



Louisiana Advocates

AAJ report: Environmental disasters show role of civil justice system in holding polluters accountable

As Gulf Coast states continued to battle the devastation created by the massive oil spill resulting from the explosion of the Deepwater Horizon oil rig, the American Association for Justice (AAJ) released a report in early July that illustrates how corporations evaded U.S. environmental laws for decades but were later held accountable and responsible for clean-up through the civil justice system.

The report examines how laws passed in the 1960s and 1970s were supposed to protect the environment, but lax enforcement left corporations with little incentive to comply. Ultimately, trial attorneys were the ones who sought justice for communities destroyed by corporate polluters, according to AAJ.

AAJ President Anthony Tarricone said, "Time and again we have seen corporations avoid responsibility for the pollution and environmental devastation they have caused. Without the civil justice system, many corporate polluters would never have been held accountable for the disaster they caused."

AAJ says one example is smelter owner Asarco in Globeville, Colorado. According to AAJ, Asarco knew its metal processing plant was spewing lead, cadmium, and arsenic into the neighborhood for decades, exposing residents to high risks of cancer, lead poisoning, and other deadly diseases. The state of Colorado had pursued the company under the Superfund law, but the settlement covered only fifty of the nearly five hundred affected homes.

With the help of trial attorneys, residents forced Asarco to replace the contaminated soil and landscaping in the town. The company later paid

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Three LAJ members honored at AAJ conference; two elected to leadership roles

Three LAJ members were honored with awards at the American Association for Justice (AAJ) 2010 Annual Convention in July in Vancouver, B.C. One of the LAJ members honored, Burton LeBlanc of Baron & Budd, P.C., Baton Rouge, was elected AAJ secretary at the convention, and Steven J. Herman, Herman, Herman, Katz & Cotlar, L.L.P., New Orleans, was elected chairman-elect of AAJ State Delegates.

LeBlanc received AAJ's Wiedemann Wysocki National Finance Council Award, and Allan Kanner, Kanner & Whiteley, L.L.C., New Orleans, and Maria Glorioso, The Glorioso Law Firm, New Orleans, were honored with AAJ's Distinguished Service Award.

AAJ presents the Wiedemann Wysocki Award to only a few recipients each year. It honors attorneys for their commitment to the legal profession and their efforts to improve the civil justice system. LeBlanc's receipt of the 2010 award marks the second time that AAJ recognized his efforts through the Wiedemann Wysocki Award. He was first presented with the award in 2007.

LeBlanc was LAJ's 2006-2007 president. He previously served as AAJ treasurer (2009-2010) and AAJ parliamentarian (2008-2009), and he chaired

the AAJ National Finance Council.

The Wiedemann Wysocki Award was established in honor of Fritz Wiedemann and James Anthony Wysocki, two New Orleans-based attorneys and active LAJ and AAJ members who died in a plane crash while traveling to an AAJ event.

AAJ's Distinguished Service Award recognizes its recipients for going above and beyond in their commitment to the principles of the civil justice system and AAJ's mission. Through their leadership, Distinguished Service Award recipients were critical in membership recruitment, fundraising, and issue advocacy, AAJ said.

Kanner is LAJ's immediate past-president and currently serves on LAJ's Executive Committee. Kanner; Robert E. Kleinpeter, Kleinpeter & Schwartzberg, L.L.C., Baton Rouge; and Conrad S.P. Williams III, Williams Law Group, LLC, Houma; are LAJ's 2009-2010 AAJ governors. Kanner also was the founding chair of LAJ's Insurance Law Section. He served two consecutive terms in that position and was the 2006 recipient of the LAJ President's Award.

Glorioso is one of LAJ's state delegates for AAJ and a member of the LAJ Board of Governors. The Glorioso Law



Maria Glorioso



Steven Herman



Allan Kanner



Burton LeBlanc

Firm hosted the 2010 finals of the AAJ Student Trial Advocacy Competition in New Orleans in March.

As chairman-elect of AAJ State Delegates, Herman will help to lead that group of AAJ members, which is composed of two attorneys from each state, the District of Columbia, Puerto Rico, and the provinces of Canada. The primary responsibilities of the State Delegates group are membership recruitment and retention.

Herman has served as one of LAJ's state delegates for several years, currently serves on the LAJ Council of Directors, and is a past chair LAJ's Law Practice Technology Section.

Fall Conference, Sept. 16-17 in Baton Rouge, offers excellent networking opportunities for members

LAJ member surveys consistently show that the networking opportunities LAJ provides for its members are a valued benefit of association membership. One LAJ event packed with occasions at which members can network is the association's Fall Conference, September 16-17.

This two-day event in Baton Rouge will include leadership and section meetings, as well as a Thursday, September 16, Annual Membership Luncheon at which American Association for Justice Chief Executive Officer Linda Lipsen will be the keynote speaker. (See page 3 for more information on Lipsen.)

The luncheon will be held from noon to 2:30 p.m. on Thursday, September 16, at the Baton Rouge Hilton Capitol Center, 201 Lafayette Street in downtown Baton Rouge. The cost of the luncheon is \$50 per person.

