

## Verdicts &amp; Settlements

# Smoke-Alarm Maker Slapped With \$50 Million Verdict in Fire Deaths

By Eric Berkman

**A** St. Louis jury has hit a smoke-detector manufacturer with a \$50 million verdict for the mother of two children who died of smoke inhalation in an apartment fire.

The jury found that the manufacturer knew the detector's "ionization sensor" was too slow to detect a smoldering, smoky fire like the one in this case, and failed to warn the public of the dangers.

Plaintiffs' attorney James Leritz of St. Louis says the key challenge in the case was countering the defendant's assertion that no smoke detector could have prevented the deaths in this case. They contended that the incident involved a flaming blaze rather than a smoldering fire, and that the children could have been saved had the father concentrated on getting them out rather than on trying to fight the fire.

Says Leritz, whose firm represented the plaintiff, Mary Gordon: "You can see how the fire-detector company would say these people would all be dead no matter what happened — that they weren't going to get out. So we had to prove to the jury that the faulty smoke alarm did make a difference."

Leritz notes that he and partner Anthony Bruning, lead trial counsel in the case, did this through the use of a Chicago-based fire investigator, who interviewed victims and firemen to construct a timeline of the blaze which showed that there would have been plenty of time to escape if the alarm had sounded on time.

The defendant, BRK Brands Inc., employed no fire expert of its own, according to Leritz.

Instead, defense lawyer Arnold Joseph argued that the father could have saved the children anyway had he focused on getting them out of the apartment rather than fighting the fire.

"[The father] testified that the fire was no bigger than a waste can when he saw it," says Joseph. "He could have just led the kids out the front door, which the evidence shows was unlocked."

Bruning disputes this.

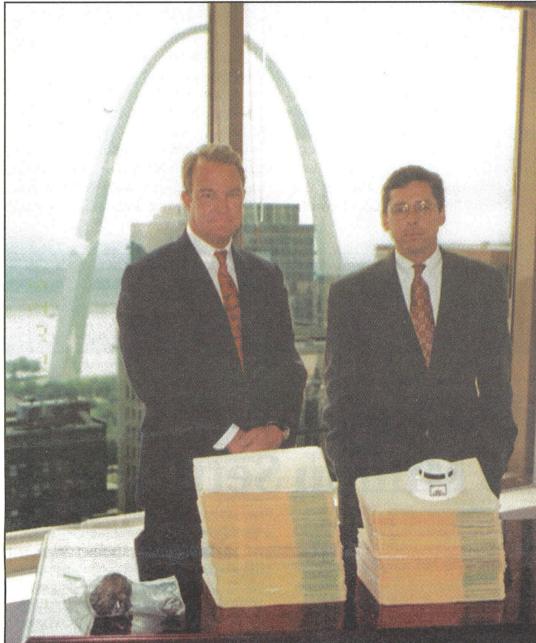
"The stairwell [in the front entryway] was full of smoke. The firemen could not get through that stairwell without masks and oxygen, so I don't know how he would have gotten the kids through there," he says.

The second critical issue was the company's knowledge of the smoke detector's defects.

The plaintiffs demonstrated this through admissions by BRK officers, says Leritz. He says those admissions were made during an interview on ABC's "20/20" in which a company official said he knew the ionization detector would take 15 minutes more to respond to a smoky fire than a photo-electronic detector which the company also made.

"In a fire, 15 minutes is an eternity. The jury saw this," says Leritz.

Leritz also obtained through discovery hundreds of written consumer com-



**Anthony Bruning (left) and Jim Leritz convinced a St. Louis jury that the defendant's smoke alarm was slow to detect smoky fires.**

plaints showing that BRK knew it had a defective product on its hands.

"[The complaints] said things like, 'I know it had fresh batteries, but I woke up in the middle of the night and my house was full of smoke. Thanks for nothing — my family's lucky to have gotten out alive,'" says Leritz. "And there must have been many others who just never notified the company. We had a file on each complaint."

Jim Heller of Philadelphia, who represented BRK, counters that these complaints were irrelevant to the case because they did not take into account the exact conditions of this fire.

"Their own smoke-detector expert testified that the only way to compare how smoke detectors work is to know all the fire factors," he says. "And he admitted that he knew none of the factors in the Gordon case or any of the consumer reports."

