

The **BOYK** LAW REPORT

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AUTO ACCIDENTS • MEDICAL MALPRACTICE
WORKERS' COMPENSATION • DOG BITES
WRONGFUL DEATH • PRODUCT LIABILITY
ATV & MOTORCYCLE ACCIDENTS
MASS TORTS • SEXUAL ASSAULT VICTIMS

INVESTIGATING CONTAMINATED PEANUT BUTTER In Death Of 11 Year Old Client

Highly publicized outbreaks of serious foodborne illnesses often result in a surge of lawsuits, many haphazardly filed. The most high-profile outbreaks usually involve Salmonella, E. coli, and Listeria. These microbial pathogens can cause serious injuries including organ failure and death. In food contamination cases, the contamination can occur at any step from farm to table. But investigating and litigating these cases involves far more than simply having a client who became ill after consuming a recalled product. The following is an example of the challenge of these cases.

On May 20, 2022, J.M Smucker Company initiated a recall of some of its Jif peanut butter products after an FDA and CDC investigation linked its products to a multistate outbreak of Salmonella infections. Just weeks before the recall, a mother in Ohio purchased a jar of Jif peanut butter for her 11-year-old daughter. Her daughter was just finishing up her last round of chemotherapy to treat her leukemia. The chemotherapy caused her daughter to suffer from a loss of appetite and nausea. Peanut butter and cheese sticks were almost the only foods she was able to eat. On May 2, 2023, during a regular scheduled hospital appointment the little girl spiked a fever and was admitted for observation. Her last meal had been the day before – a Jif peanut butter sandwich.



After a week of antibiotics, it was finally confirmed that she had a Salmonella infection. The Salmonella wreaked havoc on her vulnerable body, causing organ failure, brain bleeds, and ultimately, her death on May 19, 2023. Her immediate cause of death was identified as Salmonella.

The girl's mother was referred to our firm a few months ago. In the course of our investigation, we were able to obtain proof of purchase of the Jif peanut butter and confirm that it was one of the recalled products. The girl's mother also kept a detailed journal on her daughter throughout the course of her treatment, including what she ate. The journal confirmed her last meal was the peanut butter. Establishing product ID and consumption of the recalled peanut butter, her Salmonella infection, and the Salmonella being the direct cause of her injuries and death, all seemingly pointed to a very clear and strong case.

However, Salmonella has more than 2,500 serotypes. There is a significant difference between a clinical diagnosis of Salmonella, identification of the genus of Salmonella, and serotyping – identifying the exact strain of Salmonella.

The CDC determined that the Salmonella that was in the contaminated Jif was Salmonella Senftenberg. The pathology records our firm obtained from the hospital simply indicated Salmonella. However, a salmonellosis diagnosis triggers a health department reporting requirement. Health departments often perform more specific testing on identification, including serotyping. The health department records we obtained revealed that our client's daughter had been infected with Salmonella Choleraesuis – a different strain than what had been linked to Jif.

Our investigation into this case is ongoing and involves experts in infectious disease and epidemiology. While the case has become increasingly more complex, we are committed to being exhaustive in our efforts to identify the origin of the Salmonella that caused this child's death, and if justified, in holding the responsible party accountable. Our firm regularly investigates foodborne illness cases and welcomes referrals from attorneys.



Bayer AG Suffers Billion Dollar Losses in Ongoing Roundup Litigation



In a series of several trials, juries have found Bayer AG's Monsanto unit liable for damages totaling nearly \$5 billion. This litigation battle has been going on for more than seven years now, with nearly 165,000 claims having been filed. Initially, Monsanto lost the first three trials, with verdicts of \$80 million, \$289 million, and \$2 billion. Monsanto responded to the massive losses by committing "up to" nearly \$11 billion to settle the litigation. Monsanto initially approached settlement by negotiating aggregate/block settlements with firms that had large numbers of cases, while pursuing appeals.

Monsanto changed its settlement approach when it filed a petition with the U.S. Supreme Court to review its case on the issue of federal preemption. Bayer advised its shareholders that it believed there was a very good chance the Supreme Court would accept its case for review. In such an event, Monsanto announced that it would cease all settlement discussions. In the case of a negative Supreme Court outcome, Bayer would set up a claims fund

with pre-determined compensation values in amounts similar to the values it reached in prior settlements. The claims fund would cover any individual who used Roundup and subsequently develops Non-Hodgkins Lymphoma over the next 15 years. The Supreme Court denied Bayer's petition.

