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A DAY IN THE LIFE OF TORT LAW

*Douglas H. Cook**

What would one day's worth of tort law look like? We usually receive our doses of the law in measures other than per diem: by the case, by the brief, by the article, or by the treatise. There is, of course, a unity in each of those units; each one collects only those authorities that bear upon certain focused aspects of the law. For example, an appellate brief or a law review article is often a compendium of cases dealing within a narrow topical range, cases drawn from a span of many different days, years, or even decades. One way to view the development of the common-law subjects, then, is to envision various lines or streams of cases, sometimes guided in their courses by statutory tributaries, flowing and joining into wide rivers: contract law, property law—or tort law.

But the law also grows by accretion. Each day, in courts across the nation, another layer is added to the law of torts. In some ways, as a construct, this is the antithesis of how we have learned to view the law. If a casebook is the order of the tort law, with two proximate cause cases from different eras neatly paired,¹ then a single day represents the glorious chaos of tort: an auto accident in Pennsylvania, a products liability suit in Utah, a medical malpractice case in Connecticut. What might a one-day slice of American tort law reveal? I set out to find out.

My quest would be artistic, not statistic. To construct the most accurate picture possible of one tort day would require a painstaking assembling of trial court records from thousands of local and county courthouses in all fifty states: a daunting task, and arguably not worth the mileage or postage. A more feasible approach is made possible by the ready availability of computerized searches in legal opinion databases. It is, of course, now possible to search for and compile all court opinions promulgated on a single, specific date, and to narrow the search further to a single area of law. Therefore, using the two best known computerized legal research services, I set out to discover one day's worth of torts opinions, from the first light of dawn in Maine to the last rays on some Pacific coast courthouse.

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1. See, e.g., PROSSER, WADE AND SCHWARTZ'S CASES AND MATERIALS ON TORTS 290-95 (John W. Wade et al. eds., 9th ed. 1994) (Ryan v. New York Central R.R. Co., 35 N.Y. 210 (1866), followed by Bartolone v. Jeckovich, 481 N.Y.S.2d 545 (N.Y. App. Div. 1984)).

I. THE SEARCH

First, I had to decide which date to pick. I pursued a number of criteria. I wanted a day when a fair representative sample² of American courts were releasing tort-law opinions. It had to be recent enough that it could stand for a view of today's tort law. On the other hand, enough time should have passed so that the day's opinions could gel a little, getting past motions for reconsideration and withdrawal, and into official reporters where possible. Summer would not do—too many courts not in session. Same for holiday seasons. For similar reasons, I thought that Mondays and Fridays might also be problematic. Factoring in all of the above, and with a good dose of random dart throwing, I chose Thursday, October 19, 1995. A preliminary search indicated what seemed to be a healthy number of tort opinions on that date. A similar search of a few nearby dates satisfied me that October 19 was fairly typical in its volume of opinions. Other than that process, it was truly a random choice. I did not, for example, read torts opinions from that date or any other date, with an eye toward choosing a day with interesting cases. That would have been cheating. It also proved to be unnecessary, as will appear later.

There is, of course, an artifice to collecting all the cases bearing a single date. Some opinions are dated with an indication that the case was "decided" on that day.³ The reality, especially where an appellate court is involved, is that the given date usually represents the day the opinion is announced or released, having been actually decided some time earlier. Other cases refer to the date the opinion was "filed."⁴ Still others more accurately report the "date of announcement of decision."⁵ The point is, there is an admitted arbitrariness to collecting all opinions dated October 19, 1995. Still, October 19 represents the day that all these opinions were added to the body of the tort law.

The inception of the search itself was relatively simple. Restricting it to October 19, 1995, I searched for all opinions in which there appeared at least one of the following tort terms (or any related form thereof⁶): tort, negligence, battery, assault, false imprisonment, trespass, conversion, emotional distress, strict liability, product(s) liability, nuisance, slander, libel, defamation, invasion of

2. I am not a statistician, but I think I know enough to understand that what I have done does not represent a statistically significant sample. It is, as I said before, more appropriately viewed as an artistic endeavor.

