

## **Product Liability Litigation: Case Screening, MDLs and the Example of Lawnmower Litigation**

David J. Hodge

Morris, King & Hodge, P.C.  
200 Pratt Avenue NE  
Huntsville, Alabama 35801  
Telephone: (256) 536-0588  
Facsimile: (256) 533-1504  
e-mail: [dhodge@mkhlawyers.com](mailto:dhodge@mkhlawyers.com)

### **PART ONE: SCREENING PRODUCT LIABILITY CASES**

The traditional basic requirements for any "good" case are, and have always been, three:

1. Liability, 2. Damages, and 3. Deep Pockets.

This is true whether the case involves a rear end collision, a slip and fall, or a dog bite case. How are product liability cases any different? There are several differences.

The first basic difference is that the initial evaluation of liability can seldom be easily made. The second basic difference introduces a fourth requirement that exists in most other cases, but is particularly acute in product liability cases:

4. The cost to win.

This additional requirement involves not only an evaluation of the amount of your personal time you will have to invest in successfully handling the case, but also the amount of time that your staff will invest.

Most importantly, you will also have to consider the investment of money that must be made to investigate and prepare the case for a successful trial. This final consideration will often dramatically affect the "net" amount your client may receive out of any settlement.

#### **Factors to Consider in a Products Case**

Product: Do you have the product? If it is unavailable, how does this damage the case? The law may not allow the case to proceed. The most important exhibit is the product.

The Damage Threshold: Do you have a catastrophic injury? What is catastrophic: death, paralysis, most lost limbs, lost vital organs or other seriously disabling injury. How serious does an injury have to be to justify the time and expense necessary to bring the case to trial? Are the damages sufficient that the client will net an adequate recovery after your fee and costs have been deducted? Are the medical expenses well in excess of \$200,000? If not, you may find that your client will insist on taking a chance to improve his recovery by insisting on a trial even in the face of a reasonable offer. Most product liability cases are going to require that you advance substantial sums of money to finance

the investigation and pre-trial discovery and preparation for trial. Seldom can settlements be reached without that financial commitment. Any situation in which the attorney's fees plus costs advanced leave the client with a marginal recovery presents many risks for the results of client dissatisfaction, even if the case is settled.

Financial Responsibility: Most product manufacturers or sellers are financially responsible, either because of their own resources and self-insurance, or because of high liability limits. Be prepared to find the small seller of the product manufactured in the Far East to be thinly financed, and thinly insured. Spend a little time on the Internet to see whether "World Industrial Manufacturing, Inc." is being operated out of somebody's home or garage. While not frequently a problem, a little checking may save much time in costs and investigation expenses. Bankruptcy of a defendant can be a major problem. Mergers and liquidations may create other problems.

Costs: Intertwined with the issue of damages is the issue of costs. A financial commitment to go forward may place a strain upon personal or firm finances that can put a strain on partner relations, and limit the ability of the firm to handle other potentially profitable cases. A lawyer must recognize that such strains have led some lawyers to recommend and even force, an unsatisfactory settlement. Likewise, commitment of large amounts of lawyer or non-legal staff time can have the same deleterious effects, but is more difficult to assess.

Common scenarios: Does the case fall into a common scenario? Lawyers handling personal injury cases, especially car wreck cases, may have legitimate product liability cases in their existing caseloads. Is there excessive roof crush in a vehicle accident? Is there a seat belt malfunction in a vehicle accident? Is there a seat back failure in a vehicle accident? Is there a vehicle rollover with no tripping mechanism? Is there a tire defect in a vehicle accident? Did the tire tread separate from the tire? Was the vehicle structure crashworthy? Did the airbag fail to deploy? Was the occupant of a vehicle killed by a fuel fed fire? Was there a product recall? Is there a pending Multi-district Litigation ("MDL") proceeding? Does the case fit the criteria for an current mass tort litigation such as talc litigation, hernia mesh or Invokana?

Need for Experts. The main expense in a products case arises from the need for expert testimony. In any products case, the need for experts must be determined. If an expert will be required, as is almost always so in product liability cases, you need to be looking for and employing an expert at the time of case evaluation. Unless you are personally very knowledgeable concerning the science of the product, you may find that proceeding without an expert can be disastrous. You may be presuming the existence of a defect, for example, when expert advice may reveal that your presumption is wrong. You may at the same time be overlooking a defect that clearly exists in the eyes of an expert. Missing the option could lead to loss of vital evidence, or a focus on the wrong questions when interviewing witnesses.