In fact, Heller maintains that according to the evidence — as well as testimony by the plaintiff's own smoke-detector expert — the fire was actually a fast, flaming fire best detected by the type of detector in place, and that the smoke had not reached the detector by the time the plaintiff's husband discovered the fire.

"Throughout the case they talked about 'smoldering' fires and how ionization detectors have a difficult time detecting them," he says. "But since their expert testified that it was actually

a flaming fire, they changed terms and used the term 'smoky' fire. So they had to go around the facts and try to put it into their case."

Bruning, however, dismisses such arguments as "games of semantics."

"The smoke detector doesn't care if it's a fast, flaming or slow, smoldering fire," he says. "The detector senses smoke particles. The real issue is the size of the smoke particle, and in this instance our expert testified — based on the different materials that burned — that we had large smoke particles consistent with a smoky, oxygen-starved fire. That's why the alarm didn't sound in a timely fashion."

Besides, Bruning contends that the company still had a responsibility to notify the public of potential danger.

"At an absolute minimum they had to warn consumers who rely on smoke detectors that there are different types of detectors and each has its limitations," he says. "If the consumers were educated and warned that for an extra \$20 they could have full protection [by buying a combination detector employing both technologies], I suspect consumers would spend the money."

## Tragic Blaze

At approximately 8:00 a.m. on April 8, 1997, Mary Gordon's husband Tim was in a back room of their second-floor apartment attending to their 3-month-old baby.

Meanwhile, Mary's two young children from a prior relationship were watching TV in the front room with a 4-year-old cousin when a fire broke out. Investigators presume that one of the older children started the fire.

Both Tim and a downstairs neighbor testified that the BRK smoke detector in the apartment never sounded. Alerted by screams from the front room, Tim emerged to find the apartment filled with smoke. He then herded the children into the back room and tried, unsuccessfully, to extinguish the fire.

Tim then tried to get the children out of the apartment, but all exits had deadbolts which wouldn't unlock without a key. Tim couldn't find the keys amid the thick smoke, so he tried to punch open the bedroom window. He smashed the inner pane, cutting his hand in the process, but couldn't break through the tempered outer pane. Trapped, he gathered the children around him on the bed, covered them with blankets, and passed out.

Firefighters arrived to find the three older children dead of smoke inhalation. Tim suffered cuts, burns and smoke inhalation as well, but survived along with the infant.

Mary brought a wrongful-death action against BRK and on July 1, following a two-week trial, was awarded \$20 million in actual damages and \$30 million in punitive damages. She also brought a claim against her landlord alleging negligence in having deadbolts on apartments requiring keys to operate. That claim settled for \$1.2 million in 1998.

Bruning and Bruning recently commenced litigation against BRK on behalf of the mother of the cousin who perished in the fire.

## Punitive Damages

In order to recover punitive damages, the plaintiff had to show that BRK's conduct was outrageous.

They did this through a former BRK employee who testified that the company had committed fraud in efforts to win approval of other smoke alarms from Underwriters Laboratories, a Chicago organization that certifies the quality of electronic products.

Bruning acknowledges that there's no evidence that BRK committed fraud in obtaining certification of this particular detector, "but when the defendant has a pattern of deceiving UL to receive certifications across the board, that evidence is relevant and properly admitted," he says.

**Plaintiff's attorneys:** Jim Leritz and Tony Bruning, Leritz, Plunkert & Bruning, P.C., St. Louis.

**Defendant's attorneys:** Jim Heller, Arnold Joseph and Robert Hayes, Cozen & O'Connor, Philadelphia.

**The case:** St. Louis City Circuit Court, *Gordon v. BRK Brands, Inc.*, Case No. 97-1114, Judge Margaret Neill. **LWUSA**

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## Sample Cases

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Vol. XIV, No. 4.

ST. LOUIS CITY

PRODUCT LIABILITY

Mary Gordon, et al v. BRK Brands, Inc., et al

Cause #992-0771, Division #4,

Judge: Hon. Margaret Neill

Plaintiff's Attorney: Anthony Bruning, Leritz, Plunkert & Bruning, One City Centre, Suite 2001, St. Louis, MO 63101-1804, phone (314) 231-9600, fax (314) 231-9480.