3. *E.g.*, *Hatch v. Maine Tank Co.*, 666 A.2d 90, 90 (Me. 1995).

4. *E.g.*, *Hayes v. City of Chicago Police Dep't*, No. 95 C 1459, 1995 U.S. Dist. LEXIS 15698 (N.D. Ill. Oct. 19, 1995).

5. *E.g.*, *Suveges v. James*, No. 68533, 1995 Ohio App. LEXIS 4622 (Oct. 19, 1995).

6. For example, the root word, "tort," with an expander symbol ("tort!") will find cases containing the words tort, torts, tortious, and tortfeasor.

privacy, bad faith, malicious prosecution, abuse of process, punitive damages, fraud, and misrepresentation. After thereby obtaining well over one hundred cases, a winnowing process began. First, I had to eliminate cases in which one of the search terms had appeared by coincidence, in a context that had nothing to do with tort law. For example, in *Flamer v. State*,⁷ the word "negligence" appeared, but in the context of "criminal negligence" in a habeas corpus case.⁸ Similarly, *Mangum v. Hargett*⁹ referred to criminal assault, not the common-law tort of assault.¹⁰

Sometimes it was difficult to decide whether the case was really a tort case. Should it be considered a tort case when it was neither brought as a tort case, nor decided as a tort case, but discussed at length the substantive law of torts? An example is *City Bank & Trust Co. v. Vann (In re Vann)*.¹¹ Edwin Vann had failed to disclose to his lender bank that there had been a deterioration in his financial condition after application, but before the loan closed.¹² After Vann filed Chapter 11 bankruptcy, the bank sought to avoid discharge of the debt, on the basis that the credit had been obtained by "fraud," as that term was used in section 523(a)(2)(A) of the Bankruptcy Code.¹³ In evaluating what standard of reliance was required as an element of fraud in this statutory context, the Eleventh Circuit was faced with a split among sister circuits: some required reasonable reliance, some "justifiable" reliance, some actual reliance.¹⁴ To answer the question, the court turned to, and followed, the common law of torts. The court noted that both the Restatement¹⁵ and the Prosser hornbook¹⁶ adopt a "justifiable reliance" standard for fraud.¹⁷ The court likewise adopted that standard for bankruptcy purposes, then went on to discuss how the common law defines justifiable reliance: "Justifiable reliance is gauged by 'an individual standard of the plaintiff's own capacity and the knowledge which he has, or which may fairly be charged against him from the facts within his observation in the light of his individual case.'"¹⁸ *Vann* is

7. 68 F.3d 736 (3d Cir. 1995).

8. *Id.* at 741 n.3.

9. 67 F.3d 80 (5th Cir. 1995).

10. *Id.* at 81 n.1.

11. 67 F.3d 277 (11th Cir. 1995).

12. *Id.* at 279. The loan documents contained representations that there had been no such changes. *Id.*

13. 11 U.S.C. § 523(a)(2)(A) (1988).

14. *In re Vann*, 67 F.3d at 280. The United States Supreme Court has now resolved the split. *Field v. Mans*, 116 S. Ct. 437, 446 (1995) (holding that fraud exception to discharge requires justifiable, not reasonable, reliance).

15. RESTATEMENT (SECOND) OF TORTS § 537 (1977).

16. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 108, at 749 (5th ed. 1984).

17. *In re Vann*, 67 F.3d at 283.

18. *Id.* (alteration in original) (quoting KEETON ET AL., *supra* note 16, at 751).

thus a bankruptcy case, but with significant tort substance.¹⁹ I decided that this placed it within the realm of "tort cases" decided on October 19, 1995.

