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Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

Dangerous Kitchen Cookware: Jury Awards Stilwells \$1.157 Million

On September 11, 2000, Lanny Stilwell was rinsing a Visions Dutch Oven pot in his sink when it suddenly broke into four pieces and severed the artery, nerves and tendons in his right wrist area. With blood pouring out, Lanny stumbled out onto the street and a Good Samaritan neighbour came to his aid and rushed him to the hospital. Luckily, Lanny survived that day, but despite numerous surgeries, including a nerve transplant, Lanny remains with a permanent contracture and no functional use of his right hand. He has been unable to return to work since the incident.

Approximately thirteen years later, Lanny and his wife, Mickey, have now had their day in court. After a hard fought legal battle against Corning Inc. and World Kitchen Inc. which culminated in a six-week trial, on June 12, 2013, a jury in London, Ontario, delivered a verdict of \$1.157 million in favour of Mr. Stilwell. The jury's verdict sent a clear message that manufacturers ought to be held accountable for the safety of their products. The jury found the manufacturers 75% liable for Lanny's injuries and found that there were deficient warnings on the product.

Visions cookware is a well-known glass kitchen product line sold across North America and in Europe by World Kitchen and Corning Incorporated. The Visions cookware line was marketed as a durable, versatile product that could "turn ordinary saucepans into sauce". A number of Visions cookware commercials, which were found on YouTube, were admitted as exhibits at trial.

Contrary to assurances made in these commercials about the durability of Visions cookware, since 1983 there have been more than 2,000 reported incidents in Canada and the U.S., in which consumers were injured when their Visions cookware broke, in some cases, for no apparent reason. Witnesses from California, Ohio and Florida testified at the trial about similar incidents occurring with their Visions Dutch Ovens.

Expert evidence called on behalf of the Stilwells asserted that defects in the Visions cookware could exist even though the consumer may not see them and this posed an inherent risk to their safety.



Lanny and Moria Stilwell, accompanied by Michael Smitiuch, answer questions from the media at the August 15, 2013, news conference.

Michael Smitiuch and Peter Cho represented the Stilwells at trial. "This case was about accountability and corporate responsibility. It was about holding the manufacturers responsible for a product that can injure you and in the case of Lanny Stilwell, almost kill you and change your life forever", said Smitiuch.

The Stilwell case was a landmark decision as it is the first successful jury verdict amongst numerous lawsuits commenced against the manufacturers of the Visions cookware product across North America. The jury verdict has since been appealed by the Defendants.

The case has received considerable media attention throughout North America given the consumer safety aspects of this story. For additional information and video coverage of this case please search online, including Global News, CBC, CTV News, the London Free Press, The Wall Street Journal and other news websites as well as our blog, Twitter feed and YouTube channel.

Top 7 Legal Novels

1 To Kill a Mockingbird (Harper Lee)

A classic tale told through the eyes of a lawyer's daughter. Atticus Fitch, a lawyer in the depression-era South, defends a black man against an undeserved rape charge, and his kids against prejudice.

2 In Cold Blood (Truman Capote)

In a small town, four members of the Cluster family were savagely murdered. Without any motives or clues, Capote pieces together the murder and investigation that resulted in the capture, trial and execution of the killers.

3 The Firm (John Grisham)

This is the one that launched Grisham into stardom and a string of movies based on his books. Mitch McDeere thought he had it all; a Harvard degree and a new job at a prestigious firm. His life quickly unravels in this fast paced legal thriller.

MEDICAL EXAMINATIONS: A NECESSARY "EVIL"?

There is a famous saying that two things in life are certain: death and taxes. However, if you are involved in a personal injury lawsuit there is one other certainty: medical examinations. Sometimes lots and lots of them.

If you are suing another party for injuries you will undoubtedly require medical support from health professionals to establish a diagnosis, prognosis, treatment options and to link your problems to the incident in question (e.g. motor vehicle accident, slip and fall, defective product, etc.).

In a lawsuit, the Rules of Civil Procedure dictate that the defendant has the right to have you examined by doctors and/or a psychologist of their choosing. These are also referred to as "defence medical examinations". The doctor assessing you is paid for by the insurance company for the defendant and they will likely provide an opinion that can be vastly different than your own treating doctors. It is very common that they will try to downplay the extent of your injuries, or whether or not your current condition(s) are due to the incident in question.

In 2010, there were changes to the Rules of Civil Procedure and now all medical and psychological professionals who provide an opinion in a lawsuit must acknowledge that the primary purpose of their report is to assist the Court, not the party that has retained them.

You may also be subjected to what is called an "insurer's examination" if you are making a claim for accident benefits arising from a motor vehicle accident. Your insurance company can request that you attend multiple medical appointments so that they can determine if a benefit should be paid or not. Like defence medical examinations, the outcome of the assessments is often at odds with your own treating health professionals' opinions.

In many respects, the defence and insurer's examinations are a necessary "evil" when you bring a claim arising from injuries that you have suffered. Given the potential impact that these assessments can have on your case, we carefully screen any requests made for examinations and we ensure that any negative opinions are disputed with medical evidence and opinions advanced on your behalf.

Profile of Donna Wardell *Paralegal*



Smitiuch Injury Law is pleased to introduce Donna Wardell, a licensed Paralegal and Accident Benefits Clerk, who has been with the firm since 2010.

With a desire and need to do more with her life, Donna made the brave decision to return to school in 2009. She studied and completed her paralegal diploma at Everest College, and then went on to successfully complete the Paralegal licensing process with the Law Society of Upper Canada in 2010. Her introduction to the firm initially came with Donna fulfilling her required four week placement of her paralegal program. Upon its completion, her potential was realized and she was

offered a full time position in the firm's Brantford office.