Defendant's Attorney: James Heller and Joseph Arnold, Cozen & O'Conner, The Atrium, 1900 Market St., Philadelphia, PA 19103, phone (215) 665-2920; fax (215) 665-2013; E. Thomas Liese, Holtkamp, Liese, Beckemeier & Childress, 217 N. 10th, Suite 400, St. Louis, MO 63101-2003, phone (314) 621-7773, fax (314) 231-4384 [local counsel].

The following information is from plaintiff's attorney; defendants' attorneys were unavailable for comment.

Type of Claim: defective smoke detector, wrongful deaths to two minor children; Plaintiffs are the parents of decedents, William Phillips and Erica Jackson, 4 and 5 years old, respectively. Plaintiffs claimed that on April 8, 1997 at about 8:00 a.m. Mr. Gordon was home with his two children, an infant and a 4 year old cousin when a fire

broke out in their second story apartment. Mr. Gordon was in a back bedroom tending to the infant and the three older children were in the living room when the fire started in the living room. The children screaming alerted him to the fire and his attempts to put out the fire were unsuccessful. There were deadbolt, double key locks on the doors and he was unable to find his keys due to heavy smoke. He was overcome by smoke inhalation while trying to break a window to escape. The three older children died; Mr. Gordon and the infant survived. Plaintiffs claimed the hard-wired, ionization smoke detector was defective and did not sound an alarm at any time during the incident. Plaintiff presented evidence that defendant BRK Brands, Inc. manufactures two types of smoke detectors, ionization and photoelectric. Although 90% of the detectors that defendant sells are ionization detectors, plaintiff alleged defendant had actual knowledge that these detectors were slow to sense smoldering, smoky fires, the kind responsible for most fire casualties. Plaintiffs produced over 350 consumer complaints that ionization smoke detectors failed to sound an alarm or sounded an alarm too late. Plaintiffs claimed that defendant negligently failed to warn of such and failed to discontinue sales of the ionization detectors with a known defect. Plaintiffs contended defendant also sold a combination detector that uses both ionization and photoelectric sensors, which provide a warning in smoldering, smoky fires. Plaintiff introduced evidence from a former employee of defendant indicating that defendant manipulated certain aspects of the certification process with Underwriter's Laboratories and obtained such certification under questionable circumstances. Plaintiff claimed negligence against defendant landlord for having dead bolts on the apartment exits that required a key to open from the inside. Plaintiff settled with the landlord, Tiffany Associates, for \$1,200,000 in 1998. The claim proceeded against the manufacturer.

Defendant denied that its product was defective and disputed that the fire was slow and smoldering as alleged by plaintiffs. Defendant asserted that its ionization detector had been properly certified by the Underwriter's Laboratories and was responsible for a 75% decrease in fire related deaths each year. Defendant BRK Brands was insured by Lexington Insurance Co., Royal Insurance Co., Steadfast Insurance Co., Travelers Insurance Co.

Editor's Note: Mr. Gordon was not a named plaintiff in this suit. The survivors of the cousin who died in the fire settled a separate suit, the amount is confidential.

Damages/Injuries Alleged: wrongful death of two minor children, loss of companionship; funeral expenses: none submitted.

Plaintiff's Expert: Michael Schulz, Fire & Explosion Analyst, from Chicago, IL, live; Donald Russell, Electrical Engineer, from Texas A&M University, College Station, TX, live; Dr. Michael Graham, Pathologist, St. Louis City Medical Examiner, from St. Louis, MO, live.

Defendant's Expert: Ralph Transue, Fire Investigator, from Rolf-Jenson Associates, Chicago, IL, live; Randy Tucker, Fire Investigator, from Houston, TX, live; Dr. Kenneth Fineman, Ph.D., Human Factors Expert, from Long Beach, CA, live; Gerald D. Rork, smoke detector design and operation expert from West Dundee, IL, live.

Last Demand: \$8,800,000 to BRK, before and during trial.

