

Matthews Legal News

The Official Newsletter of Matthews & Associates Law Firm

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Supreme Court Rejects Pre-emption Defense

6-3 Ruling Preserves State Tort Suits

WASHINGTON – In a decided loss for the pharmaceutical industry, the Supreme Court ruled 6-3 on March 4, 2009 that a Vermont woman could sue Wyeth for injuries she suffered after taking one of the drug maker's medicines. Justice John Paul Stevens, in the court's majority opinion, said Food and Drug Administration oversight of drug labeling doesn't prevent the filing of state-level consumer liability lawsuits against drug companies. "In short," Justice Stevens wrote, "Wyeth has not persuaded us that failure-to-warn claims like Levine's obstruct the federal regulation of drug labeling." (p. 3)

Corporate Assault Fails as Supremes get it right

In great news for citizens, the Supreme court rejected an assault by pharmaceutical companies on the rights of people injured by dangerous drugs. It is a watershed moment in tort litigation. For 100 years, the FDA worked in a complementary way with tort law; trial lawyers represented injured people whenever FDA oversight failed to protect them from dangerous drugs, devices or food. No single agency can be expected to protect people 100 percent of the time, but that is essentially what Big Pharma was arguing. (p. 2)



David Matthews has a top rating in Martindale-Hubbell and is board-certified in personal injury trial law. Voted a "Texas Super Lawyer" by his peers, he has more than 100 jury verdicts.

Gadolinium – MRI/MRA Cases filed across the country

USA – The firm has filed several cases – in state courts across the U.S. and in federal court in Cleveland, Ohio – for victims of gadolinium-based contrast dyes used in magnetic resonance imaging. The firm will argue that the makers failed to properly study and research gadolinium and the impact it could have on people with impaired kidney function, and failed to warn of gadolinium dye's potentially fatal problems.

The FDA has indicated all five available Gadolinium/MRI contrast agents can cause several serious problems, including nephrogenic systemic fibrosis (NSF). Most NSF victims are on dialysis. If the kidneys can't expel gadolinium fast enough, it breaks free of its chelate (the substance it's mixed with to contain it); then it can infect skin, muscle tissue, bone and organs. (p. 2)

18-Wheeler Accident

HOUSTON – The firm has filed suit against the driver and company of an 18-wheeler that plowed through a school zone on Old Beaumont Highway, killing a 33-year-old woman and her 12-year-old son. The firm represents several surviving family members.

The semi-tractor trailer hit the woman and her son just after 2:00 on a Friday afternoon in 2003, just as they were exiting the school, less than 200 feet from a stop-lighted intersection. (p. 2)

Labor Case filed in New York

BUFFALO, NY – Our firm, along with attorney Tim Goss of Freese & Goss of Dallas, Texas, has filed a class action lawsuit in New York state court against Luvata-Buffalo. The suit charges the foundry has failed to honor the Fair Labor Standards Act. (p. 2)

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Baby Brain Damaged

AUSTIN – The firm has filed suit in Travis County on behalf of parents whose baby was brain damaged in July 2007 after doctors failed to respond to pregnancy complications. There was a 15-hour delay in the delivery, which should have been immediate. In addition, doctors and nurses didn't properly ventilate the baby after delivery, which further exasperated his injuries.

Raptiva Recalled

USA – The psoriasis drug Raptiva was withdrawn from the market on April 9 after it was found to be linked with a rare, but often fatal brain disorder, progressive multifocal leukoencephalopathy (PML). Other "side effects" include potentially fatal infections such as bacterial sepsis, viral meningitis, invasive fungal disease and other opportunistic infections. (p. 2)

Elidel/Protopic Lawsuit

HOUSTON – The firm has filed suit in New Jersey on behalf of a 33-year-old woman who developed T-cell lymphoma after taking Elidel. Since the FDA approved Protopic in 2000 and Elidel in 2001, seven cases of lymphoma and six skin cancer cases have been reported, according to the FDA. Animal tests have suggested the creams could cause cancer. Both skin products are made to control eczema. (p. 2)