Statutes of Limitations and Statutes of Repose:<sup>1</sup> Be aware of the growing number of statutes of repose that can eliminate a recovery at an early date based on the date of manufacture or delivery of a product. And be aware that if you fail to get jurisdiction over a defendant, you may be compelled to file suit in another state with different statutes of limitations.

International Service of Process. If you are serving a lawsuit on a foreign manufacturer, you may have to accomplish service in accordance with an international treaty: *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters*, (20 U.S.T. 361; 658 U.N.T.S. 163). The entire process normally takes 12 - 16 weeks through the Central Authority.

The Law and the Proof: Remind yourself of the requirements of proof to present to a jury issue, and begin the first checklist of how that proof will be presented. Does federal preemption apply? Must you have an expert? How many? What kind? Has any vital testimony been destroyed or are vital witnesses dead or their whereabouts unknown. Remember, it is not what is true that counts; it is what you can prove. Must you test the product? Do you need to buy exemplar products?

## **PART TWO: ALABAMA'S EXTENDED MANUFACTURERS' LIABILITY DOCTRINE ("AEMLD")**

Alabama's Extended Manufacturers' Liability Doctrine ("AEMLD") governs all actions for product liability claims brought in the state, and is a modified version of the strict liability doctrine found in the Restatement (Second) of Torts Section 402A ("§ 402A"). The Alabama Supreme Court first articulated the AEMLD in 1976 in two decisions: *Casrell v. Altec Industries, Inc.*, 335 So. 2d 128 (Ala. 1976) and *Atkins v. American Motors Corp.*, 335 So. 2d 134 (Ala. 1976),<sup>2</sup> and a formal "products liability" action was codified by statute in 1979.<sup>3</sup>

A *prima facie* product liability action was stated in *Sears, Roebuck & Co., Inc. v. Haven Hills Farm, Inc.*, 395 So. 2d 991 (Ala. 1981) a case involving a tire blowout on the plaintiff's delivery vehicle, which resulted in an accident. *Id.* at 993-96. Here, the Alabama Supreme Court held that a product failure or accident involving a specific product does not create a presumption or infer the existence of a defect. *Id.* at 994-95. The Court went on to lay out the roadmap by which a plaintiff must prove its *prima facie* case, by showing: (1) the product is defective; (2) the product left the defendant's control in the defective condition; (3) the product reached and was used by the plaintiff

---

<sup>1</sup> Alabama's common law rule of repose extinguishes claims 20 years after they could have been brought. *Ex parte Liberty Nat'l Life Ins. Co.*, 825 So. 2d 758, 763 (Ala. 2002). This common law rule is similar to a statute of limitations. Alabama has no statutory statute of repose, other than the construction statute of repose. However, the statute of repose may be a factor in out-of-state cases.

<sup>2</sup> "The AEMLD is a judicially created accommodation of Alabama law to the doctrine of strict liability for damage or injuries caused by allegedly defective products." *Keck v. Dryvit Sys., Inc.*, 830 So. 2d 1, 5 (Ala. 2002).

<sup>3</sup> Ala. Code § 6-5-521 (1975).

without substantial change in its condition; (4) the defect is traceable back to the defendant; and (5) the defect caused the injury complained of. *Id.*

### **Types of Defects: Did Something Go Wrong With the Product?**

There are three types of product defects that one or more parties along the chain of manufacture can incur liability for. They are:

Design defects: A product with a design flaw may be inherently dangerous despite proper manufacturing and appropriate consumer use (e.g., a power saw that has no guard to protect the user's hands, a vehicle with a tendency to roll over, a failure to insulate a wire). Design cases should have other similar incidents.

Manufacturing defects: These defects occur during at the time of product construction or production (e.g., a tainted batch of medicine, using the wrong types of screws on mechanical parts, screws inadvertently not added, the steel used lacks adequate tensile strength).

Marketing defects/Failure to Warn: A marketing defect can be said to exist if a product does not contain language—such as instructions or warning labels—that describes product dangers. (e.g., medicine that does not include a warning of dangerous side effects).

### **Assumption of the Risk, Client Misuse Defense**

The client misuse defense applies where the victim's misuse or abuse of the product was responsible for his or her injuries. Was the client drinking or using drugs? What role did intoxication play? For example, are they a passenger or a driver? Excessive speed in a vehicle crash? Does that defeat causation? Did the victim ignore the warning label or instructions? Did the victim alter the product? Was it a foreseeable use?