Last Offer: none

Verdict: Returned July 1, 1999, for plaintiff \$20,000,000 total actual damages + \$30,000,000 total punitive damages;

Verdict A - for plaintiff \$10,000,000 actual damages for wrongful death of William Phillips;

Verdict B - for plaintiff \$10,000,000 actual damages for wrongful death of Erica Jackson;

Verdict C - for plaintiff \$15,000,000 punitive damages for each of the deaths of William Phillips and Erica Jackson due to aggravating circumstances; on 8/2/99 defendant BRK's motion to modify was granted; judgments in Verdict A & Verdict B were amended and reduced to \$18,800,000 due to a prior settlement of \$1,200,000 between plaintiff and defendant landlord; Verdict C was not amended; defendant filed motion for JNOV, new trial and remittitur; parties settled for a confidential amount while the post-trial motions were pending.

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Vol. XIV, No. 4

ST. LOUIS COUNTY

PREMISES LIABILITY - NEGLIGENCE

Buford Coy & Thelda Coy v. Thomas A. Coy

Cause #98CC-3846, Division #n/a, Judge: n/a

Plaintiff's Attorney: Kenneth Leeds, Roskin & Leeds, 222 S. Central, Suite 1010, Clayton, MO 63105-3509, phone (314) 863-4545, fax (314) 863-6308.

Defendant's Attorney: Jayson Lenox, Niedner, Bodeux, Carmichael, Huff & Lenox, 131 Jefferson, St. Charles, MO 63301-2885, phone (636) 949-9300, fax (636) 949-3141.

The following information is from plaintiff's attorney; defendant's attorney was unavailable for comment.

Type of Claim: negligent modification of table saw, adult son lacerated hand; Plaintiff Buford Coy, about 48 years old at the time, alleged that on July 18, 1998 he was using a table saw that belonged to his father, Thomas A. Coy. Plaintiff claimed that while he was cutting stair treads with the saw, a piece of wood kicked back and his right hand came into contact with the top of the saw blade while it was activated. Plaintiff contended that at the time defendant purchased the saw, it was equipped with a blade

guard that defendant later removed. Plaintiff alleged defendant's negligent removal of the guard and negligent failure to warn plaintiff of the dangerous condition caused a severe injury to his hand.

Defendant generally denied plaintiff's allegations.

Damages/Injuries Alleged: severe laceration to dorsal aspect of right hand, fractured fingers, specifically open fracture of right index finger, damage to extensor tendon from second to fourth fingers, proximal interphalangeal distal fracture of the condyle of the ring finger, unable to work for 36 weeks; medical specials: about \$19,254.67; wage loss: \$35,571.42.

Plaintiff's Expert: Boulter Kelsey, Mechanical Engineer, from St. Louis, MO.

Defendant's Expert: none

SETTLEMENT: Reached July 9, 1999 during mediation for plaintiff \$161,000.

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**UPDATE—ISSUE OF DAMAGES MUST BE TRIED ON INDIVIDUAL BASIS IN FLORIDA CLASS ACTION AGAINST BIG TOBACCO**

In Phase One of a class action suit, a jury found five tobacco companies liable for smoking-related illnesses suffered by past and present Florida smokers. Engle v. R.J. Reynolds Tobacco Co., No. 94-08273 CA-22 (Fla., Dade County 11th Judicial Circuit Court, 1999), reported at 126 Products Liability Advisory 2 (August, 1999). Subsequently, a Florida appellate court granted a defense motion to enforce mandate and quash trial court orders permitting an aggregate trial on the amount of punitive damages prior to a determination of liability and compensatory damages, stating that in accordance with the appellate court's prior mandate in R.J. Reynolds Tobacco Co. v. Engle, 672 So.2d 39 (Fla. 3d DCA, 1996), the issue of damages, both compensatory and punitive, must be tried on an individual basis. R.J. Reynolds Tobacco Co. v. Engle, 1999 WL 689284 (Fla. 3d DCA, September 3, 1999). In its opinion, the appellate court stated that "[b]oth parties agree that individual hearings will have to be held for each class member on at least the issue of damages, if not other issues as well."