Donna loves the daily challenges her career brings and believes that the most rewarding part of her job is the satisfaction of helping clients receive the care needed after being involved in an automobile accident. Both her sense of humour and warm demeanor play a large part in her role as mentor for other Accident Benefit clerks, Assistants and other Paralegal placement students. She thrives on challenges and feels the ever-changing area of accident benefits satisfies that desire.

Donna was born and raised in Simcoe, Ontario. She and her husband share a home close to Simcoe where they enjoy many family gatherings with their five children and five grandchildren. She enjoys boating, fishing, gardening and camping in her spare time. Donna feels that this tranquil setting is the perfect balance to the stress and challenges that her career brings.

Donna can be reached directly at dwardell@smitiuchinjurylaw.com.
647-478-4979

4 A Civil Action (Jonathan Harr)

The amazing true story of a lawyer's quest to hold corporations responsible for the illnesses and deaths of citizens in Woburn, Massachusetts due to water contamination. It was made into a movie in 1998 starring John Travolta and Robert Duvall.

5 Primal Fear (William Diehl)

Martin Vail, a sharp lawyer who is not afraid to take chances, represents a man who seems all around guilty. Picking his legal team carefully, Vail tries to uncover the truth behind the Archbishop's slaughter, while everyone looks forward to seeing him lose.

6 The Merchant of Venice (William Shakespeare)

During the 16th century in Venice, a merchant is unable to pay his loan; the consequence is a pound of flesh. However, discovering a clever breach of contract could be the only thing that saves his life. It was made into a movie in 2004 starring Al Pacino and Joseph Fiennes.

7 The Lincoln Lawyer (Michael Connelly)

Operating out of his car, a shady Criminal Defense attorney finally gets a high paying client. Believing this will be an effortless case, he is unexpectedly at a standstill when it develops into a deadly game of survival.

Supporting Youth

St. John's College and Assumption College Scholarships

Since 2006, Smiutch Injury Law has been a proud supporter of St. John's College and Assumption College in Brantford, Ontario. Each year the firm awards a scholarship to a graduating student from each school. The annual scholarship was established by the firm's Principal, Michael Smiutch and Litigation Coordinator, Arthur Ryan. Both Mr. Smiutch and Mr. Ryan are alumni of St. John's College.

The scholarship is awarded to a student of each school who has successfully completed the Grade 11 Law course and who is involved in extra-curricular activities either inside or outside the school community beyond the minimum requirements.

The 2013 scholarship at St. John's College was awarded to Daphne

Chacon. Daphne is attending McGill University in Montreal in September 2013 and will be studying International Development and Economics.

The recipient of the 2013 scholarship at Assumption College was Arnisa Morina. Arnisa is attending Wilfrid Laurier in Brantford in September 2013 and will be studying Criminology for four years. After graduating, she plans on attending law school and becoming a lawyer.

Smiutch Injury Law wishes both Daphne and Arnisa the best of luck in their future studies!



Arnisa Morina accepts her award at June 27, 2013, Convocation.



Daphne Chacon

Are Schools Liable for Bullying in the Classroom?

Increasingly, there are reports of the tragic consequences of bullying and violence in schools. In light of this, the responsibility of teachers, principals and school boards to prevent and address these issues has become a topic of growing significance. There have been many lawsuits commenced against school boards and school authorities seeking damages arising out of bullying in schools, but no reported court decisions in Ontario as of yet holding school boards or school authorities liable for failing to intervene or failing to take proper steps to protect victims of bullying.

Bullying cases have been tried, however, against school boards and school officials at Human Rights Tribunals across Canada, and these cases have shed light on what actions a school would be expected to take in order to stop bullying. In the B.C. Human Rights Tribunal case of School District No. 44 (North Vancouver) v Jubran, it was noted that schools must continue to intervene and employ new strategies when others fail.

In Myers v Peel County Board of Education, the Supreme Court of Canada described the common law standard of care that should be exercised by school authorities when students are under their supervision and protection to be that of "the careful and prudent parent." This standard of care must also be considered within the context of today's technology and social media websites. School authorities can be held liable for students' on-line and out-of-school harassment as well. Department of Education officials have said that legal action could be taken if schools don't address harassment that they "reasonably should have known" about.

As students return in September for another school year, it is incumbent upon all parents, teachers and students to prevent bullying from taking place and to prevent another tragedy from occurring. Proactive measures can and should be used in order to ensure every student can learn and prosper in a safe environment.

Smitiuch Injury Law Event Calendar

September 25, 2013 – 4th Annual Accident Benefits Seminar - Practical Issues for Health Care Professionals

This seminar, presented by Smitiuch Injury Law, is intended for health-care professionals who wish to hear about the latest Accident Benefits issues and how they pertain to their practice since the SABS limits changed substantially in September 2010. To register, please contact our office.
Brantford Golf & Country Club, Brantford, ON

October 1, 2013 – Law Society of Upper Canada - Plaintiff's Personal Injury Law Practice Essentials

Personal injury files can be particularly challenging. Our presenters guide you through the stages of a personal injury file, including the initial meeting with the client and assessing the file, starting the action and bringing a motion, and conducting effective examinations for discovery. Michael Smitiuch will be co-chairing this event.

The Law Society of Upper Canada - Donald Lamont Learning Centre, Toronto ON

October 30 - 31, 2013 – Ontario Trial Lawyers Association (OTLA) 2013 Fall Conference – Trial by Jury

Chris Jackson, Smitiuch Injury Law Accident Benefits Manager, will be speaking on - The "IME" is it an Independent Medical Examination or an Insurer's Examination?

Metro Toronto Convention Centre, South Building, Toronto ON



For further information or to discuss how we can help you
please contact Michael Smitiuch at:

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