Shamberg, Johnson & Bergman
—Trial Attorneys—

Spring 2009

In This Issue

Welcome

As in the past, our firm has achieved outstanding results in a wide variety of litigated cases. The lesson from this collection of cases is that good lawyering makes a big difference, and experience pays. In personal injury cases we emphasize the importance of early attorney involvement, quick response, independent investigation by an experienced team of attorneys and experts, relentless discovery, imaginative legal thinking, and the ability to finance major litigation. These are some of the cornerstones of excellent results.

SJB Wins Record $23.5 Million Trucking Accident Verdict

Shamberg, Johnson & Bergman won what is thought to be the largest personal injury verdict in Kansas history in a trucking case against Swift Transportation.The $23.5 million verdict followed a lengthy jury trial in U.S. District Court in Wichita.

In the dead of the night on March 16, 2006, Terry Frederick was travelling in the sleeper berth of a Yellow Transportation truck driven by Mr. Frederick's co-driver

Verdict Continued on Page 4

Football Concussion Results in $3 Million Settlement with High School Coaches and Administrators in Brain Injury Case

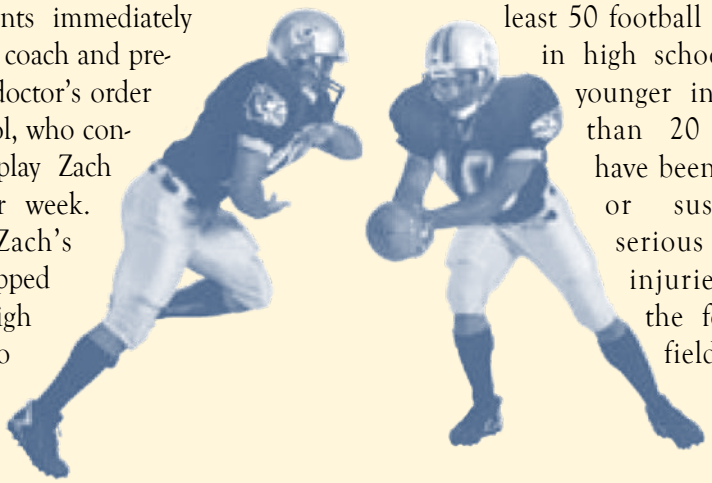
Failure by high school administrators and football coaches to pull an injured player off the field resulted in permanent brain injury for a 14-year-old freshman and ultimately a $3 million policy limits settlement after suit was filed. John Parisi and Douglas Bradley represented the family.

On October 10, 2005, Zachary Frith suffered a concussion during a freshman football game while playing wide receiver. Despite the injury, the coaches allowed Zach to remain in the game.

The coaches and school administrator documented Zach's head injury, but his parents were never notified. The following week, the coaching staff allowed Zach to continue to practice and to play an entire game. Noticing behavioral changes in their son in the week following the game, Zach's parents had him evaluated by a local physician who diagnosed his concussion and prohibited football or other physical contact.

Zach's parents immediately notified the coach and presented the doctor's order to the school, who continued to play Zach for another week. When Zach's mother dropped by the high school to pick Zach up for a follow-up doctor's appointment, she saw him on the field practicing with the rest of the team. She confronted the coaching staff. It was only then that Zach was finally kept off the field. Unfortunately, by that time Zach had developed post-concussion syndrome. Plaintiffs retained a neuropsychologist specializing in traumatic brain injuries to testify that the cumulative effects of the initial concussion and subsequent blows to his head during the next two weeks resulted in post-concussion syndrome and severe permanent cognitive deficits.

According to the CDC, more than 300,000 sports and recreation related traumatic brain injuries occur in the United States each year. Additionally, The New York Times has reported that since 1997 at least 50 football players in high school and younger in more than 20 states have been killed or sustained serious head injuries on the football field.



