



ROBERT W. KERPSACK CO., L.P.A.

Consumer and Small Business Protection Lawyers

FALL 2005

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Bob Kerpsack serving as counsel for Ohio Vioxx plaintiff class



A Master Complaint filed recently in the federal Vioxx multidistrict litigation designates attorney **Bob Kerpsack** as counsel for the Ohio plaintiff class of victims. In the Master Complaint, federal class-action lawsuits from across the country are combined to seek court certification of Vioxx victim classes for each of the 50 states. Mr. Kerpsack represents the Ohio plaintiff class representatives, who are alleging in a federal lawsuit that they and other Ohio citizens were injured by taking the prescription drug Vioxx.

The federal Vioxx multidistrict litigation is assigned to the U.S. District Court for the Eastern District of Louisiana, which is located in New Orleans. Due to the recent Hurricane Katrina tragedy, the Vioxx multidistrict litigation is now being conducted in Houston, Texas. The first Vioxx trial in the federal multidistrict litigation is scheduled to begin in Houston on November 28, 2005. In that case, a woman is suing the manufacturer of Vioxx for the death of her husband, a man in his early fifties who suffered a fatal heart attack after taking Vioxx for only one month.

A \$253 million verdict was handed down recently by a Texas jury in a federal lawsuit that was filed before the multidistrict litigation was established. The case involved the death of a man in his late fifties who took Vioxx for about eight months. Evidence presented during the trial suggested that the manufacturer of Vioxx engaged in aggressive and misleading marketing practices. At the urging of the U.S. Food and Drug Administration (FDA), Vioxx was removed from the market on

(continued on back page)

Juries protect us all

America's civil justice system holds individuals and businesses accountable when their behavior breaches society's expectations of fair treatment. The following product liability case shows how our jury system can work to protect those who need it most.

After a nine-year-old boy died from carbon monoxide poisoning when a window air conditioner caught fire, his parents sued the manufacturer, alleging wrongful death.

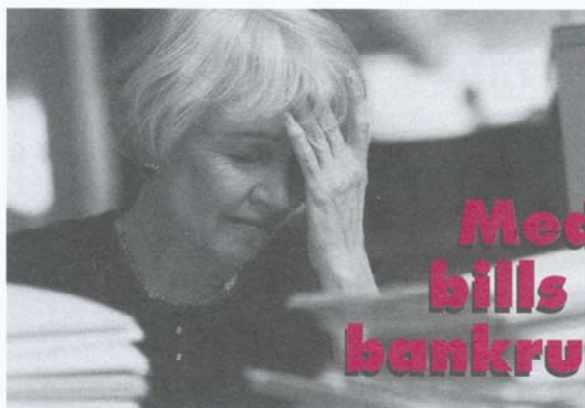
Their attorneys' investigation revealed that the air-conditioner maker had used underrated and excessively flammable components to cut costs, which resulted in the units having a

history of overheating problems. Attorneys also demonstrated that although the manufacturer was a qualified self-certifier for Underwriters Laboratories, no testing had ever been done to assure the air conditioners complied with guidelines.

A jury found that the manufacturer's conduct amounted to malice because it was aware of its product's extreme risk, but remained indifferent to consumers' safety. After jurors awarded significant actual damages, the plaintiff settled for confidential and punitive damages during jury deliberations.



We take your family's safety and security personally.



Medical bills and bankruptcy

A study appearing in Harvard University's *Health Affairs* has linked bankruptcy and medical bills.

Researchers who conducted in-depth surveys of nearly 2,000 individuals who filed for personal bankruptcy in 2001 found that roughly one in two filed for bankruptcy because of medical bills resulting from illness or injury.

Nearly half of respondents reported that their medical expenses forced them to file for bankruptcy, even though 75 percent had health-care coverage. Filers averaged nearly \$12,000 in out-of-pocket medical costs for co-payments and deductibles after they became ill. Many also lost their jobs due to their illnesses.