Monsanto again changed its settlement approach, announcing that while it was disappointed in the Supreme Court not accepting its petition, it was confident its other appeals could lead to circuit splits that would lead the Supreme Court to accept a review. In pursuit of this effort, Monsanto even "colluded" (as one U.S. Circuit Judge put it) with a plaintiff, paying the plaintiff to appeal the district court's summary judgment decision in favor of Monsanto on preemption. In state court trials, Monsanto implemented a litigation strategy to sway public opinion — only settle cases when it was deemed "strategically advantageous for the company to do so." Monsanto settled numerous cases it believed it was at risk of losing on the courthouse steps. But it allowed a small handful to proceed to trial — confident it would be successful.

Monsanto was able to string together a series of victories with this strategy. However, the strategy

backfired in the last several trials, with plaintiff verdicts of \$1.25 million, \$175 million, \$325 million, and \$1.56 billion. The massive losses and mounting litigation costs have caused Bayer's stock to suffer historic lows. This has prompted Bayer's largest shareholders to speak out against the company's litigation strategy.

Our firm has successfully resolved numerous Roundup cases and continues to be actively involved in the litigation. We also continue to accept attorney referrals of potential Roundup cases.



Second Opinion Turns No-Offer Case into A Significant Settlement

We often receive calls from individuals seeking a second opinion on a personal injury claim. In a recent case, we were contacted by a college athlete who had been seriously injured in an auto accident. The injuries - which included a fractured hip that required surgical hardware, left him unable to return to his sport.

The individual had consulted with a Toledo personal injury firm, and advised the attorney that he had been cited for the accident but was not at-fault. While the attorney told the

individual he would investigate the case he also advised the individual to plea to a lesser violation on his citation. This led to our client's insurer paying the other driver. That is when the individual reached out to us.

The individual provided a detailed description of what occurred, advising attorney Chuck Boyk that he was certain he was not at fault for the accident, that he had the right of way. Chuck went to work on the case immediately. He ordered light sequencing for the intersection and personally visited the accident scene and observed the sequence of the lights from all directions. He then ordered the responding officers' bodycam footage. The bodycam footage established that the officers had never talked to our client or his passenger before citing him for the accident.

While our firm attempted to resolve the case, the at-fault driver's carrier and our client's underinsured carrier, believed the citation was enough evidence that our client was at fault and would not agree to settle. That is when we filed suit. Through discovery and depositions, we built a strong case

that made it overwhelmingly clear to opposing counsel that not only was our client's story accurate, but that if the case needed to go to trial, the jury would be extremely sympathetic to our client. A day before the scheduled mediation, the defense offered to settle the case for the very significant full policy limits.

The settlement included policy limits from the at-fault driver's carrier and our client's under-insured motorist coverage. Our client's insurance company has previously settled the 3 claims presented by the driver and passenger in the other car and for our client's passenger.

Their investigation was as good as the first attorney of our client. Therefore, the insurance company miscalculated the claim to pay everyone involved in the accident.

Our client's refusal to accept injustice and to seek a second opinion paid off for him in a very life-changing way.

SEXUAL ASSAULT LITIGATION: BOYK LAW OBTAINS \$2.5 MILLION JUDGMENT

In April 2023, Boyk Law filed suit against a Lucas County Man for sexual assaulting five minors, including his own nephews. The complaint alleged that in addition to sexually assaulting the children, the defendant surreptitiously filmed them with hidden cameras, and may have disseminated images/recordings online.

In August 2023, the Wood County Common Pleas Court awarded judgment in favor of our clients against the defendant in the aggregate amount of \$2.5 million.

Boyk Law attorney Wes Merillat shared that his clients were so grateful that the Court listened to

their testimony and recognized the pain and suffering they each endured, adding:

“This defendant preyed upon the innocence and vulnerability of children. There are few crimes more vicious and outrageous than crimes involving the sexual exploitation of children. While each of these children are survivors in every sense of the word, they are forever scarred. The Court heard the evidence of his despicable acts and sent a powerful message in its judgment.”

The defendant pled guilty to multiple counts of sexual battery and is currently serving a long prison sentence.

