



◆ THE POPPE LAW FIRM ◆

SUMMER 2006

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Juries protect us all

America's civil justice system has stood the test of time. It doesn't put anyone in jail. Instead, it punishes those who act with disregard for the welfare of the rest of us. It also strives to restore the health and well-being of those who have been harmed by others' actions.

Our fundamental constitutional right to a trial by jury is under attack. Special interests, such as the manufacturing, insurance, and drug industries, want to change the system to benefit their own financial and legal interests.

Here are other challenges to our justice system that many of us may not often think about:

- Inadequate juror compensation.
- Juror prejudice from public relations campaigns.
- Delayed or denied justice from court budget cuts.



- Judge shortages backlogging cases.
- Appellate courts reversing jury verdicts.
- Secret settlements hiding justice from the public.
- Refusing media access to investigate court files.
- Legislatures predetermining legal issues.
- A poisoned, partisan political landscape.



Hans G. Poppe

Vioxx punitive damages

In the first Vioxx® trial, jurors found that executives at Merck & Company, Inc., were aware of the cardiac risks of its money-making painkiller as early as 1997, but continued to aggressively market the drug as safe.

Texas jurors determined their \$229 million punitive-damages award by calculating how much money Merck made by delaying changes to the drug's warning label, after a study showed that Vioxx caused five times as many heart attacks as a competitor's drug.

Some numbers

What does the \$229 million punitive-damages award really mean to Merck? Despite the jurors' clear message, Texas law automatically reduced the punitive damages to \$1.6 million. That's how much Merck made in Vioxx sales every 6 hours and 40 minutes marketing the drug.

Other numbers?

- \$11.77 billion—total worldwide Vioxx sales.
- \$37.8 million—how much Merck's CEO, Raymond Gilmarin, earned in 2004 from salary, bonus, and stock options. That's 22 times Merck's reduced punitive-damages verdict.

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Premises liability

Home or apartment fires

Every day, roughly 800 residence fires occur in the nation, with most starting overnight, between 8:00 p.m. and 8:00 a.m. More than 6,500 Americans die in home and apartment fires annually, and over half are children and older persons.

Fire safety

Taking three precautionary steps can save lives:

1. Install smoke alarms, and teach everyone about the dangers of smoke and flames in a home fire.
2. Plan and practice primary and alternate escape routes.
3. Identify a post-escape meeting place.

A negligent landlord

A renter was severely injured when he had no alternative to jumping from a window during an apartment fire. The plaintiff's attorney recovered damages by demonstrating that the landlord's negligence was responsible for the client's injuries. The landlord dead-bolted a fire exit to keep trespassers out and permitted other tenants to prop open internal fire doors to improve air circulation.

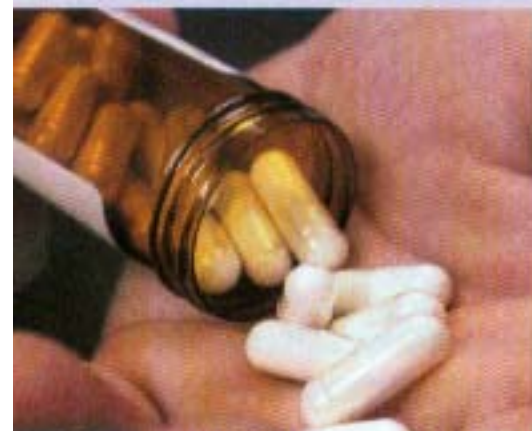
Medicare claim hearings

A July 2005 change in federal policy limits Medicare beneficiaries' access to claims-denials hearings, making it harder for older Americans to obtain justice. Forty-one million Americans participate in Medicare.

When Medicare denies claims for prescription medications, in-home care, nursing home medical services, or other benefits, claimants are now required to attend hearings conducted via video-conference or by telephone with judges supervised by the Department of Health and Human Services in only four cities—Cleveland, Ohio; Miami, Florida; Irvine, California; and Arlington, Virginia.