Bankruptcy legislation

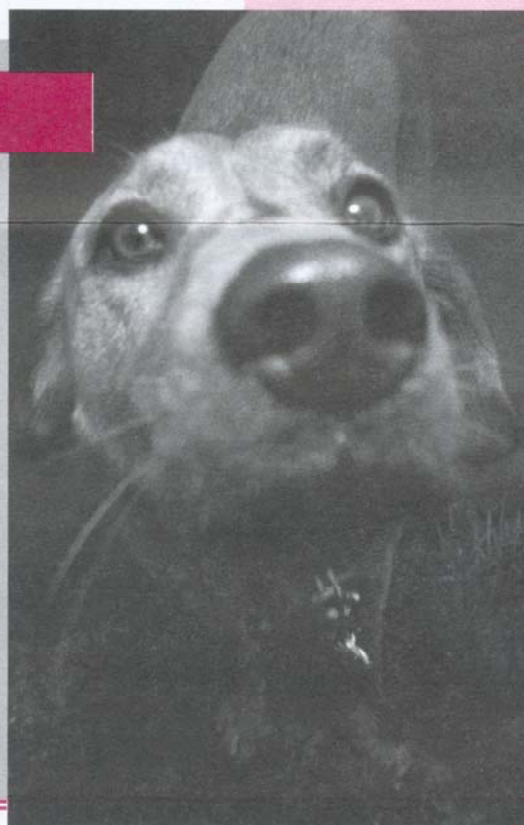
In 2001, nearly 1.5 million Americans filed for bankruptcy. In 2005, Congress passed legislation that makes it more difficult for individuals to declare bankruptcy. At the same time, however, our nation is facing escalating medical costs, increasing numbers of Americans who are paying more for health coverages at work, and more who are also losing health coverages.

DOG BITES

According to dogbitelaw.com, America is experiencing an epidemic. In a ten-year period, dog ownership grew by two percent, but bites increased by 33 percent. Insurers paid \$345 million in claims in 2003. Financial losses due to dog bites exceed \$1 billion annually.

Americans love their pets, and most dogs are safe. However, dogs still bite five million people annually, with 800,000 bites requiring medical attention. Far too many bite victims who need medical care are children, who are frequently bitten on the face.

On average, 15–20 people die from dog bites every year.



Class actions

The "Class Action Fairness Act of 2005," signed into law in early 2005, is unfair to consumers and workers. It will take most class actions out of state courts and force them into the already overcrowded and overburdened federal court system.

This class-action bill, weighed down with special-interest benefits, will make it much more difficult for those who have been harmed by corporate and other wrongdoers to obtain compensation.

Personal trust class action

The following personal trust class-action case settled in 2004 illustrates the potential value of class-action lawsuits litigated in state courts.

When several banks merged, the purchasing bank notified beneficiaries that there had been personal trust overcharges and that fees would be reduced. Nearly 6,500 plaintiffs brought a class action alleging that for nearly 20 years the banks had overcharged fees for managing personal trusts and were now failing to properly compensate trust beneficiaries.

Beneficiaries' attorneys argued that the defendants...

- should have paid compound, not simple, interest to beneficiaries.
- owed beneficiaries compensation for lost use of trust funds.
- owed plaintiffs profits from overcharged fees.
- were liable for punitive damages.

The banking defendants settled for damages of \$35 million. On appeal, the defendants also settled for profits banks made on overcharged fees for \$33 million.

Dogs that bite

Some insurers are refusing to cover homes with certain pet breeds. Insurance data show that dogs most likely to bite are Akitas, Alaskan malamutes, chows, Doberman pinschers, German shepherds, Great Danes, huskies, pit bulls, St. Bernards, and rottweilers.

A \$20,000 dog bite

A woman who was visiting a friend's apartment was bitten on her calf by the landlord's dog, which broke its chain to attack her. The wound became infected and required skin-graft surgery, which left permanent scars. Medical expenses exceeded \$20,000. The woman sued and the parties settled after jury selection.

AUTO ACCIDENT

Q After being in an auto accident, a driver is sometimes contacted by the other driver's insurer. Here is what most auto insurance agents recommend:

Q: *Should a driver give a statement to the other person's insurance company?*

A: No. Unless their agent or attorney agrees, a driver should say nothing.

Q: *How could making a statement hurt?*

A: Most people are friendly and want to answer questions honestly and fully. That could hurt a driver's case if he or she makes

remarks that somehow increase their own liability or reduce the other driver's responsibility. Insurance company representatives are trained to elicit these kinds of statements.

Q: *So how should drivers respond if agents pressure them?*

A: Drivers should tell representatives that they have attorneys and that all further contact should be directed to insurance agents or attorneys.

Q: *Is there anything else drivers should do?*

A: Yes. As soon as they're done with this kind of call, drivers should write a short record covering the conversation, noting date, time, topics, and whatever else seems important. Stay in touch with insurance agents and attorneys.

Secret settlements

Secret justice conceals risk and can even kill. Back in 2000, consumers began hearing about a number of dreadful vehicle crashes linked to Firestone tires. They learned that although Firestone had recalled six million-plus tires, more than 200 drivers and passengers had died and been injured by Firestone's products.