Table of Contents

Medical Device Act Challenged.....	p. 2
Dangerous Drugs/Devices.....	p. 2
Spanair Crash Update.....	p. 2
Supreme Court Ruling.....	p. 3
Anatomy of a Lawsuit.....	p. 3
Mesothelioma/Asbestos.....	p. 3
Lawsuits and Public Policy.....	p. 3
Chinese Sheetrock Poisoning.....	p. 4

Gadolinium/MRI *(from p. 1)*

The skin of patients with NSF often swells and tightens on the extremities and sometimes the trunk. The condition may develop in days or months after an MRI. The FDA first warned medical professionals about the link between gadolinium-based dyes and NFD/NSF in June 2006. The gold standard for diagnosis is a punch biopsy of skin tissue for microscopic analysis. Anyone with questions can call our toll-free Gadolinium line: **1-888-527-5722**.

Spanair Crash Update

NEW YORK CITY – Matthews & Associates attorneys David Matthews and Adam Funk filed a Pre-Action Disclosure in Manhattan District Court last month. Such a proceeding allows a Plaintiff to obtain certain documents from Defendants before filing a lawsuit. Mr. Funk argued before Judge Madden that the documents in question would aid Plaintiffs in identifying Defendants involved in the manufacture of the defective jetliner which crashed in Madrid last October, killing more than 153.

18-Wheeler Accident *(from p. 1)*

Defense will argue a light was not flashing on the yellow school sign stating, "Speed Limit 35 when flashing," and that the woman failed to yield. The trucker has admitted to driving at least 50 mph in the school zone, which was otherwise marked by the standard schoolground caution signs seen throughout the country.

New York Labor Case *(from p.1)*

The FLSA requires workers be paid time and one-half for overtime work hours and that "salaried" employees be paid during plant shutdowns or "holiday" time. All salaried employees who are ready, willing and able to work but are denied access, not paid, and forced to take vacation time could be entitled to compensation. We may be able to help. Please call for a free consultation.

Dangerous Drugs

Raptiva *(from p. 1)*

Genentech, Inc., the drug's maker, disclosed that three cases of PML had turned up in patients taking Raptiva since October, including two that were fatal. A fourth patient taking Raptiva died of unknown cause after developing neurologic symptoms. Each of the four had been taking the drug for more than three years, according to Genentech.

Elidel/Protopic *(from p. 1)*

The Food and Drug Administration has said that research shows these creams are absorbed into the body and can cause skin cancer and lymphoma. The creams work by suppressing the immune system. They will carry a "black box" warning, the strongest carried on drugs and medicines.

Avandia

Avandia users are 43 percent more likely to suffer a heart attack and 67 percent more likely to die of CV causes than non-users, according to the New England Journal of Medicine. As leaders in the US with similar cases involving **Rezulin**, we handle Avandia cases.

Seroquel

Seroquel has been linked to a high incidence of type 2 diabetes, pancreatitis, hyperglycemia and other blood sugar disorders, leading the FDA to request that manufacturer AstraZeneca clearly list dangers on Seroquel packaging. We are currently litigating these cases.

Trasylol

A blood-clotting agent used in heart surgeries, Trasylol can increase the risk of heart attack, kidney complications and stroke not only during surgery but up to five years after. It costs up to 1,000 times more than two alternative clotting drugs, neither of which carries the same risks. We have filed several Trasylol cases in the U.S. thus far.

Call us for a free consultation.

Supreme Ruling *(from p. 1)*

Trial lawyers who primarily handle drug litigation exist to assist the FDA with its job of policing Big Pharma, which closely watched the Wyeth verdict. If the Supreme Court had ruled against Diana Levine – the musician who lost her arm due to a Wyeth drug – every drug-related case in the country would have been jeopardized. Any drug company that had gotten any product past the FDA could have pointed to the Levine case as a precedent to skate free from whatever harm its drug had done to anyone.