The search found several cases²⁰ brought as civil rights actions under section 1983 of the Federal Civil Rights Act.²¹ Some scholars consider the section 1983 action to be a kind of "constitutional tort."²² I decided, however, not to include cases based solely on section 1983, because of their exclusive focus on federal statutory and constitutional issues, rather than on tort law. I did, of course, include those civil rights cases that alleged pendent state-law tort claims.²³

On the other hand, *New Connecticut Bank & Trust v. Mussa (In re Cleveland Tankers, Inc.)*²⁴ also involved a federal statutory cause of action, but I included it because of its extensive adoption (and discussion) of substantive tort principles. The case was brought under the Limited Liability Act,²⁵ and arose out of a ship explosion on the Saginaw River. Pursuant to admiralty principles, the district court assigned fifty percent of the fault to one defendant, and twenty-five percent each to two other defendants.²⁶ The Sixth Circuit's opinion discusses tort-related issues such as proximate cause, standards of care, and apportionment of fault.²⁷

Another challenge with regard to what cases to include involved those areas of the law that flirt around the edges of tort law, or that provide remedies similar to (or in lieu of) tort law. For example, statutory workers' compensation regimes provide compensation to employees injured on the job.²⁸ The compensation replaces what might otherwise be a tort recovery, and the former precludes the latter.²⁹ As a general rule, I have not included workers' compensation cases in my survey of tort cases from October 19, 1995, although one exception is *Danielson v. Larsen Co.*³⁰ In that case,

19. For another October 19 bankruptcy case dealing with an underlying tort cause of action, see *American General Finance v. Taylor (In re Taylor)*, 187 B.R. 736 (Bankr. N.D. Ala. 1995) (conversion).

20. *E.g.*, *Navarro v. Block*, 72 F.3d 712 (9th Cir. 1995).

21. 42 U.S.C. § 1983 (1994).

22. *See, e.g.*, PROSSER, WADE AND SCHWARTZ'S CASES AND MATERIALS ON TORTS, *supra* note 1, at 985-95 (including section 1983 cases). *See also* *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 305-06 (1986) (noting that a violation of section 1983 rights creates a species of constitutional tort liability).

23. *E.g.*, *Franklin v. Village of Riverdale*, No. 94 C 3983, 1995 WL 616678 (N.D. Ill. Oct. 19, 1995) (discussing pendent state law claims of assault, battery, and malicious prosecution).

24. 67 F.3d 1200 (6th Cir. 1995).

25. 46 U.S.C. § 183(a) (1994).

26. *In re Cleveland Tankers, Inc.*, 67 F.3d at 1204.

27. *Id.* at 1204-08.

28. KEETON ET AL., *supra* note 16, § 80, at 568.

29. *Id.*

30. 541 N.W.2d 507 (Wis. Ct. App. 1995).

the plaintiff (who had been struck by a car while working by the road) tried to break out of the workers' compensation system and into the tort system to sue his employer for negligence. He argued that his employer's maintenance of a liability policy, separate from the workers' compensation coverage, constituted a waiver of the statutory exclusive remedy provision.³¹ The court held, however, that such a waiver would be found only if express language in the other insurance policy so indicated.³² In this case, far from containing an express waiver, the other policy featured a specific provision excluding coverage for damages otherwise covered by workers' compensation.³³ Accordingly, the court precluded the injured employee from venturing into the tort system.³⁴ Because the case helps define the outer boundaries of the law of torts, I considered it to be a part of the October 19 package.³⁵

I did not count *Gordon v. Kentucky Farm Bureau Insurance Co.*³⁶ as a tort case. Gordon was injured in a car-motorcycle collision. The driver of the motorcycle (upon which Gordon was a passenger) was apparently negligent, but uninsured, so no tort claim was pursued. Rather, Gordon filed an uninsured motorist claim.³⁷ In such a case, the uninsured motorist insurance coverage can substitute for a tort recovery, but as a matter of contract law, not tort law. The opinion dealt with whether the tort statute of limitations would apply, as opposed to the longer contract statute of limitations. The court held that the latter applied.³⁸ The opinion appeared in my searches because of its use of the words "tort" and "tortfeasor" in relation to the statute of limitations issue.³⁹

31. *Id.* at 509.

