Lawsuit Abuse Fortnightly

February 2009 (Volume 8, No. 3)

Real examples of how predatory trial lawyers profit by depriving victims of justice and undermining the Rule of Law in the United States.

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Plane Unsatisfied

The U.S. Airways plane was still floating in the Hudson River, but one law professor was already speculating on legal theories available to passengers who want to sue the airline. According to tort law expert Aaron Twerski of Brooklyn Law School, it all depends on the geese that allegedly flew into the plane's engines.

"[I]f there is negligence," Twerski told *The Wall Street Journal*'s Law Blog, "what's the damage? Well, it was a harrowing experience, and the people will probably be able to say they've suffered emotional distress—such as nightmares and fears—as a result. ... [I]f there was negligence and follow-on emotional distress then there's a cause of action."

Meanwhile, passengers were complaining that U.S. Airways gave them a measly one-year upgrade to Chairman's Preferred status, according to the *New York Post*. That gives them first-class seats as available, choice seats, and priority check-in, plus an upgrade to Europe or Hawaii, until March 2010. They also received $5,000 checks to pay for lost luggage and expenses from the airline.

"I think if you survive a plane crash, being upgraded permanently is a good gesture too," said one passenger. Another, who escaped with her husband and two children, agreed. "My husband is not going to want to get on a plane for at least a year," she said.

Source: Dan Slater, "Can the Passengers of Flight 1549 Sue for Emotional Distress?" Wall Street Journal Law Blog, January 16, 2009; Ana Maria Alaya, "Survivors' Gilt," New York Post, January 30, 2009

Weeping Beauties

Big-name retail stores gave away $175 million in brand-name perfumes and cosmetics on January 19 in settlement of a class-action lawsuit. You didn't have to prove you were a member of the class bringing the suit to get the freebies, which flew out of the stores.

The free cosmetics were to go to those who purchased cosmetics between May 29, 1994 and July 16, 2003, a period when cosmetics manufacturers allegedly engaged in price-fixing. The suit was filed in 1999, but the settlement was delayed by disputes over legal fees for the plaintiffs' lawyers. They eventually got $24 million, but all customers got were cosmetics on a "first come, first served basis" if they signed a form stating they were in the class bringing the suit. The makeup was gone in less than a day.

Source: Susan Taylor Martin, "Putting lipstick on a lawsuit," St. Petersburg Times, January 30, 2009, via overlawyered

Impaired Diver

A Florida man was awarded $76.6 million by a Brevard County jury for injuries he suffered when he dove headfirst from a dock into a one-foot-deep river. The award includes $52.8 million in noneconomic damages for pain and suffering.

The man was at the dock working for the company building it. He was waiting for concrete to dry when he took the dive, allegedly in response to a dare from his boss and coworkers. He was paralyzed as a result of the incident. The company has filed for bankruptcy.

"Why he went into the water, I don't know," said the owner. "There's got to be some common sense."

Source: Susan Jacobson, "Merritt Island man, paralyzed after dare, wins $76.6M award," Orlando Sentinel, January 23, 2009

Ratted Out

A Rhode Island man was sentenced to pay $1,000 and to perform 50 hours of community service on charges of animal abandonment after he left 280 rats in aquariums and cages at the side of a road. He said he didn't want the rats in his apartment with his new baby.

The Society for Prevention of Cruelty to Animals in Rhode Island, which euthanized the 208 rats that were still alive, said it was "disappointed" with his sentence.

Source: Bruce Morin, "Man punished for abandoning rats, He did not want the rats living with his new baby," WPRI.com, January 22, 2009

Contains Silliness

U.K. regulations requiring disclosure of allergens such as eggs, shellfish, nuts, and milk are leading to ridiculous warning labels disclosing the obvious.

A dairy firm producing milk in plastic bottles for supermarkets carries the warning "Contains milk." An

egg producer is labeling its eggs cartons, “Contains eggs.” A producer of dairy milk chocolate warns on its labels that its candy “contains milk.”

U.K. Daily Mail readers ridiculed the labeling requirements. “Most health and safety advice, information, and warnings ... is purely about avoiding litigation,” one wrote. Another said, “I’m surprised no one has put a health warning on my Sunday roast chicken—‘Not suitable for vegetarians’.”

The dairy firm later announced it would omit its warning in the future, after government officials said it wasn’t necessary. “Everyone knows milk is milk,” a spokesman said.

Source: U.K. Daily Mail, “Warning from Asda: This milk bottle contains, er, milk,” January 31, 2009 via overlawyered.com

Shoe Fly

Last month, *Lawsuit Abuse Fortnightly* reported on a New York man injured this way during a lap dance. This month an Ohio man filed a $25,000 suit against an Akron strip club after he was hit in the nose with the boot from a dancer’s foot. He claims the stage on which the dancer performed is “hazardous.”

He says he doesn’t frequent such clubs but took a visiting relative to one. “I got injured and I shouldn’t have gotten injured just going out and trying to show somebody a good time,” he said.

Source: Phil Trexler, “Man ‘booted’ at strip club files injury lawsuit,” Akron Beacon Journal, January 21, 2009 via iamlawsuitabuse.com, a project of the U.S. Chamber Institute for Legal Reform

Cheer Down

The Wisconsin Supreme Court recently ruled a cheerleader whose male teammate dropped her during a stunt can’t sue the school district or the teammate.

A state law immunizes individuals from liability “in a recreational activity that includes physical contact between persons in a sport involving amateur teams” unless they act “recklessly or with intent to cause injury.” There was no allegation of reckless or intentional acts, but the complaint did allege negligence. The court held cheerleading is a contact sport, so the teammate is off the hook.

The court also held the district is immune from any alleged negligence of the coach “because no ministerial duty was violated by the cheerleading coach and there was no known and compelling danger that gave rise to a ministerial duty.”

Source: Dan Slater, “No, No, Says Wisc. High Court: Cheerleading is a Contact Sport,” Wall Street Journal Law Blog, January 27, 2009

Lawsuit Abuse Fortnightly
Published by The Heartland Institute,
a nonprofit 501(c)3 organization founded in 1984.
Phone 312/377-4000, fax 312/377-5000
Back issues are available online at www.heartland.org.
Publisher: Joseph L. Bast
Editors: Maureen Martin, Diane Carol Bast

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