Shamberg, Johnson & Bergman

John E. Shamberg*†
Lynn R. Johnson
Victor A. Bergman
John M. Parisi
Scott E. Nutter
Matthew E. Birch
Aaron M. Kroll+
David R. Morantz
Douglas R. Bradley
Shannon T. Kempf+

* OF COUNSEL
† ADMITTED ONLY IN KANSAS
+ ADMITTED ONLY IN MISSOURI

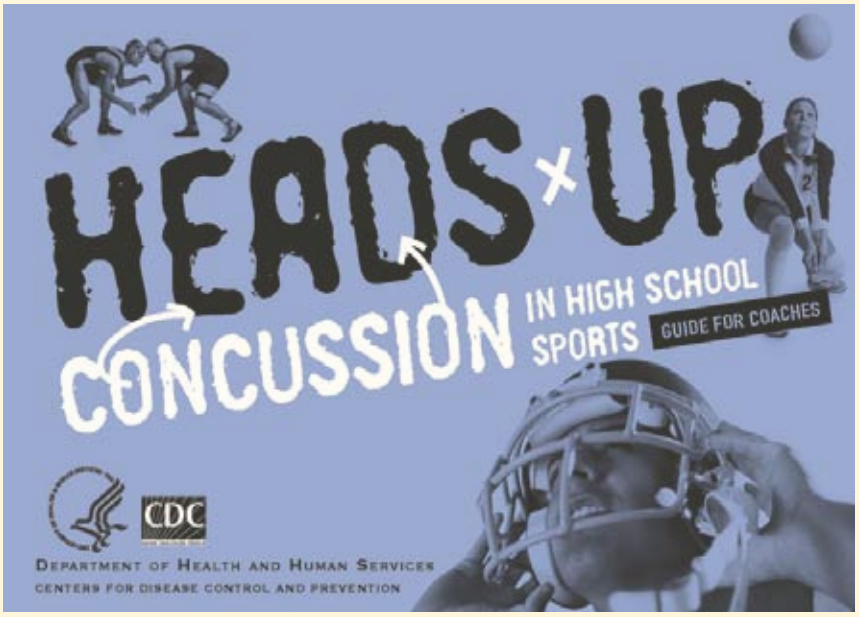
2600 Grand Boulevard, Suite 550
Kansas City, MO 64108
816-474-0004
Fax: 816-474-0003

Kansas Office:
Commerce Plaza I
7300 West 110th Street
Overland Park, KS 66210
913-642-0600

www.sjblaw.com

Administrators, trainers, and coaches play key roles in preventing concussions. Managing them correctly can prevent serious and permanent injuries such as those suffered by Zach.

The standard of care required that Zach be removed from play when initially injured. This was established in part from a publication of the Department of Health and Human Services Center for Disease Control and Prevention entitled Head's Up: Concussion in High School Sports – Guide for Coaches.



The CDC publication is specifically directed to high school coaches and requires that they take the following steps: (1) remove the athlete from play; (2) ensure the athlete is evaluated by an appropriate health care professional; (3) inform the athlete's parents or guardians about the known or possible concussion and give them a fact sheet on concussions; and (4) allow the athlete to return to play only with permission from an appropriate health care professional. After Zach's lawsuit was filed, Lafayette County School District adopted the action plan recommended by the CDC.

We are pleased that the defendants in this case stepped forward and resolved this case without putting the family through trial.

GM Antifreeze Class Action Suits Resolved

Beginning in 2003, Shamberg, Johnson & Bergman, Chtd., along with a consortium of firms across the country, pursued class actions against General Motors seeking compensation for damage done to GM vehicles by Dex-Cool, an extended life antifreeze.

Labels on GM radiators recommended Dex-Cool coolant.

John Parisi and Aaron Kroll handled the matter.

Shamberg, Johnson & Bergman, in partnership with Shughart, Thompson & Kilroy, filed one of the first cases in the Circuit Court of Jackson County Missouri. Similar class actions were later certified against GM in federal or state courts in California, Illinois and Texas.

GM marketed the orange-colored coolant as protecting engines longer than traditional coolants, causing less wear on engine parts and providing environmental advantages. However, class members experienced problems ranging from coolant leaks, radiator failures and engine failures.

GM's Dex-Cool coolant was a unique orange color.

On the eve of our Missouri trial in Jackson County, the cases settled on a nationwide basis. The settlement per

GM Antifreeze Continued On Page 7



Still images pulled from a collision animation that was played at trial show the Swift truck backing into the path of the Yellow truck.

Verdict Continued From Page 1

along a dark stretch of U.S. Highway 54 near Tucamcari, N.M. As the Yellow truck passed a rest area, a Swift truck that was attempting to enter the rest area from the wrong entrance backed into the Yellow Truck. The collision left Mr. Frederick partially paralyzed and killed his co-driver.

The only eyewitness to the accident was the driver of the Swift truck. Consistent with her account to the New Mexico State Police, the accident report indicated that she was turning into the rest area when the Yellow truck rear-ended her. Friends of Mr. Frederick and the co-driver from Yellow Transportation told the Frederick family that the Swift driver's story did not make sense, given Mr. Frederick's and his co-driver's experience and familiarity with the route they were driving. Subsequent evidence would prove the friends correct.