32. *Id.* at 510.

33. *Id.*

34. *Id.* at 511.

35. Two other October 19 cases also involved drawing the boundary between tort and workers' compensation. In *Pace v. Cummins Engine Co.*, 905 P.2d 303 (Utah Ct. App. 1995), the court held that the workers' compensation statute precluded the plaintiff's negligence suit under Utah's "loaned employee doctrine." *Id.* at 311. And in *McCoy v. Zahniser Graphics, Inc.*, 45 Cal. Rptr. 2d 871 (Cal. Ct. App. 1995), the court construed a California statute allowing injured workers to bring tort actions when the injury is caused by a power press lacking a specific safety device. *Id.* at 872-73. I included one additional workers' compensation case, because it contained some discussion of substantive tort rules. In *Bellia v. General Motors Corp.*, No. 68489, 1995 WL 614509 (Ohio Ct. App. Oct. 19, 1995), the court observed: "The definition of 'proximate cause' in the workers' compensation context is the same as in the field of torts. . . . 'Proximate cause' is a happening or event which as a natural and continuous sequence produces an injury without which the result would not have occurred." *Id.* at *4.

36. 914 S.W.2d 331 (Ky. 1995).

37. *Id.* at 331.

38. *Id.* at 333.

39. *Id. passim.*

Other cases were close to the outer boundaries of tort law. One court characterized an insurance bad faith claim as "part-contract and part-tort: part-contract because such claims do not arise in the absence of an insurance contract and part-tort because such claims can be brought by third parties and result in awards of tort-like damages."⁴⁰ The line between tort and contract was also at issue in *Foseid v. State Bank*,⁴¹ a case exploring the potential for a tort of bad faith breach of contract. This Wisconsin appellate opinion arose in the context of the bank's contractual relationship with a mortgagor landowner. The court recognized that every contract carries with it an implied covenant of good faith and fair dealing.⁴² In the relationship between an insurer and an insured, breach of the good faith covenant gives rise to an action in tort.⁴³ But in every other contract, bad faith breach is only viable as a *contract* action, not a tort action: that is, the tort of bad faith "does not exist in Wisconsin other than in certain cases involving insurance companies and their insureds."⁴⁴

II. THE RESULTS

After going through the process described above, I arrived at a count of seventy-eight tort cases decided on October 19, 1995. The cases and their citations are listed in the Appendix to this article.⁴⁵ Tort cases on that date came from three federal circuit courts⁴⁶ and from nine federal district courts.⁴⁷ The highest courts of Illinois,⁴⁸ Kentucky,⁴⁹ Maine,⁵⁰ Mississippi,⁵¹ and Pennsylvania⁵² issued torts

40. *Pen Coal Corp. v. William H. McGee & Co.*, 903 F. Supp. 980, 983 (S.D. W. Va. 1995).

41. 541 N.W.2d 203 (Wis. Ct. App. 1995).

42. *Id.* at 211.

43. *Id.*

44. *Id.*

45. I resisted the temptation to create an extremely long and therefore potentially impressive footnote listing all cases. I decided that the Appendix would be more accessible.

46. *Jacobs v. E.I. Du Pont de Nemours & Co.*, 67 F.3d 1219 (6th Cir. 1995); *Stratmeyer v. United States*, 67 F.3d 1340 (7th Cir. 1995); *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277 (11th Cir. 1995).

