients of this additional concern during pursuit of Supplemental Security Income and/or Social Security disability benefits.

Our non-attorney representatives Brenda Clark and Lee Todd are participating in the Social Security Administration's (SSA) new project by meeting stringent criteria including background investigation, representational experience, educational requirements and SSA's testing. Currently, only about 200 non-attorney representatives nationwide are eligible to participate in SSA's new project. Both North Carolina and federal laws allow non-attorney representatives to represent individuals for Social Security disability claims.

Martin & Jones believes our clients deserve quality representation. We realize your Social Security disability benefits are important to you, your family, and your future. Our Social Security representatives and staff have more than 15 years experience in disability claims. Brenda and Lee are members of the National Organization of Social Security Claimants' Representatives (NOSSCR) and the Disability Section of the North Carolina Academy of Trial Lawyers (NCATL) and participate in continuing educational training and seminars to keep abreast of the myriad of changes so prevalent throughout the Social Security Administration today.

It's The Insurance

By Hoyt Tessener

Many times after the case for our client is over, we speak with the jury members. One of the jurors' common questions is why did you not settle this case? Most of the jurors believe, as the insurance companies want them to believe, that if you go to court you must have turned down a reasonable settlement offer. Worse yet, many jurors believe that by going to court we are pursuing the individual defendant personally.

In today's climate, most insurance companies offer a very small amount or make no offer at all. We believe this is largely because of their losses in the stock market and their effective marketing propaganda. Everyday we hear radio advertisements, see television commercials and read publications echoing the same message – stop insurance fraud. The purpose of these messages is to influence all potential jurors. The insurance companies want us to believe that fraud is rampant and jury verdicts are out of control.

Once a reasonable offer is not made, we have no choice but to go to trial. The trial itself is really against the insurance company. However, the rules of evidence, the rules of court, do not allow us to state that insurance is involved. We all have to pretend as though the money is going to come from the defendant's pocket. That is why you have the lawyer, who is hired by the insurance company, who may not have ever met his client until the day of court, tell the jurors about the poor defendant and how the jury's decision will affect the poor defendant. In reality, everyone in the courtroom, but the jury, knows that the money is not coming from the defendant, it is coming from the insurance company.

Is it fair that the very people who are going to make the decision, the jury, does not know all of the facts? No. It is not fair. But those are the rules. We do not have the money to fund an army of lobbyists like the insurance companies. Although we do not have the resources to change the rules, we fight for our clients within the rules.

Legal Myths – Amusing and Dangerous

by Elizabeth Todd Beall

You've heard the stories: A California man won $74,000 for injuries when his neighbor ran over his hand with a car . . . while the man was trying to steal the car's hubcaps.

The story is completely false. The fabricated lawsuit and stories like it circulate each year. Some of the latest **fiction** include:

- A man purchased a motor home. On his trip home on the freeway, he set the cruise control and left the drivers seat to make a cup of coffee. The RV left the freeway, crashed and overturned. The man sued Winnebago for not advising him that he could not actually do this. He was awarded $1,750,000 plus a new Winnebago.
- A restaurant was ordered to pay a woman $113,500 after she slipped on a spilled drink and broke her coccyx. The beverage was on the floor because she threw it at her boyfriend 30 seconds earlier during an argument.
- A woman sued the owner of a nightclub when she fell from the bathroom window and knocked out two front teeth. This occurred while she was trying to sneak through the window in the bathroom to avoid paying the $3.50 cover charge. She was awarded $12,000 and dental expenses.

Although the stories of the **fake** lawsuits are amusing, they are also dangerous. The **fake** lawsuits become a part of our cultural beliefs – that there are too many lawsuits and that the majority of those lawsuits are "frivolous."

You've heard the claims that the American justice system is out of control. Before buying into the propaganda these stories propound, consider the source and do your own research, and ask yourself why someone would spend so much time making up stories to make Americans doubt their justice system.

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