Other events planned for Thursday, September 16:

- Maritime Section Meeting, 9:30-10:30 a.m.
- Auto Torts Section, 10:30 a.m.-noon
- Insurance Law Section, 2:30-3:30 p.m.
- Medical Malpractice Section, 3:30-5 p.m.

The Auto Torts, Insurance Law, and Medical Malpractice section meetings will each feature a guest speaker: John Cattie, Garretson Firm Resolution Group, will speak to the Auto Torts Section on ERISA issues. Cattie served on the faculty of LAJ's 2010 Post-Legislative Retreat in July.

Isabelle Arnold—a former national mold claims manager for Farmers Insurance, whistleblower, and former insurance company executive—will speak at the Insurance Law Section meeting. She will discuss the workings of insurance claims at the executive level.

At the Medical Malpractice Section Meeting, Lorraine LeBlanc, executive director of the Louisiana's Patient's Compensation Fund, will provide an overview of recent

PCF-sponsored legislation and how it will change how the fund operates.

You must be a member of a section in order to attend its meeting. Although there is no charge to attend any of the section meetings, please register for any meeting you plan to attend.

If you have been considering joining an LAJ section, why not make that move now so that you can take advantage of these focused meetings? A link to the LAJ section application is available on "Practice Sections" page in the "Communities" section of www.lafj.org. You may also call LAJ at 800-354-6267 or 225-383-5554 to have a section application sent to you.

The annual fee for most LAJ sections is just \$35; it is \$100 for the Medical Malpractice Section. Section members are required to complete a membership agreement.

A "Bountiful Bash for a Bodacious Board" is also planned for Thursday, September 16. The Board Bash is an invitation-only event that honors members of the association's outgoing and incoming boards. Attendance at the event for a board member and his or her guest is complimentary.

Friday board meeting

The first meeting of LAJ's 2010-2011 Board of Governors will be from 9 a.m. to noon on Friday, September 17, at the Baton Rouge Hilton Capitol Center. All members are welcome to attend the board meeting. There is no cost to attend the meeting, but pre-registration is requested.

Online registration for Fall Conference is now available on www.lafj.org. A link to registration is available on the website's home page, on the Fall Conference page, and on the "Conferences & Events" page in the "CLE & Events" section of the website.

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Verdicts & Settlements

Casino slip and fall; \$850,000 settlement

Plaintiff slipped and fell on a wet floor in a casino restroom. Plaintiff had passed a casino employee as she walked into the women's restroom, and the only portion of the restroom floor that was wet was in the stall where plaintiff slipped.

The casino's risk manager and maintenance personnel testified that every time a janitor leaves a casino restroom he or she should check the entire floor, including the stalls, for water. However, the casino was unable to produce an employee document that included the rule.

Plaintiff alleged that the casino employee who was leaving the restroom either knew about the wet floor and failed to warn or failed to check for wet floors before leaving. Plaintiff maintained the casino failed to adequately supply its employees with important safety rules. She also alleged that although the casino was notified of the fall, it failed to take any pictures and to record the name of the janitor responsible for the restroom.

Plaintiff defeated summary judgment, arguing application of an adverse presumption for failing to preserve evidence.

Plaintiff underwent more than ten epidural steroid injections and rhizotomies. Eventually, she also required a two-level discectomy and fusion. Future surgery to remove hardware is likely.

Plaintiff, who was fifty-two at time of

settlement, is the manager of a personal loan company. She was at the casino to pick up her boss. The case also included a minor past wage-loss claim but no future wage-loss claim.

Workers' compensation lien of approximately \$140,000 was reduced to \$18,500. Past medical expenses totaled about \$296,631.

Defendant conducted ten days of surveillance, which the court excluded due to lack of impeachment value.

Boudreaux v. PNK (Lake Charles), LLC d/b/a L'Auberge du Lac and Geraldine Spell, No. 2006-004334, 14th JDC, Calcasieu Parish, 5/10

Plaintiff's counsel: Aaron Broussard, Broussard & Hart, L.L.C., Lake Charles

Plaintiff's experts: James D. Perry, M.D., orthopedic surgery, Lake Charles; Gregory, J. Rubino, M.D., neurosurgery, Lake Charles. Both were treating physicians.

Failure to treat appropriately; toxic epidermal necrolysis; \$2.12 million verdict

Plaintiff's mother brought plaintiff to defendant pediatrician for treatment of an upper respiratory infection. Defendant pediatrician first prescribed the antibiotic cefdinir, but changed the prescription to trimethoprim-sulfamethoxazole.

Plaintiff began experiencing a negative reaction to the medication twelve days after starting it, and her condition progressed to toxic epidermal necrolysis. Plaintiff lost 65 percent of the skin on the surface of her body, as well as tissue in her eyes and intestines.

Plaintiffs contended that defendant was negligent in prescribing any antibiotic since plaintiff did not meet, and the defendant failed to determine whether she met, the American Academy of Pediatrics' requirements for a prescription of antibiotics for upper respiratory infections. Plaintiff also maintained that if prescribing an antibiotic was correct, trimethoprim-sulfamethoxazole was an inappropriate antibiotic to use for upper respiratory infections in adolescents.