### **Sealed Container Defense**

Alabama appellate courts have long held that the "sealed container" defense applies to retailers and distributors sued on products liability claims under the AEMLD. In 2009, the Alabama Supreme Court held that the sealed-container defense was not available to the retailer in claims asserting a breach of implied warranty under the UCC. *Sparks v. Total Body Essential Nutrition, Inc.*, 27 So. 3d 489, 490 (Ala. 2009)

### **2011 Amendments: Re-Codification of the Sealed Container Defense**

*Alabama Act 2011-627* amended *Ala. Code* § 6-5-501 and 6-5-521 to generally prohibit product liability actions against wholesalers, dealers, distributors or retailers (collectively, "distributors"). The primary exception applies where the distributor is also the manufacturer or assembler. Other exceptions include (1) if the distributor "exercised substantial control over the design, testing, manufacture, or labeling"; (2) if the distributor "altered or modified" the product and (3) if the distributor commits any

“independent acts unrelated to product design or manufacture” including negligence, wantonness, warranty violations or fraud. Section 6-5-521(b)(4) states that it “is the intent of this subsection to protect distributors who are merely conduits of a product.”

Also, a plaintiff may bring suit against a distributor if it cannot determine the identity of the manufacturer (but must dismiss the distributor if the manufacturer is later made known).

## **PART THREE: MULTI-DISTRICT LITIGATION (MDL)**

### **Introduction**

Many of us have seen commercials for asbestos cases and metal hip replacement lawsuits. For many lawyers, these commercials may be the closest they ever come to multidistrict litigation (“MDL”). The asbestos litigation and metal-on-metal hip replacement cases are two examples of MDLs, but MDLs are formed for many other wide-ranging types of cases as well. In fact, one of the largest anti-trust cases in the country is an MDL proceeding in the Northern District of Alabama. Generally, when there are numerous plaintiffs with similar facts with complaints pending against the same defendants for similar damages in multiple federal district courts, coordination of those cases into an MDL will be sought. Once ordered, all cases pending in federal courts from around the country are transferred to a single judge for pretrial proceedings.

### **Class Action vs. Mass Torts: What is the difference?**

A mass tort is a single tort that results in injury to many victims, and therefore involves many plaintiffs suing one or a few defendants. In most cases, mass tort claims are brought when consumers are injured on a large scale by defective drugs, medical devices or defective products. In a mass tort case, each plaintiff has an individual claim with distinct damages, and each plaintiff will, theoretically, receive his or her own separate trial. In contrast, a class action involves a single case with only one trial with the class representative representing the class of plaintiffs.

Mass tort cases are often bundled together for pre-trial proceedings for efficiency. Mass tort litigation allows a group of attorneys to represent several injured parties in individual cases. The investigation and discovery conducted by a leadership committee of attorneys can be shared among all cases. A nationwide network of attorneys can pool resources to ensure all individuals receive fair treatment for their injuries.

### **Rising Amount of MDL.**

The amount of MDL proceedings in the federal courts is skyrocketing, particularly in the areas of mass torts and products liability. One significant reason for the explosion of MDL has been the difficulty of maintaining nationwide or multistate class actions in these areas.

As of March 31, 2017, there were 349,666 total pending actions in U.S. district courts. As of November 15, 2017, there were 125,373 actions presently pending in MDL proceedings. This means that MDL proceedings account for roughly 36 percent of all cases pending in federal courts across the country. Despite the prevalence of MDLs, only a small percentage of lawyers are regularly involved in MDL cases. Those lawyers who are not regularly involved will likely have at least a handful of encounters with MDLs in their careers. Hopefully, these materials will be a helpful primer and make those encounters slightly less frustrating.

The stated purpose of the MDL process is to promote efficiency. For a defendant, an MDL allows them to avoid having to defend actions in many different federal courts, respond to thousands of sets of discovery, and to respond to thousands of different individual motions. For plaintiffs, an MDL means pooled resources and an experienced leadership structure to divide the workload. For both sides, an MDL results in consistent pretrial rulings that apply to every case.

Statutory authority for multidistrict litigation is found at 28 U.S.C. § 1407(a). The statute provides that “when civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.”