Early involvement in the case by Lynn Johnson, Scott Nutter and Douglas Bradley ensured preservation of evidence from the accident scene. The damaged Swift trailer and Yellow cab established that the angle of the Swift trailer at the time of impact could not have resulted from a normal steering maneuver. Instead, the damage showed that the Swift truck, upon not being able to complete the turn into the rest area, was backing up — into oncoming traffic — just prior to the accident.

Discovery revealed that the Swift driver lacked the experience, qualifications and training to safely operate her rig — let alone to drive the prestigious

Swift Has History of Large Jury Verdicts

The Wichita case is not the first time a jury has hit Swift Transportation with a large verdict.

In December 2007, an Arizona jury awarded more than $36 million to the family of a father of eight who was killed when a Swift truck ran a stop sign and plowed into the father's SUV. The award included $13.5 million in punitive damages against Swift for failing to produce its driver's logs during the litigation.

And in California, a jury awarded an 8-year-old boy and his mother more than $11 million for a 2003 wreck that killed his father and twin sister. In that case, a Swift truck cut across two lanes of traffic and struck the family's vehicle. The truck driver said he was fatigued from having driven more than 70 hours that week.

intercontinental route to which Swift had just promoted her. She had prior difficulties delivering loads on time. She had lied on her job application about past drug use, felony convictions and license suspensions. She had tested positive for methamphetamine in a U.S. Department of Transportation test conducted shortly after the March 2006 accident. After surviving an evidencury challenge, plaintiffs' pathology expert was allowed to testify that the Swift driver was impaired at the time of the accident, based on the amount of meth in her urine shortly after the accident.

Discovery also revealed that a third tractor-trailer had been parked in the rest area in a location that would have made it impossible for the Swift driver to turn into the rest area without backing up. Two witnesses from the towing company that cleared the accident scene testified that the Swift driver told them just after the accident that she actually did have to back her rig up in order to enter the rest area.

At trial, Swift argued that if its driver was impaired by meth at the time of the accident, she would not be in the scope and course of her employment, because Swift forbade drug use by its drivers. Thus, Swift argued, it could not be vicariously liable for its driver's negligence. After the Court rejected this argument, the case was submitted to the jury with counts of negligence against the driver and Swift.

SJB hired a truck driver and rented a parking facility to demonstrate that the Swift truck could not have turned into the rest area without backing up.

The jury came back after six and a half hours of deliberation with a verdict of $19.5 million in damages for Mr. Federick and $4 million for Donna Frederick, Terry's wife. Under New Mexico law, no caps apply to the verdict. The jury assigned 35 percent fault to Mr. Frederick's co-driver, reducing the net judgment to $15.275 million.

The Fredericks' determination to seek the truth about the accident resulted in a great victory and a rebuke of Swift's refusal to take responsibility for its and its driver's qualifications and negligence. The case shows the importance of relentless discovery when an initial account of an accident – as is often found in an accident report – doesn't add up.

Temporary Employee Qualifies for FELA Settlement

An industrial saw that caught fire and caused third degree burns to a railroad worker resulted in a favorable settlement for our client under the Federal Employers Liability Act (FELA).

In May of 2006, James Pollock was working for Progress Rail, a railroad contractor that performed a specialized "flash welding" process for Burlington Northern Santa Fe Railroad. While welding pieces of rail together, James and his Progress Rail coworker travelled with a larger steel gang, or railroad crew, which consisted of approximately 40 BNSF employees.

As the steel gang was working in western North Dakota, the specialized Progress Rail welder broke down. A BNSF supervisor told James and the Progress Rail crew to make sure the machine was operating the next day. James' crew experimented with the welder in order to trouble shoot the problem.

A cutsaw caught fire when fuel contacted rail heated from welding and caused substaintial burns to a railroad employee.

While trying to cut a piece of rail, James' industrial saw stopped working. As he opened the cap to the fuel tank to check the fuel level, the fuel sprayed out, ignited and caught James' clothes on fire. He suffered third degree burns to his arms and legs, with burns on his right arm penetrating the muscle. He also suffered second degree burns to his neck, nose, ears and chest. In all, 20 percent of James' body was covered in second and third degree burns.