The recently enacted Medicare drug benefit is expected to create large numbers of claims. Previously, beneficiaries petitioning personal claims-denial hearings could travel to 1 of 140 Social Security offices located throughout the nation. Now, Medicare will conduct face-to-face hearings only under very special circumstances, and those demanding personal hearings forfeit the right to a 90-day decision.

Many legislators, patients' rights groups, and Medicare attorneys claim four offices were insufficient and worried that the change would result in sick or aging beneficiaries not obtaining just or positive decisions.



FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled defective or dangerous products you may have in your home or at work:

- ✓ **King of Fans, Inc.**, recalled 75,000 Maxi-Heat™ Dream Tower Heaters. Interior heater wiring can short-circuit and harm consumers.
- ✓ **Porter-Cable** has voluntarily called back 70,000 Porter-Cable 890 Series Routers with motor coil insulation that can be worn away by vibration and shock users.
- ✓ **Country Home Products, Inc.**, has asked buyers to return 15,700 2005 Model NEUTON® Cordless Electric Lawn Mowers. Even when the handlebar is released, the motor sometimes continues to run, causing the blade to spin, which can harm consumers.
- ✓ **Fisher-Price** has recalled 614,000 Fisher-Price® Laugh & Learn™ Musical Learning Chairs™. Children may become trapped between the chair seatback and side table, which poses a strangulation hazard.
- ✓ **Simplicity Inc.** requests consumers to return 104,000 Aspen 3 in 1 Cribs, sold under the Graco Trademark. Support screws can loosen, allowing mattresses to fall, posing a suffocation hazard to young children.
- ✓ **LTD Commodities and its subsidiary, The Lakeside Collection**, have voluntarily recalled 34,600 Pilates Balls. Exercisers using the ball can be hurt by plastic clips or grommets that may loosen from rubber tubing on nylon webbing.



Auto accidents

What is "proper lookout?"

In auto accident cases, drivers may be found negligent for failing to keep "proper lookout."

A driver is obliged by law to constantly monitor all the circumstances of driving in order to prevent a car accident. Requirements include paying attention to the roadway, traffic signals and controls, and other drivers.

To keep a proper lookout, drivers also should avoid common distractions. Studies show that the most common driver diversions are accidents, slowdowns, or other events outside the driver's vehicle; changing radio stations or CDs; talking with passengers; adjusting heating or cooling controls; eating or drinking; talking on a car or cell phone; and smoking.

Younger drivers are more prone to music-related distractions. Adults have their attention diverted by passengers. Seniors attend to objects or events happening outside the vehicle.

Drive safely. Keep a proper lookout.



You can beat City Hall

Police officers and qualified immunity

The long-standing legal doctrine of qualified immunity protects police officers and public officials from unreasonable allegations or false accusations that might hamper their ability to enforce the law or perform governmental business.

Most citizens understand that police put their lives at risk during dangerous situations and believe officers deserve some leeway in their behavior—as long as the police obey the law and uphold citizens' civil rights.

When police overstep bounds

When police violate the law while performing their duties, our civil justice system provides citizens a way to protect their rights. An appellate court ruled that a defendant law-enforcement officer who conducted clearly unconstitutional strip searches on two suspects arrested for drunk driving, and also made racist and threatening comments, did not have qualified immunity from prosecution. The court permitted the plaintiffs to sue to recover damages.

Consumer credit-card disputes

Collusion lawsuit challenges mandatory arbitration

Credit- and charge-card marketers take away consumers' rights to dispute unauthorized use, erroneous merchant billing, and extra fees by requiring cardholders to accept mandatory arbitration clauses in disagreements.

A 2005 lawsuit filed against these marketers alleges that they met in secret numerous times between 1998 and 2003 to establish strategies for industrywide imposition of mandatory arbitration clauses for settling customer disagreements. The plaintiffs claim that the clauses "deprive cardholders of effective recourse for illegal anticonsumer and anticompetitive activity, secure an unfair advantage for defendants in the dispute-resolution process, and immunize defendants from collective action by consumers."