**JURY IN ST. LOUIS AWARDS \$50M, INCLUDING \$30M IN PUNITIVE DAMAGES, AGAINST SMOKE DETECTOR MANUFACTURER FOR FIRE DEATHS**

At about 8:00 p.m. one evening in April 1997, William Phillips, age five, his sister Erica Jackson, age four, and Jelisa Jackson, their four-year-old cousin, were in the front room of their St. Louis apartment watching television. Plaintiff Mary Gordon, the mother of William and Erica, was at work. Timothy Gordon, Mary Gordon's husband, was in a back bedroom with the infant brother of William and Erica. Tim Gordon heard one of the children scream and emerged from the bedroom to find the apartment filled with smoke from a small smoldering fire near the stairway in the front room. After putting the children in the bedroom, he tried unsuccessfully to put the fire out, and then attempted to find his keys to unlock the deadbolt locks which were on all exits to the apartment. Thick smoke prevented him from doing so, however, and he was soon overcome by the smoke. The three older children died, and Tim Gordon suffered cuts, burns, and smoke inhalation. Neither he nor a downstairs neighbor heard the smoke detector sound.

Represented by Anthony S. Bruning, of Lerlitz, Plunkett & Bruning, St. Louis, MO, the Gordons

brought an action against BRK Brands, Inc., the manufacturer of the model 1769ACI BRK Brands smoke detector, which was hard-wired into the building's electrical system, and which had an ionization type smoke sensor, alleging that the smoke detector was defective because it did not utilize both ionization and photoelectric sensors, and that there had been a post-sale failure to warn. According to Bruning, the evidence showed that BRK knew that an ionization sensor does not respond as quickly to slow smoldering fires as a photoelectric sensor, and that although BRK had received hundreds of complaints from consumers that the detectors failed to respond to smoke, and although BRK makes a combination detector utilizing both ionization and photoelectric sensors, BRK continues to sell the ionization detectors and has never taken any steps to warn the purchasers of some 100 million ionization detectors that they may not respond to smoldering smoky fires in a timely manner.

Bruning noted that BRK contended at trial that the ionization detector was adequate, citing its certification by Underwriters Laboratory. However, the plaintiffs presented testimony of a former employee of BRK whose job it was to obtain UL certification. According to Bruning, the employee said that his superiors at BRK instructed him to resubmit a smoke detector that had failed the UL certification process because of faulty electric contacts which prevented the detector from sounding. The detector was resubmitted after the faulty contacts had been surreptitiously oiled to insure proper functioning, Bruning said, and the company then sold the detector to the public without changing the design. Bruning also noted that there was speculation that one of the children started the fire.

On July 1, the jury in Gordon v. BRK Brands, Inc., No. 0992-00771 (Mo., St. Louis City Circuit Ct., 1999), returned a verdict against BRK totaling \$50 million, including, for each of Mary Gordon's two children, \$10 million in actual damages and \$15 million for aggravating circumstances. A suit arising from the cousin's death was pending. Claims against the landlord, alleging negligence for having deadbolts on the apartment exits which required a key to operate, were settled in 1998 for \$1.2 million.

Experts for the plaintiffs were fire investigator Michael Schulz, of Chicago, IL; electrical engineer Donald Russell, Ph.D., of College Station, TX; and medical examiner Michael Graham, M.D., of St. Louis, MO. The defendants were represented by James Heller, of Cozen & O'Connor, Philadelphia, PA, and their experts were Kenneth Finemann, Ph.D., Huntington Beach, CA, on human factors; Randolph W. Tucker, P.E., of Rolf Jensen & Associ-

ates, Vernon Hills, IL, on fire investigation; and Gerald D. Fork, West Dundee, IL, on smoke detector design and operation. [For other cases involving smoke detectors, see Am Law Prod Liab 3d § 118:13.]

**JOINTER MANUFACTURER WINS DEFENSE VERDICT IN MASSACHUSETTS**

Plaintiff Peter Skaltsis was injured on April 13, 1995, while operating an eight-inch Rockwell longbed joINTER at his place of employment, a manufacturer of electric bass guitars. He was jointing a piece of maple with dimensions of 2 x 8 x 20" long. As he was finishing an edge on the workpiece, his left hand slipped off the workpiece and made contact with the rotating cutter heads. Skaltsis sustained open fractures with bone and soft tissue loss to his left long, ring, and little fingers. He underwent initial surgery on the day of the accident and, one year later, reconstructive surgery to lengthen the left ring finger. He had been an accomplished professional guitarist, and the injury ended any hopes of career advancement as a musician.