The back story is even more appalling than what you see out front on this one. Drug companies have, for years, funneled millions of lobby dollars into weakening the FDA – which led to record drug recalls in the mid 1990s. At the same time, they've tried to hide behind it, with this pre-emption scheme, when it was later found a drug or device was dangerous or defective. Thank God their shameless assault failed.

Medical Device Act News

WASHINGTON – Representative Henry Waxman (D-CA) is leading a congressional charge to overturn Medical Device Amendments (MDA) of 1976, which currently exempt corporations from state lawsuits in cases where medical devices were approved by the FDA. Waxman and others are attempting to pass a law which would prevent medical device makers from using FDA approval to fend off plaintiffs' claims in state courts. Medical device makers are currently shielded by the 1976 MDA.

Beware of Payment Scams

USA – People from all over the country have been calling us about a curious check they have allegedly received from Matthew (*sic*) & Associates. The scams vary daily, but many have originated in Canada. They often announce you've won a lottery, and request you send tax on the winnings to a sham company or give personal account information. Don't be victimized.

Mesothelioma/Asbestos

Matthews & Associates continue to pursue mesothelioma cases throughout the country. Mesothelioma is caused by exposure to asbestos, which is present in many work places such as construction, ship building, automotive and other manufacturing industries. People with a history of extended asbestos exposure are at the highest risk for developing malignant mesothelioma.

Even minor exposure to cancer-causing asbestos can result in malignant mesothelioma. However, mesothelioma has a latency of up to 40 years. Many people previously exposed to asbestos are only now showing symptoms; the average age of meso victims is 50 – 70.

Asbestos consists of tiny fibers that can find their way to the outside lining of the lung and damage the cells pleura is made of. These fibers can also be carried on clothing, which also makes them dangerous to family members.

Symptoms may include, but are not limited to, respiratory distress and a lasting cough and pneumonia. Symptoms are often mistaken for less serious ailments, and many patients show no signs at all. Diagnosis is usually made by chest x-rays and CT scans. Anyone with concerns should seek medical help.

Call us for a free consultation

Lawsuits and Public Policy

HOUSTON – In addition to compensating victims for their injuries and suffering, lawsuits can also encourage businesses or corporations to work in ways to improve citizens' safety.

A man was stabbed in the head last year on a Houston premises. The property was surrounded with criminal activity that spilled over to the property's parking lot. A lack of security and dim lighting set the stage for the stabbing in the graffiti-vandalized area. Matthews & Associates settled the case; and a few weeks later, the property owners made safety improvements. They hired a security guard on a golf cart, cleaned up ugly graffiti and added more lighting. The bottom line: besides compensating injured victims, lawsuits can provoke positive changes.

Supreme Court Rejects Drug Pre-emption

(from p.1)

Justice Stevens added that, "Congress has repeatedly declined to preempt state law," and that Bush administration changes to FDA policy claiming "state tort suits interfere with its statutory mandate is entitled to no weight" in the Wyeth case.

The ruling affirms an opinion by the Vermont Supreme Court in a lawsuit brought by guitarist Diana Levine. She lost an arm after Wyeth's antinausea drug Phenergan was inadvertently injected into one of her arteries during a push IV injection. Ms. Levine had gone to a clinic for treatment of a migraine headache. She argued that Phenergan's labeling, though approved by the FDA, didn't provide proper warnings of the risk of administering the drug through a push IV injection instead of an IV-drip. A Vermont jury awarded her \$6.7 million in damages. The Vermont Supreme Court upheld the award, ruling that FDA drug regulations don't prevent a company from being sued under state law over drug labeling.

Wyeth argued that Ms. Levine's lawsuit, which was based on Vermont law, should be preempted by federal drug regulations. The FDA, Wyeth said, knew of the drug's risks and benefits and instructed the drug maker to use labeling that accommodated both. Wyeth claimed it wasn't free to change the label warnings.