### **Makeup of the MDL Panel**

The Judicial Panel on Multidistrict Litigation (“JPML”) is made up of seven circuit and district judges appointed by the Chief Justice of the United States. The JPML’s main office is in Washington, DC, but hearings are conducted at various locations around the country every other month. The MDL statute provides that no two members may be from the same federal judicial circuit. While the Panel has no authority to adjudicate any substantive issues in the cases, it has broad discretion over case management at the pretrial stage. The current Chair of the Panel is Judge Sarah S. Vance, who sits in the Eastern District of Louisiana.

Our own Judge R. David Proctor from the Northern District of Alabama currently serves as a member of the Panel alongside a judge from the Third Circuit Court of Appeals and district judges from California, New York, District of Columbia, and Missouri.

### **How an MDL Forms**

In most instances, something occurs that triggers these mass litigations. To use the examples from the introduction, it could be the issuance of recall letters for a defective medical device or the discovery of a causal link between a product and cancer. Once the triggering-event happens and cases are filed in several federal districts around the country, a motion for centralization will be filed with the JPML and the motion will be

set for hearing at the next JPML hearing session. Plaintiffs typically file the motion, but defendants can, and often do, move for centralization. The initial motion includes arguments about why the case meets the criteria for centralization, along with the statements as to which venue is most convenient and best equipped to handle the MDL, and which judge should oversee the litigation.

After the initial motion to centralize is filed, the nonmoving party (typically a defendant) files a response, which either supports or opposes coordinated pretrial proceedings and will either agree, disagree, or propose alternative venue and/or judge. The moving party will file a reply brief addressing the issues raised by the nonmoving party. At this point, the Panel or the parties notify the district courts and parties with potential tag-along cases<sup>4</sup> of the pending MDL motion. Those cases are usually stayed until the Panel issues an order either establishing an MDL or refusing to consolidate the cases. Other parties (usually plaintiffs with potential tag-along cases) file interested-party responses either supporting or opposing the initial motion for coordinated or consolidated pretrial proceedings. Attorneys who wish to argue at the hearing must then file a notice of presentation before the Panel.

If more than one attorney files for a particular venue, then the Panel requires attorneys to meet and confer and to select one counsel to advocate for each venue.

The primary task of the JPML is to determine (1) whether the civil actions pending in various federal districts should be transferred to a single judge for pretrial proceedings and, if so, (2) which federal judge is best suited to handle that specific MDL. The best method of accomplishing its task is through hearing sessions. The JPML holds hearing sessions approximately every other month. Depending on the arguments, the JPML may not focus on whether or not transfer is appropriate; rather, the JPML may focus on the specific federal district or the particular judge to oversee the cases.

There are three criteria the JPML consider when determining whether the cases should be centralized for pretrial proceedings. First, the cases must share more than one question of common fact, and those questions must be material and contested. Second, the transfer of cases must advance just and efficient conduct of the actions. The JPML will closely consider the number of cases (both filed and unfiled), the fact questions involved, the discovery efficiencies and, also, the availability of the transferee judge to handle the cases. Third, transfer must serve the convenience of the parties and witnesses. The JPML looks at where the parties and witnesses reside, where documents are and whether either side is merely trying to forum shop. A district that is convenient and has pending cases will usually be selected. The JPML will also consider the current caseload and MDL experience of the potential transferee judges.

After the JPML ordered that an MDL be established and determined the district judge that will oversee it, the transferor courts lose jurisdiction and the transferee court's jurisdiction becomes exclusive. The transferee court will then hold a status conference for

---

<sup>4</sup> If the MDL Panel has already established an MDL for a particular set of cases, your case can be transferred by means of a "tag-along" notice with no hearing, unless you object within 15 days.

all the attorneys of record with pending cases. A number of case management issues will be discussed at this conference, but the primary task for the transferee court is to decide the leadership for the plaintiffs' case. Generally, the plaintiffs' leadership organizational structure consists of a lead or co-lead counsel, plaintiff's liaison counsel, plaintiff's executive committee ("PEC"), and plaintiffs' steering committee ("PSC"). There are usually dozens of attorneys jockeying for leadership positions and the process can become contentious.

### **MDL Leadership**

There are two distinct ways that judges go about selecting attorneys for the plaintiffs' leadership roles. The "consensus model" is when the plaintiffs' attorneys file a proposed leadership slate that is subject to objections and to court approval. The "competition model" is when the court invites applications for leadership positions and the judge makes appointments based on the applications. The applications are basically resumes highlighting MDL experience and other relevant qualifications.

