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LIFESAVERS 2016: CJ&D'S GUIDE TO LAWSUITS THAT PROTECT US ALL

2016 Case Highlights

Lifesavers 2016: CJ&D's Guide to Lawsuits that Protect Us All is a comprehensive compilation of tort lawsuits that have led to specific safety improvements benefiting large segments of the population.

The study features over 100 cases spanning 50 years. It includes both well- and little-known examples that have resulted in the redesign or recall of a product, a changed hospital procedure, a safer workplace, a more secure public area, the bankruptcy of a hate group or a cleaner environment.

The following are a sampling of recent *Lifesavers 2016* cases, each of which had a jury verdict or settlement in 2016:

After patient was paralyzed because a hospital ignored his pre-existing conditions, his lawsuit settlement required the hospital to investigate and seek solutions to prevent future harm.

In May 2013, head Microsoft Xbox designer August de los Reyes became paralyzed after emergency room staff repeatedly failed to document a pre-existing condition that made his spine more susceptible to fracturing. After being sent home from the ER several times with a spine fracture, he was finally admitted to the hospital in “unspeakable pain.” Medical staff then broke his back while positioning him for an MRI scan, leaving him paralyzed from the chest down.

In 2014, Reyes sued Overlake; the case settled for \$20 million. As part of the settlement, de los Reyes “refused to keep terms of the agreement secret and demanded that the hospital investigate and evaluate the circumstances that led to his injury – with his participation.” His ultimate goal “is to take the lessons learned and develop solutions that can be applied at Overlake – and potentially other hospitals.”¹

Trucking company, which failed to stop dangerous driver cellphone use, changed its policy after a lawsuit.

Vernon O'Tuel suffered severe injuries after his car was rear-ended by a Unifi tractor-trailer at dusk on October 16, 2014 in Bennettsville, NC. The truck had been traveling too fast on the highway and collided with O'Tuel's vehicle as he decelerated to turn into his driveway. The truck driver had been on his cellphone at the time of the crash, had been using his phone for seven hours during his nearly eight-and-a-half-hour driving shift and his employer had failed to enforce its policy that limited driver cellphone use.

In November 2016, Unifi settled O'Tuel's lawsuit. As a result of the case, Unifi agreed to ban drivers from using cellphones while their trucks are on the road, making operation of all 60 of Unifi's tractor-trailers safer as they travel in the Carolinas and 13 other states.²

After paramedics severely burned a newborn, a settlement required new training to ensure such a tragedy never happens again.

On August 12, 2014, Londyn Porter was unexpectedly born at home in Rexburg, ID. City paramedics arrived, decided to separate Londyn from her mother and put the newborn in an ambulance, wrapping her in a foil blanket and applying heat packs outside it to help Londyn retain body heat en route to the hospital. Almost immediately Londyn suffered deep second-degree burns to her buttocks and right leg; she was admitted to the neonatal ICU, where her wounds were scrubbed daily for six weeks. Because of her premature birth, doctors could not give Londyn pain medication stronger than Tylenol before they removed dead skin and treated the burns.

Londyn's parents filed a lawsuit and as part of the settlement, the parties announced the "Londyn Porter Policy," which requires "that all fire department personnel be trained in the uses of heat packs and use them in accordance with manufacturer's specifications to ensure safe application and zero injury," according to a joint press release. As the city's attorney told the *Rexburg Standard Journal*, "[T]he suit was more about preventing a repeat incident. 'It was never about money for the Porters. They wanted to ensure that it never happened again.'"³

As part of a lawsuit settlement reached with parents whose child died from food allergies, a camp adopted new food safety measures to protect future campers.

On July 26, 2013, 13-year-old Natalie Giorgi died after eating a Rice Krispie treat containing undetectable peanut butter while at Camp Sacramento in California. The camp's baker had added Reese's peanut butter pieces to the dessert without any warning or label that the treats contained nuts. Natalie's parents had repeatedly informed camp employees in writing and in person of her daughter's allergy. Natalie ultimately died from anaphylactic shock.

The case settled in September 2016. As part of the agreement, the city of Sacramento pledged that the camp would become accredited by the American Camping Association (ACA), which required the camp to adopt and adhere to safety measures and food service protocols that protect campers from known food allergens. As Natalie's father, Louis

Giorgi, told *Allergic Living*, “The City of Sacramento has made their statement and it is quite strong – they are going to make changes and those changes are going to protect future campers. Therefore, hopefully, there will never be another story like Natalie’s with those changes.”⁴

After two young men died in an apartment fire, lawsuits helped bring attention to building code violations, improving housing safety.

A September 18, 2014, fire trapped Michael Moore, 23, and his friend and roommate James Ford, 21, in their Biddeford, ME third-floor apartment. Flames had engulfed the only staircase and they couldn’t escape through a window. Both died. The Maine State Fire Marshall’s Office concluded that 27 code violations in the building “significantly contributed” to Ford and Moore’s deaths. The victims’ families filed wrongful death claims against the building owner.