In Skaltsis v. Delta International Machinery Corp., No. 98CB10156WGY (U.S. Dist. Ct., D.Mass., 1999), Skaltsis claimed that the Rockwell joINTER was defective because there were no warnings on the product at the time of the accident. In particular, he alleged that the product should have had warnings prohibiting the use of gloves and also instructing the plaintiff more specifically regarding the placement of his hands on the workpiece. At trial, Delta's Director of Mechanical Engineering testified that at the time of the product's manufacture, in 1980, it was equipped with a label warning users against a variety of risks associated with the product. The defendant also put in evidence at trial and argued to the jury that no warning, neither the one which originally accompanied the product nor that proposed by the plaintiff, would have made a difference in the case; the evidence indicated that Skaltsis was using the product properly, that his hands were in an appropriate position, and that he was fully aware of the risks associated with the product.

On June 18, the jury returned a verdict for the defense. Michael S. Appel, of Sugarman, Rogers, Barshak & Cohen, Boston, MA, represented Delta International, and the defendant's expert was mechanical engineer Raymond A. Hagglund, Ph.D., of Worcester Polytechnic Institute. Skaltsis was represented by Kevin J. Reddington, of Brockton, MA, and his liability expert was engineer David A. Colling, Ph.D. During settlement negotiations, Skaltsis' demand was for \$250,000, while the defendant's offer was \$10,000. [For other cases

involving jointers, see Am Law Prod Liab 3d § 112:150.]

**SAN FRANCISCO JURY AWARDS \$5.1M IN ASBESTOS CASE**

A San Francisco jury has returned a verdict believed by the plaintiffs' attorneys to be the largest compensatory award to a single plaintiff in a San Francisco asbestos case. Hicks v. John Crane, Inc. No. 999242 (Cal., San Francisco Superior Court, 1999), went to trial before the Honorable John Dearman on May 17, 1999. On July 6, after approximately 1.5 days of deliberation, the jury returned its verdict for the plaintiffs and against John Crane, awarding plaintiff Charles Hicks \$1.8 million in economic damages and \$2.5 million in non-economic damages, and awarding plaintiff Shirlene Hicks, Charles' wife, \$800,000 in noneconomic damages. The jury also found John Crane to be 20 percent at fault. The verdict was unanimous except for questions dealing with the amount of damages, on which the vote was 10-2, with one juror wanting to award more and one wanting to award less. Prior settlements with other suppliers will exceed \$2 million.

Charles Hicks, age 51, was exposed to asbestos for 20 years while serving in the U.S. Navy as a marine machinist between 1965 and 1985, primarily aboard nuclear submarines. Hicks later went to work at a nuclear test facility in Idaho. He was in charge of nuclear waste disposal at this facility when he became ill from malignant mesothelioma. His case went to trial against John Crane, which manufactured and sold packing materials which, Hicks and his wife alleged, were defective because they released asbestos fibers into the air when used in a reasonably foreseeable fashion. John Crane denied this and contended that its products did not release asbestos beyond background levels. Stephen Tigerman of Warnick, Chaber, Harowitz, Smith & Tigerman, San Francisco, tried the case for the plaintiffs. Freeman Cullom of Cullom, Burland, Bacon and Overpeck, San Francisco, and Margaret Byrne of Chicago tried the case for John Crane.

The trial took an unusual turn at one point when attorneys for the Justice Department showed up and essentially confiscated some of the plaintiffs' exhibits. Apparently, one of John Crane's experts was concerned that the exhibits contained classified information and complained to the government. The exhibits had originally been produced and attached to a deposition taken approximately a decade ago with dozens of attorneys in attendance.

The plaintiffs presented expert testimony by: lung biologist and pathologist Arnold Brody, New

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to deduce that BMW's story of how the recall notices were sent differed from the discovery information from Polk (provided by BMW). Affidavits from BMW's agents conflicted with the alleged actions of Polk and its employees. BMW was then placed in a position where they could not risk putting Polk employees on the stand and have the discrepancies brought to the jury's attention. Hence, our punitive damage claim not only survived BMW's summary judgment motion, but was now staring at them at trial.

At this point, our strategy became straight forward, tell the jury what happened to Mr. Johnson, show the jury Mr. Johnson's horrific scarring, impress upon them how this injury has and will continue to effect Mr. Johnson's life, and leave it up to the jury's discretion.