Defendants

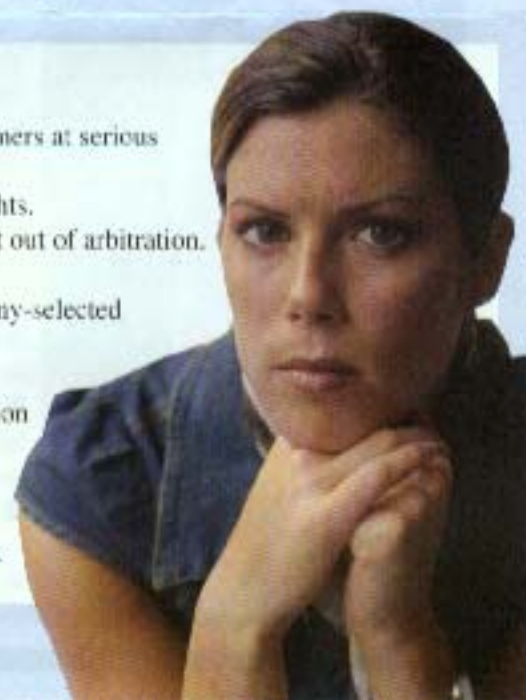
American Express
Bank of America
Capital One
Chase, Bank One
Citibank/Diners Club
Discover, Household
First USA
J.P. Morgan Chase
MBNA
Wells Fargo

Plaintiffs want the clauses, which also ban class actions and let companies skirt consumer protection and antitrust laws meant to prevent corporate misconduct, declared void.

Mandatory arbitration

Credit-card mandatory arbitration puts consumers at serious disadvantage because it...

- forces unknowing waivers of constitutional rights.
- does not give cardholders an opportunity to opt out of arbitration.
- screens cases from public scrutiny.
- compels cardholders to agree to biased, company-selected arbitrators.
- fast-tracks cases card issuers can win quickly.
- prevents legal discovery of important information about a company's disputed actions.
- limits remedies available to wronged purchasers.
- may require consumers to pay arbitration costs.



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Driving safely

Everyone can drive more safely and confidently in all driving conditions by reviewing some basics:

Your car

- Keep it in tip-top shape. Have tires, wipers, lights, and battery checked.
- Clean windows and lights.
- Be visible. Turn on headlights at dusk, especially in rainy or low-visibility conditions.
- Insist that everyone wear seat belts.
- Tune your radio to local weather updates.



Your driving

- Stay calm and alert at all times.
- Concentrate and drive defensively.
- Go slower, especially under adverse weather and other poor-visibility conditions. You can see only as far as your headlights' beams in the dark.
- Accelerate and brake more slowly in bad weather, and always signal before turning or changing lanes.
- Maintain a safe distance from cars in front of you. Braking distances increase dramatically as slippery conditions intensify.
- Get used to your car's antilock braking system.
- Refrain from overbraking during skids. Instead, remove your foot from the gas, and steer your car to safety.
- Take necessary precautions to avoid car theft.
- For more information, call our law office at 502-895-3400.

Bird flu vaccine Senate eliminates liability

Patients suffering harm from bird flu vaccines cannot hold manufacturers accountable, no matter what.

Senator Bill Frist, a physician, inserted a backroom deal for drug makers into a \$453 billion defense budget the Senate passed in late 2005. Critics claimed Frist gave his pharmaceutical-industry friends an unprecedented gift—immunity, even if they commit gross negligence or are reckless in marketing dangerous and deadly drugs.

According to a broad-based, bipartisan coalition of public-health organizations, nurses, first responders, consumer groups, children's health organizations, and veterans, the bill gave incredibly sweeping immunity to drug manufacturers and will require those harmed by the vaccine to prove the company engaged in malicious misconduct.

Eliminating an individual's right to hold negligent drug companies accountable removes an important incentive for drug companies to make safe drugs—especially considering that some big drug companies have a track record of putting profits before the health and safety of the public.