

Electronic Newsletter

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Greetings!

Spring is almost here! This month, in addition to firm news and some recently reported appellate decisions, we look at a variety of safety-related issues including problems with prescription drugs, medical helicopters, dangerous products and food, and more. We're also pleased to learn of the U.S. Supreme Court's March 4th decision in *Wyeth v. Levine*, discussed below.

Best regards,

The Law Firm of Stephen M. Reck, LLC

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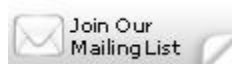
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The Law Firm of Stephen M. Reck Files Suit for Death of Nursing Home Resident
[Attorney Scott D. Camassar](#) has filed wrongful death suit on behalf of the estate of a 69 year old woman who fell and suffered a head injury at Haven Health Center of Waterford in June of 2007.



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Know someone who might enjoy our newsletters? Forward our newsletter to them and ask them to check it out. As always, if you know someone with a legal problem, we appreciate your kind referrals. Thank you.

Due to her health, Nilda Simonds was at risk of falling, and she had a condition that would cause her to bleed heavily in the event of a traumatic injury. Despite knowing her health conditions, and knowing that she had suffered a head injury and hematoma, Dr. Harold Phillips decided not to send her to the hospital for a CT

scan or other test--even after family members questioned him and asked that she go to the hospital. Showing signs of a head injury, Ms. Simonds continued to worsen until her family insisted that she be seen in the hospital. She was taken to L & M Hospital, where doctors diagnosed a subacute subdural hematoma requiring emergency surgery. She was rushed to Yale-New Haven Hospital where surgeons drilled holes in her skull to drain the blood, but progressive bleeding required a craniectomy (in which a piece of the skull is removed) the following day. Ms. Simonds' condition continued to deteriorate until medical treatment became futile, and she died on July 25, 2007, as a result of blunt traumatic head injury.

In addition to Dr. Phillips, Attorney Camassar sued Raymond Termini, the former CEO of Haven Healthcare, who is being investigated by the State for using nursing home funds to furnish a lavish lifestyle and start a Nashville record company before driving the nursing homes into bankruptcy. The suit also names the State of Connecticut Dept. of Public Health (DPH), alleging that it failed to enforce its own consent order and allowed the home to operate with inadequate staff and other deficiencies. Haven of Waterford was on probation and was supposed to have been monitored by the State at the time of the incident involving Ms. Simonds.

Children at Risk When Talking on Phone, Crossing Street

In a report published in last month's issue of *Pediatrics*, researchers found that preteens participating in an interactive simulation were more likely to suffer a virtual accident if they talked on the phone while crossing a street. The experiment showed talking on the phone increased the odds of being hit or almost hit by a virtual car from 8.5 to 12%, a 43% increase in risk. The study follows several others that have shown that talking on the phone interferes with the attention and visual processing skills of drivers, and may make the risk of an automobile accident four times as likely. Read [more](#).

Traffic Deaths Down Last Year

Traffic deaths fell across most of the nation last year, dropping in at least 42 states and Washington, D.C. as Americans sharply reduced their driving due to high gasoline prices and the down economy. Twenty-five states and the District of Columbia had double-digit percentage declines in traffic fatalities, according to preliminary data provided to [USA Today](#). Connecticut only had a 1% decrease, while Rhode Island had a 3% decrease.



Institute Pushes for Stronger Vehicle Roofs



[The Insurance Institute for Highway Safety](#) announced last month it will require automakers to "dramatically increase the strength of vehicle roofs to receive its top safety pick ratings."

Adrian Lund, president of IIHS said, "We see significant safety benefits in stronger vehicle roofs" adding that "NTSA has 'clearly undercounted' the number of injuries and deaths that can be prevented by stronger roofs." Read [more](#).

Medical Helicopters Have Worst Fatality Rate

In the first day of NTSB hearings into the safety of air-ambulance helicopters, one expert testified they have the worst fatal crash record in aviation, and their crews are among the most likely to die on the job, at a rate exceeding other dangerous professions such as logging and deep-sea fishing. Read [more](#).

Understanding Risk Leads to Better Health Decisions

In a new book, "Know Your Chances: Understanding Health Statistics," some Dartmouth Medical School physicians suggest that taking the time to understand the often-confusing statistics used in the medical industry is the key to making smarter decisions about your individual health care. "To know what a discount means, you have to know the regular price," said Dr. Steven Woloshin, one of the authors. "The same is true in health care. If a drug promises '50 percent fewer deaths,' you need to know, 'Fewer than what?'" Read [more](#).

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Privacy Complicates Switch to Digital Medical Records

Obama's plan to transition to electronic medical records is complicated by privacy issues. [Read more](#).