James asked Shamberg, Johnson & Bergman, Chtd., to investigate a potential products liability claim concerning the industrial saw. After learning more about James' employment on the railroad, Aaron M. Kroll and David R. Morantz partnered with the law firm of Hubbell Peak, O'Neal, Napier & Leach to pursue a FELA claim against BNSF in Jackson County (Mo.) Circuit Court. Under FELA, an injured railroad worker must show that the railroad was negligent in failing to properly train its workers or to provide a safe workplace, and that such negligence contributed to cause the worker's injuries. However, for a plaintiff to have standing under FELA, he or she must be found to be a railroad employee.

Through discovery, a motion for summary judgment and up to the eve of trial, BNSF argued that James was not a railroad employee and thus was not covered by FELA. Rather, BNSF argued, James worked for Progress Rail – not BNSF – and was under not under the control of BNSF or its supervisors. Plaintiff's counsel argued that although James was employed by Progress Rail – albeit indirectly through a temp agency – he was under the control of the BNSF road master while working on BNSF lines. James had to take and pass a BNSF safety course and follow all BNSF safety rules. He had to attend a daily job briefing conducted by the BNSF road master, who also would tell James and his crew what, where and when to weld. These and other factors helped demonstrate that there was a genuine issue of material fact as to whether James was a railroad employee under FELA.

Shortly after the Court denied BNSF's motion for summary judgment, and days from the start of trial, the case settled. James' claim serves as an example of how plaintiffs counsel can obtain favorable results for clients by considering alternative legal theories.

Referral Relationships

We welcome referrals or will associate with you, and we will be considerate of your relatioship with your client.

We return referral fees in accordance with the rules of professional conduct.

Our goal is to maximize results for you and your client.

The Firm Welcomes Shannon Kempf

Shamberg, Johnson & Bergman, Chtd., is proud to welcome Shannon T. Kempf, who joined the firm this past summer after graduating from the University of Missouri-Kansas City School of Law. Shannon was on the Deans' list each semester at UMKC and was honored as the top student in the area of entrepreneurial law.

During his final two years of law school, Shannon clerked for outside counsel for the Missouri Board of Healing Arts. There, he was involved in preparing physician licensure discipline cases on behalf of the State of Missouri. Prior to attending law school, Shannon worked as an insurance adjuster handling workers' compensation, premises and general liability claims.

Shannon earned his undergraduate degree in Political Science at Westminster College, graduating summa cum laude with a 4.0 GPA.