### **Handling Cases in the MDL**

Once the court appoints the leadership, the PSC is charged with litigating the cases on behalf of all the plaintiffs' lawyers in a concerted effort. PSC members will advance the costs of the litigation. If the cases are resolved in favor of the plaintiffs, the PSC will be awarded "common benefit" fees, which are derived by taking a percentage from each plaintiff's recovery. Judges usually order these assessments to be taken out of both the attorney's fee and the client's recovery.

The PSC is responsible for the lion's share of the litigation work. The transferee court has broad discretion on how to conduct the litigation to make it as efficient as possible. No two MDLs are procedurally identical from start to finish. Among many other things, the PSC will conduct the discovery, take depositions, hire experts, file and respond to dispositive motions, negotiate group settlements, and, if called for, prepare for bellwether trials. Individual plaintiffs must still respond to client specific discovery requests propounded by the defendants, which are typically uniform requests. called the "Plaintiff's Fact Sheet" or "Plaintiff's Profile Form" that are negotiated and agreed to by the PSC.

Bellwether trials may be conducted in an attempt to get an idea of the results if these cases, or classes of cases, were litigated individually. The vast majority of MDLs result in some sort of "group" settlement that disposes of the bulk of the consolidated cases. Each plaintiff has the option to accept or reject the global settlement offer. In the rare MDL where the cases are not resolved at the pretrial stage, each case will be remanded back to the court it originally came from for any remaining pretrial activities and trial. When this occurs, the PSC will distribute a "trial package" to the individual plaintiffs' attorneys with relevant trial materials pertaining to the common elements of the cases.

The number of MDLs has expanded rapidly over the past fifteen years. It appears that the federal judiciary will continue to use MDLs as a procedural tool in its attempts to efficiently and effectively manage federal dockets. Despite criticisms of MDLs, there is no denying that the federal court system would not be able to handle its caseload without the process.

#### **PART FOUR: THE EXAMPLE OF LAWNMOWER NO-MOW-IN-REVERSE LITIGATION**

Every year, hundreds of children suffer injuries as a result of lawnmowers that continue to mow while in reverse. This problem has been identified and criticized since the early 1960's. Despite the number of annual serious injuries suffered by children as a result of this design defect, the industry has been slow to address the problem. There are simple design solutions that would prevent lawnmowers from reversing while the mowing blades are engaged. The design alternatives to prevent this hazardous situation are an anti-lock system wherein the blades stop turning if the lawnmower is put into reverse, the lawnmower cannot be put in reverse if the blades are engaged, or the lawnmower simply shuts off if it is placed in reverse while the blades are engaged.

#### **Lack of No-Mow-In-Reverse Systems Lead to Hundreds of Child Injuries Every Year**

Each year approximately 560 children are injured as a result of a back over incident with a riding lawnmower.<sup>5</sup> Riding lawnmowers provide an annual injury rate of 2.6 injuries per 1,000 ride-on mowers. "This injury rate is more than three times greater than that for walk behind power mowers."<sup>6</sup> The overall injury rate for all lawnmowers and children was an average of 9,400 annual injuries or 11.1 injuries per 100,000 U.S. children per year.<sup>7</sup> The injury rates are particularly troubling in light of the infrequent and seasonal use of this product.

Coupled with the high injury rate is the fact that lawnmower injuries are severe. The lawnmower blade has an extreme amount of power when it is engaged. The kinetic energy of an average blade at 3,000 RPM is 2,100 ft/lb.<sup>8</sup> "Placed in perspective, the wounding capacity of a rotary blade is the same as the power generated by dropping a 211 lb object from the height of 100 ft or three times the power of a .357 Magnum gun. Additionally, the power lawnmower can become a lethal weapon by indirect mechanism. The momentum at the tip of a blade moving 3,000 RPM can launch a 1.5 lb object at 232 MPH."<sup>9</sup> Obviously, such force creates a large potential for severe injuries to children.

---

<sup>5</sup> David Vollman, et al., *Lawnmower Related Injuries to Children*, 59 *Journal of Trauma*, 724, 727.

<sup>6</sup> Gary Smith, Technical Report: Lawnmower Related Injuries to Children, *Pediatrics* Vol. 107 No. 6 (June 2001).