Kids' Staph Infections More Resistant to Drugs

A recently published study finds that children are contracting more stubborn staph infections that do not respond to commonly used antibiotics. Also, the proportion of drug-resistant ear, nose and throat infections has increased dramatically over a six-year period. [Read more](#) about this serious public health threat.

Legislator Proposes Warnings on Violent Video Games

Citing the link between violent video games and aggression in children and teens, a California congressman has proposed the Video Game Health Labeling Act of 2009, which would require games with a T rating or higher to be sold with a warning label reading: "WARNING: Excessive exposure to violent video games and other violent media has been linked to aggressive behavior." Press release [here](#).



Suspended Olympic Swimmer Sues Supplement Maker

Swimmer Jessica Hardy, 21, who was denied a spot on the U.S. Olympic team due to a failed drug test, has sued Advocare International, a nutritional supplement company, for not telling her

Study: BPA Lingers in Body

A new study indicates that the chemical bisphenol A (BPA), which is used to harden plastics in products such as baby bottles and water bottles, stays in the body at high levels for much longer than was previously thought, even after fasting for 24 hours, suggesting that BPA either does not metabolize rapidly, or is coming from non-food sources, or both. BPA is also used in PVC water pipes, as a coating inside metal food cans, and to make dental sealant. Read [more](#).

'Roid-Rage Wrestler's Doctor Pleads Guilty to Overprescribing Drugs

The personal doctor to the late Chris Benoit, the WWE professional wrestler who killed himself, his wife and their 7-year-old son in 2007 in an apparent steroid-induced rage, pleaded guilty in January to illegally distributing prescription drugs to patients, one of whom died. Dr. Phil Astin, 54, pleaded guilty to a 175-count federal indictment charging him with illegally distributing and conspiring to distribute prescription drugs. He also admitted that prescriptions he wrote resulted in the overdose death of a female patient in 2007. His attorneys did not specifically name any patient or link the doctor to Benoit. Read [more](#).



Study: Mental Illness By Itself Does Not Cause Violence

A new study of more than 34,000 adults, published in *Archives of General Psychiatry*, concludes that mental illness alone is not a leading cause of violence. Instead, researchers cite multiple factors in combination, namely substance abuse and a history of violent acts, that increase the danger when combined with mental illness. "Younger age topped the list. History of violence came next, followed by male gender, history of juvenile detention, divorce or separation in the past year, history of physical abuse, parental criminal history and unemployment in the past year. Rounding out the list were severe mental illness with substance abuse and being a crime victim in the past year." Read [more](#).

Insurer Seeks Ruling on Policies Issued to Peanut Corp.

Hartford Casualty Insurance Co., liability insurer for Peanut Corp. of America, the company that knowingly put tainted products on the market, has filed a declaratory judgment action in Virginia federal court to determine its responsibility under three years of policies it issued to the company. Read [more](#).

Plant Shipped Tainted Syringes

FDA Fails in Policing Role

First tainted peanuts, now this: prosecutors that a North Carolina plant "prepared life-sustaining syringes and shipped them before ensuring they were sterile" and "investigators believe a rush to maximize profits led Dushyant Patel's AM2PAT Inc. to produce heparin and saline syringes that killed five people and sickened hundreds of others, some resulting in spinal meningitis and permanent brain damage." Read [more](#).

Supreme Court Rejects Preemption in Wyeth

In a major victory for civil justice, the U.S. Supreme Court has held that FDA drug regulation does not preempt common law claims for damages under state law.

In a 6-3 decision in the case of *Wyeth v. Levine*, the Court rejected Wyeth's arguments that a drug company cannot comply with both state law duties and federal labeling requirements, and that requiring a drug maker to comply with a state-law duty to provide a stronger warning label interferes with Congress' purpose in establishing the FDA's authority. The Court stated that Congress never intended for FDA labeling regulation to preempt state tort law. Writing for the Court, Justice Stevens said:

"If Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express preemption provision at some point during the Food, Drug and Cosmetic Act's 70 year history . . . its silence on the issue, coupled with its certain awareness of the prevalence of state tort litigation, is powerful evidence that Congress did not intend FDA oversight to be the exclusive means of ensuring drug safety and effectiveness."

its products allegedly contained banned substances. Hardy accuses Advocare of providing her products containing clenbuterol, a prohibited anabolic agent. Hardy, who took two of the company's products while training, tested positive for the substance in July at the Olympic trials, after which she was suspended for two years. She claims that Advocare assured her its products did not contain banned substances. Read [more](#).

Recall Central

To read about recent recalls and product safety news from the U.S. Consumer Product Safety Commission, click [here](#).

Get the latest recall information from the National Highway Traffic Safety Administration [here](#).

The Dept. of Agriculture's Food Safety and Inspection Service regulate meat, poultry products and processed eggs. Check their recalls [here](#).

