

COMMON GOOD

REFORMING AMERICA'S LAWSUIT CULTURE

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COMMON GOOD ANNOUNCES ITS TOP FIVE EXAMPLES FOR 2003 OF JUDGES FAILING TO WEED OUT RIDICULOUS LAWSUITS

New York, NY – January 29, 2004 – Common Good, the nonprofit, bi-partisan, legal reform coalition, announced today its selection of the top five examples for 2003 of judges failing to weed out ridiculous lawsuits.

“Drawing the boundaries of reasonable claims is a critical part of the role of judges,” said Philip K. Howard, Chair of Common Good. “Failure to eliminate unreasonable or extortionate suits undermines public confidence in the legal system and contributes significantly to growing fear of litigation.”

The decisions described below are examples of that failure. Each has been made by a court and, in some cases, by an appellate court. The circumstances raised in these cases are serious, sometimes even tragic, but the decisions undermine the common good.

- *Perri v. Furma Restaurant, Inc.* (Lawyers Weekly USA No. 9924778) Illinois Court of Appeals No. 96 L 10655 January 6, 2003

Parents can sue Chinese restaurant for hot tea burn, even though a child from their family caused the burn by spinning the lazy susan. In this case, the Illinois Court of Appeals overruled a very sensible opinion by trial judge Mary Mulhern. Judge Mulhern threw the case out on the grounds that the parents should have been supervising the child: “That’s what Asian restaurants do. They serve tea, whether it’s ordered or not.” Reinstating the case, Justice Cohen of the Court of Appeals said that the restaurant “should have anticipated that Jordan’s (the child’s) parents would fail to notice or prevent Jordan from disturbing the pot of hot tea, even if the teapot was in fact ‘obvious.’ ” Justice Cohen also thought that whether the burn was caused by 4-year-old Jordan (who spun the lazy susan) or by the waitress (who brought the tea) was a question for the jury. Other Chinese food lovers can expect to pay for Justice Cohen’s indecision through higher prices or lack of hot tea.

- *Blair L. Hornstine v. Township of Moorestown, et. al.*, United States District Court, District of New Jersey, Judge Freida L. Wolfson, May 30, 2003.

Student can get injunction against school preventing it from allowing another student to share the award of Valedictorian. Because of chronic fatigue, Blair

Hornstine took all her classes at home with a private tutor, paid for at taxpayer expense. Her weighted grade point average was the highest in her class, but only a fraction of a point above that of another student who had achieved it without one-on-one teaching at home. The school wanted them to share the award of Valedictorian. Hornstine literally made a federal case of it and succeeded in getting the judge to issue an injunction, preventing the school from appointing co-honorees. Judge Freda Wolfson chided the school district for denigrating Hornstine's "remarkable achievements as a special needs student." Unfortunately, those remarkable achievements did not include crediting her sources. Harvard University rescinded Hornstine's Fall 2003 acceptance when it turned out that she had plagiarized material in a local newspaper article. The decision on valedictorian should have been left to the school. Judge Wolfson's decision will only encourage more lawsuits challenging schools' authority.

- *Gary Dailey v. Board of Review, et. al.*, No. 30730 in the Supreme Court of Appeals of West Virginia, November 10, 2003

Truck driver, who lied about having driver's license, wins suit to get unemployment benefits. Gary Dailey was hired as a line technician at an air terminal. His duties included driving gasoline trucks and driving off the airport grounds to buy bulk gasoline and transport passengers. After many attempts to obtain a copy of Dailey's license (about which he repeatedly lied), his employer discovered it had been suspended four years earlier. Dailey was fired. The West Virginia unemployment compensation board refused Dailey's application for unemployment, and a lower court agreed. That didn't stop the Supreme Court of Appeals of West Virginia from reversing. What Dailey did was "simple misconduct" not "gross misconduct," and he should get paid. Apparently in West Virginia, unlawful behavior is rewarded.

- *Ellen Hall v. Tim Henn, et. al.*, No. 95431, December 18, 2003 (*unpublished opinion*)

Woman who broke her arm on backyard snow luge can sue neighbor who invited her and other friends and neighbors to use the luge. There is a statute in Illinois that says you can't get sued if you open your property to the public and someone gets accidentally hurt. So why is there no protection here? According to the Illinois Supreme Court, you are only protected from suit if you open your land to the public – not to invited guests. To disallow invited guests from suing "renders an absurd and unjust result," said Justice Bob Thomas, reversing a sensible trial court decision. The snow luge apparently can be considered an "unnatural and dangerous condition" even though the victim called and asked if she and her daughter could come over and use it. So for Illinois residents, every guest truly is a potential lawsuit.

- See: *National Law Journal*, "Foster Kids Cost a State \$10 Million," Dee McAree, Vol. 25, No. 14, pg. 4, December 1, 2003. *The News Tribune (Tacoma, Washington)*, "Costly Foster-Care Verdict Stems from Poor State Supervision; But Liability for Kids' Crimes Should be Limited," pg. B06, November 19, 2003. *Spokesman Review*

(Spokane, Washington), “Large Verdict Raises Concerns: Case against DSHS Spotlights Gap in Liability Law,” pg. A8, November 24, 2003.

Victim of beating by foster kids can sue state for failing to properly raise them.

Four boys assaulted 16-year-old Said Aba Sheikh, causing permanent brain damage – an obvious tragedy. Three of the four attackers were old enough to be tried as adults and received sentences from 8 to 10 years. But since two of the attackers were foster kids, the family of Aba Sheikh sued the State of Washington for providing inadequate care to the foster kids; the case was allowed to go to trial and the family won a \$10 million jury verdict. In addition to consuming substantial taxpayer monies, the outcome puts the state in an unworkable position: the state must place foster children in the “least restrictive” environment, but can now be held liable when poorly-supervised children commit crimes. The case also, in one columnist’s words, “smacks of overzealous litigation.” In addition to filing civil suits against the assailants, the family sued the county (settling for \$4.5 million) and the Shell station where the attack occurred (winning \$300,000). They might also have sued the court that, a mere 24 hours before the attack, returned one of the assailants to his inadequate foster home, over a state social worker’s objections.

There were, of course, other judicial decisions that wisely dismissed unfounded suits. Examples of them are available on Common Good’s web site, www.cgood.org.

*Common Good is a bi-partisan legal reform coalition dedicated to overhauling America’s lawsuit culture. Its board is comprised of leaders in a wide range of fields: former government officials, including Griffin Bell, Newt Gingrich, Eric Holder, George McGovern, Diane Ravitch, Alan Simpson, and Richard Thornburgh; current and former university presidents, including Tom Kean, George Rupp, and John Silber, and numerous other leaders in education, healthcare, law, business and public policy. The Chair of Common Good is Philip K. Howard, a lawyer and author of *The Death of Common Sense* and *The Collapse of the Common Good*.*

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