### \$50 Million Verdict In Suit Alleging Defective Smoke Alarm

Plaintiff Mary Gordon is the mother of William Phillips, age 5, and Erica Jackson, age 4, who were killed in April 1997 as a result of a fire in their apartment in St. Louis. Plaintiff claimed the smoke detector, manufactured by defendant, failed to sound in a timely manner.

Mary Gordon, Mary Gordon's husband, was in the second floor apartment with William Phillips, Erica Jackson, their infant brother, and a four year old cousin. Mary Gordon was at work. At about 8:00 a.m., the three older children were in the front room watching television and Tim Gordon was in a back bedroom with the baby. He heard one of the children scream and emerged from the bedroom to find the apartment filled with smoke from a small smoldering fire near the stairway in the front room. Mr. Gordon put the children in the bedroom and attempted briefly to put the fire out, without success. All the exits from the apartment, including the one in the back bedroom, had dead bolts which required a key to unlock, so Mr. Gordon made several attempts to find his keys but was unable to do so because of the thick smoke. He tried without success to break out a rear bedroom window before he was overcome by smoke. The three older children died and Mr. Gordon suffered cuts, burns, and smoke inhalation. Mr. Gordon never heard the smoke detector sound, nor did a downstairs neighbor. There was speculation that one of the children had started the fire.

Plaintiff sued on two theories: defective product and sale failure to warn. The smoke detector, which was hard-wired into the building's electrical system, had an ionization type smoke sensor. The evidence showed that defendant knew that such a sensor does

not respond as quickly to slow smoldering fires as a photoelectric type sensor. Although defendant has received hundreds of complaints from consumers that the detectors failed to respond to smoke, and although defendant makes a combination detector utilizing both ionization and photoelectric sensors, plaintiff alleged, defendant continues to sell the allegedly faulty ionization detectors and has never taken any steps to warn the purchasers of some 100 million ionization detectors that they may not respond timely to smoldering smoky fires.

At trial defendant contended that the ionization detector was adequate, citing the Underwriters Laboratories certification.

Plaintiff also sued her landlord, claiming that the landlord was negligent for having dead bolts on the apartment exits which required a key to operate. Those claims were settled in 1998 for \$1.2 million.

**Injury:** Death of William Phillips, age 5, and Erica Jackson, age 4.

**Result:** \$50,000,000 million jury verdict, consisting of \$10 million actual damages per child, and \$15 million punitive damages per child.

**Plaintiffs' Expert Witnesses:** Michael Schulz, Fire investigation, Chicago, Illinois; Dr. Donald Russell, Ph.D., Electrical engineer, College Station, Texas; Dr. Michael Graham, M.D., Medical examiner, St. Louis;

**Defendant's Expert Witnesses:** Dr. Kenneth Fineman, Ph.D.; Human factors, Huntington Beach, California; Randolph W. Tucker, PE, Fire investigation, Rolf Jensen & Associates, Inc., Houston, Texas; Ralph E. Transue, PE, Fire investigation, Rolf Jensen & Associates, Inc., Vernon Hills, Illinois; Gerald D. Rork, Smoke detector design and operation, West Dundee, Illinois.

**Plaintiff's Attorney:** Anthony S. Bruning of Leritz, Plunkett & Bruning, P.C., St. Louis, Mo.

**Defendant's Attorneys:** James Heller, Arnold Joseph, Philadelphia, Pa.

**Gordon v. BRK Brands, Inc.**, No. 992-771 (St. Louis City Ct. Mo. July 1, 1999)

### Comments

According to information provided by plaintiff's attorney, plaintiff presented testimony of a former employee of defendant whose job it was to obtain UL certification of defendant's products. He testified that his superiors at BRK instructed him to resubmit a smoke detector that had failed the UL certification process because of faulty electric contacts which prevented the detector from sounding. The detector was resubmitted

## VERDICTS, SETTLEMENTS & TACTICS

after the faulty contacts had been surreptitiously oiled to insure proper functioning, it was alleged. The company then allegedly sold the detector to the public without changing the design.

### Settlement In Suit Involving Flammable Hair Product

On April 14, 1995, Plaintiff, a 25-year-old accounts payable clerk, was removing a hair weave with Brother's Smooth Sheen Conditioning Spray, a hydrocarbon (propane, butane) propelled hair care product manufactured by J.M. Products pursuant to Bronner Bros.' specifications. Bronner Bros. designed the product's warning label. After setting the can down, Plaintiff struck a match to light a cigarette, immediately creating a fireball around her head.