Click [here](#) for Food and Drug Administration recalls, market withdrawals and safety alerts.

For updates on the peanut products recall click [here](#).



Feds to Pursue Doctors Who Took Kickbacks

The New York Times reports, "Federal health officials and prosecutors, frustrated that they have been unable to stop illegal kickbacks to doctors from drug and device companies, are investigating doctors who take money for using these products."

In the past, "prosecutors rarely pursued doctors because they believed that juries would sympathize with respected clinicians." In the near future, however, "officials plan to file civil and criminal charges against a number of surgeons who they say demanded profitable consulting agreements from device makers in exchange for using their products." According to the Times, this "move against doctors is part of a diverse campaign to curb industry marketing tactics that enrich doctors but increase healthcare costs and sometimes endanger patients." Read [more](#).

Appellate Court Sets Aside Inadequate

In a concurring opinion, Justice Thomas called Wyeth's preemption argument unconstitutional:

"Because such a sweeping approach to pre-emption leads to the illegitimate - and thus, unconstitutional - invalidation of state laws, I can no longer assent to a doctrine that preempts state laws merely because they 'stand as an obstacle to the accomplishment and execution of the full purposes and objectives' of federal law."

Score one for the good guys. This decision will go a long way towards protecting those injured by dangerous drugs.

Seizures Blamed on Switch to Generic Drugs



A Dayville, CT woman blames her son's string of epileptic seizures on a generic medicine that was expected to work as well as the original brand-name drug. She claims her son "went seven weeks without an episode" while taking Zonegran, but "after pharmacists switched him to generic copies made by four different companies, he suffered multiple seizures daily and was hospitalized three times before doctors identified differences between the medications as the cause." Now, "armed with more than 1,000 similar reports, the Epilepsy Foundation of America and other patient-advocacy groups are pressing lawmakers in at least 33 states to stop pharmacies from substituting generic drugs for the originals before patients and their doctors are alerted to the changes." Read [more](#).

Vaccine Court Rejects Autism Causation Claim

The federal vaccine court rejected three cases yesterday in which families claimed that their children's autism was brought on by substances in the vaccines - either the measles virus in the measles/mumps/rubella vaccine, or its combination with thimerosal, a mercury-based preservative that was used in most childhood vaccines until 2001. The ruling affects about 5,000 similar claims. Read [more](#).

To read the court decisions, click [here](#). The CDC's information on the MMR vaccine and autism research is available [here](#).

Vaccine Makers' Immunity Questioned

The [Wall Street Journal](#) reported that the National Childhood Vaccine Injury Compensation Program provides partial protection from liability risk, shielding vaccine makers "from much of the litigation risk that dogs traditional pill manufacturers and is an important reason why the vaccine business has been transformed from a risky, low-profit venture in the 1970s to one of the pharmaceutical industry's most attractive product lines today." However, "vaccines' transformation into a lucrative business has some observers questioning whether the shield law is still appropriate." There are many vaccines today "which aren't vital to preventing pandemics." Also, the Journal says, "many plaintiffs' lawyers would prefer to take their lawsuits directly to civil court," where they can get a jury trial and potentially higher damages. The drug industry "argues that the vaccine shield is still necessary."

About Our Firm

At [The Law Firm of Stephen M. Reck](#), justice is our mission. Our firm is well known and well respected for its ability to handle personal injury, wrongful death, and professional malpractice cases in Connecticut and Rhode Island. Call us today or visit us on the web at www.stephenreck.com.

The Law Firm of Stephen M. Reck, LLC

Proud to support the [North Stonington Education Foundation](#), [Little League Baseball](#), [Children International](#), and the [Conn. Chapter of the Special Olympics](#).

* Advertising Material *

Verdict

In *Benedetto v. Zaku*, the Connecticut Appellate Court held that a jury verdict that included \$50,000 for a future painful and disabling spinal fusion surgery with no award for pain and suffering was outside the bounds of fair and reasonable compensation.

Photos Showing No Damage to Vehicles are Admissible Evidence

In *Acetta v. Provenca*, No. 2008-31, the Rhode Island Supreme Court recently held that photos of vehicles depicting little or no damage are admissible at trial where the only issues for the jury are whether any injuries were suffered and if so, what amount of compensation should be awarded. "Photographs depicting no damage to the vehicles indeed are relevant when determining the force of the impact during the collision." Connecticut has a similar rule.

Happy St.



Patrick's Day!

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The trial attorneys at The Law Firm of Stephen M. Reck, LLC represent individuals in all types of personal injury cases throughout the state of Connecticut and the state of Rhode Island, including, in Connecticut: New London County, New Haven County, Middlesex County, Hartford County, Tolland County, and Windham County; and in Rhode Island: Bristol County, Kent County, Newport County, Providence County, and Washington County.

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