ABOUT THE CO-COUNSEL NEWSLETTER

Charles Boyk Law was founded more than 20 years ago with the intent of helping people in need. Behind a team of outstanding lawyers, professional support staff, and state-of-the-technology, our firm has grown to become one of the leading personal injury law firms in NW Ohio and SE Michigan.

We consider it an honor to be contacted by attorneys, both locally and across the U.S., who are seeking co-counsel to help litigate complex personal injury cases. It is an even greater honor when those attorneys refer us a case involving their loved ones or friends.

Our co-counsel newsletter is tailored to attorneys. It highlights examples of cases we are handling and provides updates on litigation. If you have a personal injury case you are looking to refer, we invite you to consider our firm. Our team of attorneys and professional staff have the experience, knowledge and resources to provide your clients with the best representation and maximize the recovery.

Practice Management: Ohio and Michigan Rules on Succession Planning



Succession planning is essential for every lawyer's practice. A succession plan proactively protects clients, attorneys' interest in their law practices, and the judicial system in the event the attorney becomes unable to represent their clients because of death, disability, or discipline.

The need for a succession plan is particularly critical for sole practitioners as an untimely disability or death of the lawyer could create a significant lapse in representation. Calls could go unanswered, email and

mail could go unopened, deadlines could be missed, and severe consequences could result. Thought must be given to what would happen to staff.

Additionally, surviving spouses or other family members who are dealing with the death or major disability of the lawyer could be thrown into financial uncertainty by the closing of the firm.

Michigan is one of the few states that mandate all private practice attorneys designate an attorney capable of taking on certain duties in the event the attorney becomes unable to practice law or enroll in the State Bar's Interim Administrator Program – where an attorney will be assigned.

Ohio does not expressly mandate a succession plan, but the Supreme Court has recently amended its rules to require (starting January 1, 2025) attorneys engaged in the private practice of law must disclose whether they have a plan in place to manage the attorney's work or caseload in the event the attorney becomes unable to practice law, either temporarily or permanently.

Comment [5] to Rule 1.3 of the Rules of Professional Conduct provides that in order to prevent neglect of client matters in the event of a sole practitioner's disability or death, the duty of diligence may require sole practitioners to prepare a plan that designates another competent lawyer assume representation.

Regardless of whether having a succession plan in place is mandated or not, it is prudent and in the best interest of clients and the practitioner.

If you are a private practice attorney wanting more information on succession planning or have been considering future retirement from the practice of law, we would be interested in talking with you on how we may be able to help you protect your clients, your practice, and even add additional value.

Contact Charles Boyk Law Offices

For more information about Co-Counsel Opportunities, contact Charles E Boyk Law Offices, by phone at 419-241-1395, email at referecb@charlesboyk-law.com or visit our website, www.charlesboyk-law.com/referral

Attorney James White



“I have known Chuck Boyk for most of his career and have always found him to be a very respectable and responsive attorney. Chuck's team at Boyk Law Offices have been most helpful to the clients I have referred: they have taken on cases with difficult fact patterns and were able to settle for favorable terms. They consistently analyze and honestly advise clients as to the merits of their case and follow through in a timely, professional, and successful manner.”



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A Newsletter by Attorneys, For Attorneys

The **BOYK** LAW REPORT

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Attorney Referrals: Due Diligence on PI Referral Uncovers Valuable Camp Lejeune Claim



Our firm was referred a potential Roundup case. The individual had a history of Non-Hodgkins lymphoma (NHL). He also had had some Roundup usage. Our

initial investigation determined that his Roundup exposure was not significant enough for us to represent him in a claim against Monsanto. However, we subsequently discovered that he had been born at Camp Lejeune and lived at the base for some time thereafter.

The Camp Lejeune Justice Act provides compensation to eligible individuals who spent at least 30 days at Camp Lejeune between 1953 and 1987 and developed certain injuries that have been linked to the contaminated water at the base. Among the injuries the government presumes to have been caused by the contaminated water, is NHL. Awards for NHL can range from \$100,000 to

\$550,000 if an eligible individual elects to accept payment under the basic review process. However, individuals may also elect to reject the award offer and pursue the claim for greater compensation.

In every intake we receive, we make considerable effort to ensure the individual has a legitimate and serious claim. While we turn down far more cases than we accept, our screening and intake process often reveals legitimate claims that were previously unknown to the individual or referring counsel.

New address or phone number? Help us stay current by letting us know! Call 419.241.1395 or e-mail marketing@charlesboyk-law.com