Toxic Chinese Sheetrock

(from p.4)

The easiest way to check your home, says Thomas Martin, head of America's Watchdog, is to remove electrical faceplates and see if copper ground wires have blackened. Contact America's Watchdog at 866-714-6466, or via the group's web site at <http://HomeownersConsumerCenter>. More than 300,000 homes may be affected. For legal recourse, contact Matthews & Associates for a free consultation.

Anatomy of a Lawsuit – an overview

by Lizy Santiago

Many clients understandably ask about the process of filing their case, so here it is: Once companies receive copies of our petition informing them that we have filed a lawsuit, they have approximately 20 days to answer. Their response is typically in a form that basically says, "We didn't do it. Prove it, if you can."

The next step in the process is called discovery. This is the time given us by the court to investigate and develop the case. Discovery can last from six to twelve months or longer, depending on the scope of the litigation.

One of the first steps in discovery requires a plaintiff to answer many written questions (interrogatories) and provide several documents relevant to the lawsuit, through a formal request for production. Once we receive the interrogatories and request(s) for production of documents, we contact the plaintiff to help answer the questions and locate the relevant documents. We then type everything and submit the final document to defense.



Lizy Santiago

As part of the discovery process, the plaintiff and many other key witnesses and experts will also be interviewed in person and under oath by lawyers for the defendants. This interview under oath is called a deposition. During the deposition, a plaintiff will be asked many of the same questions previously answered in writing, and also some new questions.

Once discovery is complete, if the Court has not yet assigned a trial date, we request one. Prior to trial, the court may require we participate in a dispute resolution process called mediation. If a case is not settled during mediation, we move forward to trial preparation. We work every case assuming it will go to trial. The litigation process can take one to two years or more. I hope this gives some helpful overview of the long and arduous legal process.

Toxic Chinese Sheetrock Poisoning Homes

USA – China continues to make news with poison products. Toxic Chinese drywall that first showed up in 2001 in Florida and the Eastern U.S., may also be found in New Orleans and Southeast Louisiana, Texas, Colorado, Virginia, Georgia, Washington, Oregon, California, Arizona, Nevada, Oklahoma the Carolinas and numerous other states. A lawsuit seeking class action status has been filed in Florida, alleging walls in homes were built with toxic Chinese drywall.

Symptoms include a rotten egg or sulphur smell; continuous failures of air conditioning coils or HVAC units; corroded electrical wiring in properties built or remodeled since 2001; the repeated failure of oven or stove elements or refrigerator coils. Health symptoms include mild to severe upper respiratory problems, nose bleeds, headaches or other potentially serious health problems. A simple test can show homeowners whether they have toxic sheetrock. (p. 3)

Baby's Death Linked to Poor Medical Treatment

PORT ARTHUR, TEXAS – Jason C. Webster of Matthews & Associates is preparing to file a lawsuit against an obstetrician and a Port Arthur hospital for negligence which resulted in the death of a baby boy. Born in May 2007, the baby weighed a healthy 7 lbs. 6 oz., but unbeknownst to the mother, she had previously tested positive for Strep B bacteria. Both the physician and the hospital overlooked the pre-existing condition and failed to treat it properly. The resultant infection was transferred to the baby, killing him 11 days after his birth. Mr. Webster will argue to a jury that a simple round of antibiotics prior to the birth would have prevented the infection and saved the baby's life.

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Matthews Legal News gives clients and other friends across the country up-to-date information about our firm's litigation as well as late-breaking national news. **Matthews & Associates** is a law firm of trial lawyers, consultants, investigators and medical personnel. We help people harmed by negligence, greed or incompetence. With more than 100 years of combined legal experience, our lawyers have practiced law in nearly all 50 states and Puerto Rico. We have the financial resources to handle any personal injury case.

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