Although plaintiffs' expert was qualified in internal medicine, he had knowledge of and experience in treating the condition in these kinds of patients. Plaintiff also argued that the standard of care was identical regardless of the specialty of the treating physician.

The trial court ruled that La. R.S. 9:2794(D) prevented him from testifying as to the standard of care applicable to pediatricians in treating upper respiratory infections in adolescents. The trial judge stayed the trial for 24 hours while plaintiffs took an interlocutory appeal. Plaintiffs prevailed, with the appellate court holding the expert was qualified to give testimony, and any specialty issues were to go only to the weight given his testimony.

Jury found for plaintiff and awarded \$2,116,597.39, plus future medical expenses.

Ellis, et al. v. Louisiana Medical Mutual Insurance Company, et al., No. 541, 872, 19th JDC, East Baton Rouge Parish, 4/30/10

Plaintiffs' counsel: Donald W. Price, Dué, Price, Guidry, Piedrahita & Andrews, Baton Rouge
Plaintiff's expert: Dr. Donald Marks, internal medicine, Hoover, Ala.

Drowning at state-owned dam; jury verdict exceeds \$4 million

Decedent, a 27-year-old offshore worker, was in a boat that was swamped after a back current pulled it upstream into a state-owned dam. Decedent and the boat's other occupant were forced to abandon the boat. While decedent attempted to make his way to shore, the current swept him off the dam and he drowned.

The Louisiana Department of Wildlife and Fisheries (LDWF) owned the dam, which was maintained by the state Department of Transportation and Development (DOTD). DOTD employees inspected the subject dam at least thirteen times in the twelve-month period before the accident. There were similar accidents at that dam, including one involving a LDWF agent, but there were no warning signs, buoys, or barricades of any kind at the dam to warn of the danger.

Decedent's widow and two minor children, a six-year-old son and five-month-old son, filed suit. After a week-long trial, jury found DOTD 75 percent at fault and LDWF 25 percent at fault. It awarded plaintiffs \$5,948 for funeral expenses, \$268,414.27 for past loss of support, \$1,806,703.68 for future loss of support, \$300,000 for decedent's conscious pain and suffering, \$500,000 in general damages for decedent's widow, and \$600,000 in general damages for each of the sons.

Defendants appealed the case to the Third Circuit, which unanimously affirmed the judgment. The Louisiana Supreme Court denied the state's writ application.

After calculating interest and reducing the awards for caps, the final judg-

ment is more than \$5.5 million.

McManus v. State of Louisiana Department of Wildlife and Fisheries, et al., No. 75,446-B, 10th JDC, Natchitoches Parish, 3/6/2006; affirmed, La.App. 3d, No. 09-1158, 3/10/2010; writ denied, La. Supreme Court, No. 2010-C-0816, 6/18/2010
Plaintiffs' counsel: T. Taylor Townsend and Keenan K. Kelly, Kelly & Townsend, L.L.C., Natchitoches
Plaintiffs' expert: J.B. Turnmire, Ph.D., water resource engineering, hydrology, hydraulics, Knoxville, Tenn.

Hospital overdosed infant; liver failure, death; \$5 million verdict

The liver of plaintiffs' five-month-old daughter was incurably damaged when hospital staff gave her an overdose of infant's acetaminophen. The baby died while awaiting a liver transplant.

The manufacturer's version of acetaminophen for infants was over three times more concentrated than its children's product. The package design for the infant's product was the same as that of the children's product and the infant's product included no warning. Plaintiffs alleged failure to warn and failure to use an alternative design.

Jury found for plaintiffs and awarded \$5 million for wrongful death and survival. Verdict totaled \$7.5 million with accrued interest.

Hutto v. McNeil-PPC., Inc., No. 04-C-0096-D, 27th JDC, St. Landry Parish, 8/26/10
Plaintiffs' counsel: Clé Simon and Barry Domingue, Simon Law Office, Lafayette
Plaintiffs' experts: Kenneth B. Laughery, human factors, Janesville, Wis.

Grocery store slip and fall; \$1.5 million settlement

Plaintiff, a 38-year-old man, slipped and fell on a recently mopped grocery store floor. The store's newly hired janitor admitted to forgetting to put out wet-floor signs. He testified he used half of a bottle of floor cleaner. Based on the directions on the bottle, the amount that the janitor used was approximately six times too much.

Plaintiff underwent two lumbar surgeries: a laminectomy and then a discectomy. Past medical expenses were approximately \$250,000.

Plaintiff was unable to continue employment as manager of a medical supply company. He earned approximately \$45,000 a year.

The trial court granted summary judgment on medical causation of plaintiff's lumbar injury after IME agreed with treating physician's opinion.

Doe v. ABC Grocery Company, 14th Judicial District Court, Calcasieu Parish, 9/09
Plaintiff's counsel: Aaron Broussard, Broussard & Hart, L.L.C., Lake Charles
Plaintiff's experts: Clark A. Gunderson, M.D., orthopedic surgery, Lake Charles; Dr. Stephen Esses, orthopedic surgery, Houston, Texas

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