<sup>7</sup> David Vollman et.al., *Epidemiology of Lawnmower Death Related Injuries to Children in the United States*, 1990-2004. *Pediatrics* Vol. 118, No. 2, (August 2006).

<sup>8</sup> Jorge E. Alonzo, M.D. and Fernando El Sanchez, M.D., *Lawnmower Injuries in Children: A preventable Impairment*, 15 *Journal of Pediatric Orthopedics* 83 (1995).

<sup>9</sup> *Id.*

An estimated 2,000 children are permanently impaired every year as a result of lawnmower injuries.<sup>10</sup>

A 2005 study entitled “Characteristics of Pediatric Traumatic Amputations Treated in Hospital Emergency Departments: United States”, was the first to use a nationally representative sample to evaluate amputation injuries among children.<sup>11</sup> The study analyzed data from children with amputation injuries treated in NEISS participating hospitals from January 1, 1990 through December 31, 2002.<sup>12</sup> This study found that “lawnmowers were associated with more severe injuries than any other product in [the] study period. They caused the largest number of toe and foot amputations and had the highest proportion (51.9%) of injuries requiring hospitalization.”<sup>13</sup> “Of all pediatric mower-related injuries, more than 7% require hospitalization, roughly two times the hospital admission rate for consumer product-related injuries overall.”<sup>14</sup> “Ride-on mowers were the leading cause of amputation injuries among children admitted to one regional level I trauma center.”<sup>15</sup>

No-mow-in-reverse system has been in use for over twenty years; however, some manufacturers still refuse to utilize the safety feature. In 1981, the Consumer Product Safety Commission identified the hazard pattern of a child being backed over by a riding lawnmower.<sup>16</sup> In that same report, the Consumer Product Safety Commission suggested a requirement that “during the time that the mower is in reverse gear the propulsion engine is running, the blades shall be stopped and there shall be an intermittent sound signal of specified characteristics.”<sup>17</sup>

Manufacturers as early as 1981 began producing riding lawnmowers with no-mow-in-reverse features. Several manufacturers in the early 1980s advertised lawnmowers with this feature. Despite competitors utilizing and advertising this safety feature and recommendations by the Consumer Product Safety Commission, some manufactures continue to fail to install such safety devices.

The medical community has consistently called for the implementation of such devices and has affirmatively concluded that such devices will prevent the severe back-over injuries. For example, the American Academy of Pediatrics has stated that manufacturers should be required to “design ride-on lawnmowers that will not mow in reverse, with a manual override option if adequate levels of safety cannot be achieved voluntarily, a mandatory federal safety standard may be necessary.”<sup>18</sup> The American

---

<sup>10</sup> Id. at 84.

<sup>11</sup> Sarah Graham Hostettler et al., *Characteristics of Pediatric Traumatic Amputations Treated in Hospital Emergency Departments: United States, 1990-2002*, *Pediatrics* Vol. 116, No. 5 (2005)

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Vulman, *Supra* at 724.

<sup>15</sup> Id.

<sup>16</sup> Ray Newman and Regina Miles, *Hazard Analysis Injuries Associated With Riding Type Lawnmowers*, U.S. Consumer Products Safety Commission, (1981).

<sup>17</sup> Id.

<sup>18</sup> <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;107/6/1480>

Academy of Pediatrics Committee on Injury and Poison Prevention has reported no-mow-in-reverse feature “could help reduce the number of injuries from back-overs involving blade contact.”<sup>19</sup> A ten year study of lawnmower injuries in children concluded that if no-mow-in-reverse feature were mandatory, “the majority of severe injuries in children would be prevented.”<sup>20</sup>

## CONCLUSION

The above is a broad overview of a dangerous design defect found in a number of riding lawnmowers. This problem has been identified for over 20 years yet some manufacturers continue to place children at risk by failing to install no mow in reverse systems. The American Association for Justice recently created a litigation group to assist its members with these types of cases as well as other lawnmower concerns. For membership information please contact the author of this article.

---

<sup>19</sup> Gary Smith, *Technical Report: Lawnmower-Related Injuries to Children*, Pediatric Vol. 107, No. 6 (2001).

<sup>20</sup> Stanley T. Lau, et al., *Lawnmower Injuries in Children: A Ten Year Experience*, Pediatric Surgint 22 209 (2006).

Other Sources: Bill Wagner, Practical Aspects of Screening Products Liability Cases, *The Practical Litigator* (Nov. 2002); “What is Multidistrict Litigation” Chris T. Hellums.