In May 2016, the case settled. Said the families’ attorneys, “[T]he lawsuits helped bring attention to the lack of safety code compliance by landlords around Maine, and the need for better enforcement.” They “were always about justice for the families of James and Michael...[b]ut the families had a larger goal. We wanted to improve the housing safety of all people in Maine by bringing code compliance into the public spotlight.”⁵

Following Sandra Bland’s suicide in jail, her mother sued; as part of the settlement, the jail and sheriff’s office were required to change procedures and training.

Sandra Bland died in a Waller County, Texas jail cell three days after being stopped by a state trooper for failing to properly signal a lane change. Bland had pulled over and given the officer her identification, but when she refused to put out her cigarette, the trooper threatened her with a Taser, demanded she exit her vehicle, tried to physically remove her from her car, handcuffed, wrestled, and slammed her into the ground and then arrested her for assault on a public servant. Though Bland told jail intake screening staff that she had a history of attempted suicide, she was still placed alone in a camera-less, obstructed-view cell with potentially lethal items and not checked on at intervals consistent with jail protocol. On July 13, 2015, Bland was found hanged in her cell; her death was ruled a suicide.

Her mother sued and in September 2016, the parties reached a settlement. Under the agreement, among other things, the Waller County jail “will use automated electronic sensors to ensure accurate and timely cell checks” and “provide an on-duty nurse or EMT for all shifts.” In addition, the Waller County Sheriff’s Office is required to “provide additional jailer training (including ongoing continuing education) on booking and intake screening.” Her mother said, “I can’t bring Sandy back, she’s not coming back. But I got to tell you, there will be lots of lives saved and changed with this new agreement.”⁶

A lawsuit brought by the widow of a police sergeant killed by a fellow officer led to new department training and policy changes.

Bay Area Rapid Transit (BART) Det. Sgt. Tommy Smith died on January 21, 2014 after being shot in the chest while leading a team on a probation search of a Dublin, CA apartment. As a result of poor training, a fellow officer had mistaken Smith, age 42, for an armed criminal. His widow, herself a 20-year BART police veteran, filed a lawsuit.

The case settled in November 2016. Under the settlement, “the BART Police Department, working in collaboration with attorneys for Smith’s family, has revised existing training policies to provide that any officer can contact their immediate supervisor and request remedial training on any basic law enforcement practice and that their supervisor will provide and document it.” In addition, “if the department isn’t able to provide an in-house training regimen to address any perceived or identified deficiencies, officers will be sent to an outside approved training provider to address them.” As Smith’s widow said in a statement, “I am very hopeful that these policy changes will avoid another tragedy like this from happening in the future. I wish more than anything that none of my fellow officers’ families from the BART Police Department will ever have to suffer through what our family has over the past three years.”⁷

After her son was repeatedly abused by classmates, a mother filed a lawsuit; the case resulted in stronger anti-bullying protocols and staff training at the school.

A Maine middle schooler was verbally and physically bullied by male students because of his perceived sexual orientation. Brunswick Junior High School teachers and the school principal dismissed the victim’s repeated complaints and allowed the hostility to persist, with the principal essentially telling the child’s mother that “boys will be boys.” The student was ultimately hospitalized and diagnosed with depression and post-traumatic stress disorder stemming from the bullying and harassment.

His mother sued and the case settled in November 2016. As part of the agreement, “Brunswick Junior High School is required to implement stronger anti-bullying programs [including] a centralized digital system to keep records of all bullying incidents, data monitoring for trends, and the formation of a gay-straight alliance at the school. The school also must continue annual, in-person staff training sessions to identify and stop bullying, with particular instruction on sexual stereotyping, and hold annual schoolwide assemblies to prevent and stop bullying.” In addition, as the *Portland Press Herald* explained, “[H]uman rights advocates pointed to anti-bullying programs required in Brunswick as part of the settlement agreement as a model for other districts.”⁸

NOTES

¹ Barnet, Shannon, “After medical error, former Microsoft designer works with hospital to find where things went wrong,” *Becker’s Infection Control & Clinical Quality*, June 20, 2016, <http://www.beckershospitalreview.com/quality/after-medical-error-former-microsoft-designer-works-with-hospital-to-find-where-things-went-wrong.html>; Mangan, Dan, “A hospital’s mistake paralyzes a designer. He got \$20M,

and an Unusual Promise,” *CNBC*, June 19, 2016, <http://www.cnbc.com/2016/06/19/a-hospitals-mistake-paralyzes-a-designer-he-got-20m-and-an-unusual-promise.html>.

² Wren, David, “Lawsuit settlement could lead to more cellphone bans by trucking firms,” *Post and Courier*, November 21, 2016, http://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking/article_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html; *O’Tuel v. Unifi Manufacturing, Inc.*, No. 2015-CP-34-00069 (Marlboro County Ct. Common Pleas, S.C.)(amended complaint filed April 24, 2015).