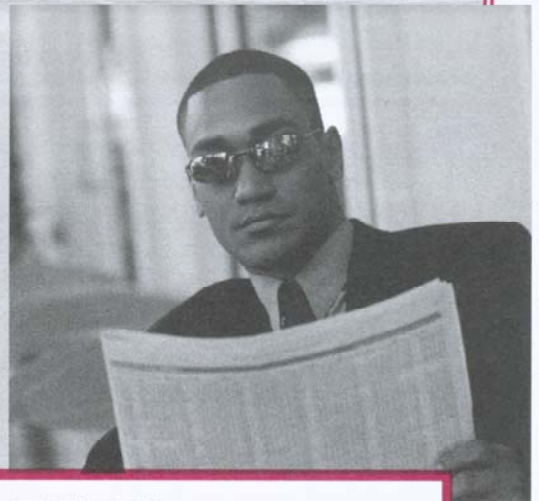
A shocking revelation was that although those harmed had sued, reports and information about this hazardous product had been sealed in secret court agreements. Wrongdoers can avoid public exposure by asking judges to approve secret agreements in which victims agree to silence in exchange for compensation.

Americans later read newspaper articles about a similar pattern of secret settlements involving...

- sexually abusive priests in the Catholic Church.
- systemic autoimmune disease related to leaking silicone breast implants.
- medical societies protecting incompetent physicians who have repeatedly committed medical malpractice.

Nearly 30 states have passed laws or promulgated court rules to keep such records open to public scrutiny to prevent additional harm or injury. But corporations, defense lawyers, and other backers of court secrecy keep finding new ways to hide serious problems from the clear light of day.

Secret justice for the few is no real justice for all.



FOR YOUR SAFETY Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **American Suzuki Motor Corporation** has recalled 30,000 Suzuki 2004-2005 model year Vinson and 2005 KingQuad ATVs with faulty throttles that can injure riders.
- ✓ **Elegant Kids 2000, Inc.**, asks parents to return 34,500 Soother Baby Pacifiers, banned under federal law after failing federal safety tests. Nipples separate from bases and can choke infants or small children.
- ✓ **Whirlpool Corporation** has recalled 40,000 KitchenAid® ProLine® toasters with heating elements that can start fires.
- ✓ **MGA Entertainment, Inc.**, has called back 300,000 Bratz™ Stylin' Scooters™ with wheels that can break and harm young riders.
- ✓ **Elec-Tech International Co., Ltd.**, of China and Applica Consumer Products, Inc., of Miramar, Florida, recalled 500,000 Black & Decker®-brand ProBlend® blenders with blades that can break and injure users.
- ✓ **Nature's Finest** voluntarily recalled about 727,000 Nature's Finest Gel Candles, which can create a high flame and start fires.

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CPSC fines manufacturer

In February 2005, the U.S. Consumer Product Safety Commission (CPSC) provisionally imposed a record \$4 million penalty against Graco Children's Products, Inc., of Exton, Pennsylvania.

CPSC officials levied the fine because Graco executives intentionally withheld information from the government that more than 12 million of its products posed dangers to young children nationwide. Between 1991 and 2002, Graco knew that its popular children's high chairs, strollers, swings, and beds had serious defects—hundreds of injuries had been reported—but it failed to act.

"CPSC is at the forefront of protecting children from products that can cause serious injuries," stated CPSC Chairman Hal Stratton. "Today's announcement demonstrates our commitment to protecting American families by holding companies accountable for keeping safety information from us."

In the settlement, Graco agreed to recall 1.2 million toddler beds that could entrap infants' arms, legs, and feet.

Medical malpractice

Texas study contradicts "litigation explosion"

Although politicians and the American Medical Association warn that the nation is in the midst of a "litigation explosion," yet another study has shown there's little evidence to make such a claim.

Researchers from Columbia University, the University of Illinois, and the University of Texas—including two doctors—who studied 15 years of Texas claims data, reported "remarkable stability" in medical malpractice lawsuits and payouts.

University researchers concluded that Texas physicians' large insurance premium increases did not come from medical malpractice claims, but instead from dynamics operating within the insurance

industry itself. Another research center, the National Bureau of Economic Research, has independently suggested that these factors might include insurance companies' investment practices, competitive behavior, and the cycle of their underwriting.

The Texas researchers also reported that:

- Large claims (over \$25,000) remained constant between 1991 and 2002.
- The number of small claims actually dropped sharply.
- Payouts and jury awards per claim remained constant or dropped.
- The rate of claims per 100 Texas physicians dropped from 6.4 (1990–92) to 4.6 (2000–02).

Bob Kerpsack serving... *(continued from front page)*

September 30, 2004.

Vioxx lawsuits are also being filed in New Jersey state courts because the corporate headquarters of the drug's manufacturer, Merck & Co., is located in Whitehouse Station, New Jersey. An ongoing trial in Atlantic City involves a 60-year-old man who suffered a heart attack after taking Vioxx for only two months. Medical expert testimony presented in that case suggests that taking Vioxx for just one day may be enough to cause injury.

If you or a family member has taken Vioxx and experienced side effects such as blood clots, heart attacks, strokes, or sudden death, then you should consult an experienced lawyer regarding your potential legal rights.