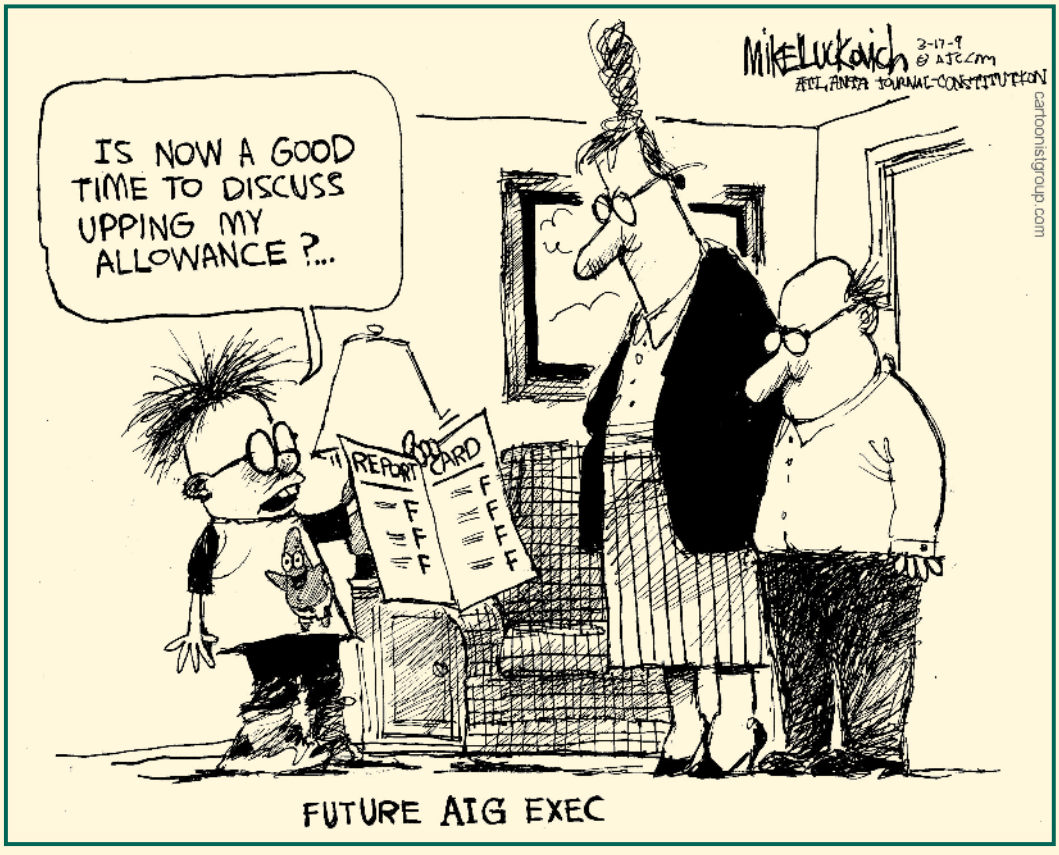
GM Antifreeze Continued From Page 3

tains to 3.8-liter V6 engines in Buick, Chevrolet, Oldsmobile and Pontiac vehicles manufactured between 1995 and 2004 that experienced engine sealing issues, and 4.3-liter V6 engines in Chevrolet, GMC and Oldsmobile vehicles manufactured between 1995 and 2000 that had cooling-system sludge problems.

As part of the settlement, GM agreed to reimburse class members between $50 to $800 each for repairs stemming from the use of Dex-Cool. For covered claims GM is required to pay class members for repair costs incurred during the first 150,000 miles or the first seven years of vehicle ownership or lease, whichever occurred first. GM's overall payouts have not yet been determined, but tens of thousands of claims were made pursuant to the settlement agreements. There is no cap on the overall amount GM will pay on the claims. It has been estimated that up to 20 million initial and subsequent buyers of GM vehicles used Dex-Cool in the cooling system.

The courts approved up to $16.5 million in attorneys' fees and $1.55 million of out-of-pocket expenses.

Answers To Puzzler: *Across* – 1. Six 2. Wrigley 4. Bush 7. Balls 8. Malamud 9. Billygoat 11. Cap 12. Mendoza 13. Tudor 15. First 19. Lima 20. Denkinger 21. Bartman 22. Canseco *Down*: 1. Shea 3. Eisenhower 5. Mudville 6. Purple 10. Cobb 11. Catcher 12. Municipal 14. Ozzie 16. Yankees 17. Gehrig 18. Braves



Baseball Trivia Puzzler

Across

1. Number of umpires on the field during a World Series Game.
2. Last MLB field to install lights.
4. U.S. president who traded Sammy Sosa from the Texas Rangers.
7. Before 1880, it took nine of these to walk a batter.
8. Last name of author of "The Natural".
9. Cubs fans believe a curse involving this type of animal has kept them out of the World Series since 1945.
11. The two ways a fielder is not allowed to catch a fly ball are with his pocket or his ___.
12. Ironically, Mario ___ never actually batted .200 for any season.
13. Last name of Cardinals pitcher who cut hand punching an electrical fan during Game 7 of 1985 World Series.
15. Per the rules, the catcher and ____ baseman are the only positions allowed to use a "mitt".
19. Last name of Royals pitcher who was signed from the Newark Bears in 2003 and who won his first seven starts.
20. Last name of umpire most despised by Cardinals fans.
21. Cubs fan Steve ___ attempted to catch a foul ball in 2003 NLCS.
22. First player in history to hit 40 home runs and steal 40 bases in same season (last name).

Down

1. Name of stadium famous for the Home Run Apple.
3. Last name of president who played semi-pro ball under the name "Wilson" in the Kansas State League.
5. But there is no joy in___ – mighty Casey has struck out.
6. The 20th row of the upper deck of Coors Field is painted this color.
10. Last name of holder of record for stealing home plate.
11. This position wears the "Tools of Ignorance."
12. Stadium originally built for the Kansas City Monarchs.
14. First name of shortstop who holds MLB records for games played, assists and double plays.
16. Royals pitcher Eduardo Villacis made his only MLB start against this team in 2004.
17. In 1998, Cal Ripken, Jr., broke whose streak of consecutive games played (last name).
18. Babe Ruth's career ended with what NL team in 1935.

Shamberg, Johnson & Bergman

2600 Grand Boulevard, Suite 550
Kansas City, Missouri 64108

PRSRT STD
U.S. Postage
PAID
Kansas City, MO
Permit No. 6654