³ Dayley, Lisa Smith, “City settles lawsuit with Porter family,” *Rexburg Standard Journal*, October 28, 2016, http://www.rexburgstandardjournal.com/news/city-settles-lawsuit-with-porter-family/article_f9d1fda4-9d39-11e6-b4ef-430844847b4d.html; Careaga, Esmi, “Update: Family and City settle dispute over burned baby out of court,” *Local News 8* (Idaho), October 28, 2016, <http://www.localnews8.com/news/rexburg/burned-baby/130975523>; Dayley, Lisa Smith, “Baby injured, parents sue paramedic and City of Rexburg,” *Rexburg Standard Journal*, October 24, 2016, http://www.rexburgstandardjournal.com/news/local/baby-injured-parents-sue-paramedic-and-city-of-rexburg/article_eba50952-9a4f-11e6-a20c-e37f21ed2c6c.html.

⁴ “Giorgi Family on Lawsuit and Natalie’s Impact on Allergy Advocacy, Research,” *Allergic Living*, October 19, 2016, <http://allergicliving.com/2016/10/19/giorgi-family-on-lawsuit-and-natalies-impact-on-allergy-advocacy-research>; City of Sacramento press release, “Settlement of Giorgi Case,” October 5, 2016, <http://www.cityofsacramento.org/City-Manager/Media-Releases/Settlement-of-Giorgi-Case>; *Giorgi v. City of Sacramento*, 2016 WA Jury Verdicts & Sett. LEXIS 274 (Sacramento County Super. Ct., Cal., settlement September 26, 2016); *Giorgi v. City of Sacramento*, No. 34-2014-00162222, 2016 WA Jury Verdicts & Sett. LEXIS 274 (Sacramento County Super. Ct., Cal., settlement September 26, 2016); *Giorgi v. City of Sacramento*, No. 34-2014-00162222, 2014 WL 1621574 (Sacramento County Super. Ct., Cal.)(complaint filed April 18, 2014).

⁵ Berman & Simmons press release, “Settlements reached in Maine apartment fire deaths,” May 12, 2016, <https://www.bermansimmons.com/news/settlements-reached-maine-apartment-fire-deaths>; Bigos, Michael, “Out of fire tragedy, an opportunity for change,” *Journal Tribune*, June 8, 2016, http://www.journaltribune.com/news/2016-06-08/Opinion/Out_of_fire_tragedy_an_opportunity_for_change.html.

⁶ Silver, Johnathan, “Sandra Bland’s Family Looks Forward from Lawsuit Settlement,” *Texas Tribune*, September 19, 2016, <https://www.texastribune.org/2016/09/19/sandra-blands-family-settled-their-lawsuit-heres-w>; Silver, Johnathan, “Sandra Bland’s Family Settles Wrongful Death Lawsuit,” *Texas Tribune*, September 15, 2016, <https://www.texastribune.org/2016/09/15/sandra-blands-family-settles-wrongful-death-lawsuit>; “Sandra Bland’s Mom Hopes \$1.9 Million Settlement Will Help ‘Save Lots Of Lives,’” *NewsOne Now* (September 2016), <http://newsone.com/3539360/geneva-reed-veal-says-19000000-settlement-will-save-lives>; *Reed-Veal v. Encina*, No. 4:15-cv-02232, 2016 Jury Verdicts LEXIS 6917 (N.D. Tex., settlement September 15, 2016).

⁷ Shuttleworth, Jeff, “BART to pay \$3.1M to settle suit with family of slain local officer,” *Bay Area News*, November 20, 2016, <http://pleasantonweekly.com/news/2016/11/20/bart-to-pay-31m-to-settle-suit-with-family-of-slain-local-officer>; Baldassari, Erin, “BART: Family of officer slain in friendly fire settles suit for \$3.1 million,” *East Bay Times*, November 18, 2016, <http://www.eastbaytimes.com/2016/11/18/bart-to-pay-family-of-officer-shot-killed-in-friendly-fire-3-1-million-settlement>; Palomino, Joaquin, “BART to pay \$3.1 million to family of cop killed by friendly fire,” *San Francisco Chronicle*, November 18, 2016, <http://www.sfgate.com/bayarea/article/BART-to-pay-3-1-million-to-family-of-officer-10623596.php>; *Smith v. Bay Area Rapid Transit District*, Case No. 3:15-cv-02402-TEH (N.D. Cal.)(complaint filed May 29, 2015).

⁸ Doyle, Megan, “Brunswick schools agree to pay \$125,000 to settle bullying lawsuit,” *Portland Press Herald*, November 15, 2016, <http://www.pressherald.com/2016/11/15/brunswick-schools-pay-125000-to-settle-bullying-suit>; *Doe v. Brunswick School Department*, No. 2:15-CV-257-DBH (D. Me., report of pre-filing conference under Local Rule 56 dated July 1, 2016), <https://ecf.med.uscourts.gov/docpub/09101889103>; *Doe v. Brunswick School Department*, No. 2:15-CV-257-DBH (D. Me., memorandum decision and order on discovery dispute dated April 29, 2016), http://www.med.uscourts.gov/Opinions/Rich/2016/JHR_04292016_2-15cv257_Doe_v_Brunswick.pdf; Brogan, Beth, “Former Brunswick student sues over alleged bullying, sexual assault” *Bangor Daily News*, July 7, 2015, <https://bangordailynews.com/2015/07/07/news/midcoast/former-brunswick-student-sues-over-alleged-bullying-sexual-assault>