**Injury:** Third degree burns over face, ears, scalp, neck, shoulders and hands resulting in extremely disfiguring keloid scarring, neuropathic pain syndrome, entrainment neuropathy, and intractable pain.

**Result:** Confidential settlement with the primary target defendant, Bronner Bros., Inc., and Y & Y Beauty Supply, Inc. Plaintiff settled with J.M. Products on December 23, 1998, for \$900,000 cash.

An ERISA lien of \$185,000, for medical bills of approximately \$400,000, was settled for \$15,000 by virtue of the "make whole" doctrine.

**Plaintiff's Expert Witness:** James M. Miller, warnings, Ann Arbor, Mich.

**Plaintiff's Attorneys:** Matthew W. Sowell and James C. Cumbie, Jacksonville, Florida.

**Defendants' Attorneys:** J. Scott Murphy and Michael S. Gotshall, Murphy & Associates, Orlando, Florida, (for Bronner Bros., and Y & Y Beauty Supply); Robert E. Schrader, III, Boyd & Jenerette, Jacksonville, Florida, (for J.M. Products)

**Ward v. Bronner Bros., Inc.**, No. 98-566-CAJ (Duval Ct. Jud. Circuit Court Florida, February 1999)

### Defense Verdict In Suit Alleging That Chevrolet Astro Was Not Crashworthy

Around 11:00 p.m. on October 20, 1992, Steven Williams, Corey Johnson, Anthony Washington and Athanashoreh Beard were traveling westbound on Interstate 20 just west of Jackson, Mississippi in a rented 1992 Chevrolet Astro EXT Van. Williams was driving himself and the other individuals home to Chicago from Atlanta. After passing another vehicle at approximately

90 to 100 miles per hour, Williams lost control of the van, which slid sideways across the highway and ultimately rolled over four times.

Williams, Washington, and Beard were ejected during the rollover. Williams and Washington died, and Beard suffered severe and permanent brain damage, leaving him unable to speak and paralyzed on one side of his body. The fourth passenger, Johnson, sustained minor injuries.

The estates of Williams and Washington, Beard's guardian, and Johnson all sued General Motors, the Astro Van's manufacturer. Plaintiffs alleged that General Motors negligently designed and tested the Astro Van with respect to rollover stability. Plaintiffs also claimed that the Astro Van was unreasonably dangerous because the van purportedly becomes top-heavy and unstable when loaded with passengers and luggage.

At trial, General Motors argued that the Astro Van is a safe vehicle and that vehicle loading does not significantly affect rollover stability. GM also contended that the accident was caused by the high rate of speed at which the Astro Van was being driven.

**Injury:** Williams and Washington died, and Beard suffered severe and permanent brain damage, leaving him unable to speak and paralyzed on one side of his body. Johnson sustained minor injuries.

**Result:** Jury verdict in favor of defendant.

**Plaintiffs' Expert Witnesses:** Dr. Steven C. Batterman, Consultants Associates, Inc.; Dr. Leon S. Robertson, Randall A. Whitfield, Quality Control Systems Corp.; I. Robert M. Hooker, Eliseco Systems, and Dr. Thomas J. Wielenga, Engineering Insight, L.L.C.

**Defendant's Expert Witnesses:** Michael P. Holcomb, M.P. Holcomb Engineering; Dr. Michelle M. Vogler, Design Research Engineering, Inc., and Ronald L. Leffert, General Motors Corporation.

**Plaintiffs' Attorneys:** Timothy H. Okal and John D. Spina of Spina, McGuire & Okal P.C., Elmwood Park, Illinois.

**Defendant's Attorneys:** Scott D. Lasseter of Weil, Gotshal & Manges, L.L.P., Houston, Tex. and New York, N.Y.; David A. Coulson and Michael P. Kornak of Kirkland & Ellis, Chicago, Illinois.

**Williams v. General Motors Corporation**, No. 93-C-6661 (N.D. Ill., July 19, 1999)

### \$4.6 Million Verdict In Asbestos Suit

Plaintiff, the owner of a construction company, was first exposed to asbestos when he began to work in the