47. *E.g.*, *Bomboir v. National R.R. Passenger Corp.*, 902 F. Supp. 160 (N.D. Ill. 1995); *Carbotrade SpA v. Bureau Veritas*, 901 F. Supp. 737 (S.D.N.Y. 1995); *Strickland v. Royal Lubricant Co.*, 911 F. Supp. 1460 (M.D. Ala. 1995); *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140 (D.D.C. 1995); *Flannagan v. Bader*, 905 F. Supp. 933 (D. Kan. 1995); *Statia Terminals v. Huber Inc.*, Civ. A. No. 95-1633, 1995 WL 619775 (E.D. La. Oct. 19, 1995); *Bosley v. Kearney R-1 Sch. Dist.*, 904 F. Supp. 1006 (W.D. Mo. 1995); *Doe v. Dendrinis*, No. 95-4471, 1995 WL 621567 (E.D. Pa. Oct. 19, 1995); *Pen Coal Corp. v. William H. McGee & Co.*, 903 F. Supp. 980 (S.D. W. Va. 1995).

48. *E.g.*, *Bubb v. Springfield Sch. Dist.* 186, 657 N.E.2d 887 (Ill. 1995).

49. *E.g.*, *Adams v. Miller*, 908 S.W.2d 112 (Ky. 1995).

50. *E.g.*, *Hatch v. Maine Tank Co.*, 666 A.2d 90 (Me. 1995).

51. *E.g.*, *Leaf River Forest Prods., Inc. v. Ferguson*, 662 So. 2d 648 (Miss. 1995).

opinions on October 19. Lower courts in those states, and in twelve other states,⁵³ also decided tort cases.

A review of the substantive theories of the cases reveals some interesting features: of the seventy-eight cases, forty-eight of them involved allegations of negligence.⁵⁴ I had always perceived as conventional wisdom the truism that negligence dominates the tort field; here was some (limited) empirical evidence. Also interesting was the variety of other torts involved in the cases. In order of the frequency with which they appeared in the cases,⁵⁵ the torts are: intentional infliction of emotional distress⁵⁶ (seven cases); strict products liability⁵⁷ (six); defamation⁵⁸ (six); fraud⁵⁹ (five); battery⁶⁰ (five); conversion⁶¹ (four); negligent infliction of emotional distress⁶² (four). Other torts that appeared occasionally (no more than three times, but at least once) were interference with contract, bad faith, trespass, nuisance, common-law strict liability, false imprisonment, invasion of privacy, interference with business relationships, malicious prosecution, abuse of process, negligent misrepresentation, and assault: in all, twenty different torts in one day's worth of tort opinions.

The cases arose in a variety of settings. Nine of the cases involved automobile accidents.⁶³ Only eight cases were products liability

52. *E.g.*, Lockhart v. List, 665 A.2d 1176 (Pa. 1995).

53. *E.g.*, Renz v. 33rd Dist. Agric. Assoc., 46 Cal. Rptr. 2d 67 (Cal. Ct. App. 1995); Traunig v. Knutson Mortgage Corp., No. CV 95-0551598 S, 1995 Conn. Super. LEXIS 2942 (Conn. Super. Ct. Oct. 19, 1995); Reddick v. Carfield, 656 N.E.2d 518 (Ind. Ct. App. 1995); Oxley v. Sabine River Auth., 663 So. 2d 497 (La. Ct. App. 1995); Garcia v. Kusan, Inc., 655 N.E.2d 1290 (Mass. App. Ct. 1995); Dunn v. Wal-Mart Stores, Inc., 909 S.W.2d 728 (Mo. Ct. App. 1995); Jacobo v. A.H.A. Gen. Constr., Inc., 632 N.Y.S.2d 560 (N.Y. App. Div. 1995); Lazzara v. Marc Glassman, Inc., 667 N.E.2d 1275 (Ohio Ct. App. Oct. 19, 1995); Arnold v. Ford, No. 01-A-01-9505-CV00203, 1995 WL 611280 (Tenn. Ct. App. Oct. 19, 1995); Jamar v. Patterson, 910 S.W.2d 118 (Tex. Ct. App. 1995); Kleinert v. Kimball Elevator Co., 905 P.2d 297 (Utah Ct. App. 1995); Foseid v. State Bank, 541 N.W.2d 203 (Wis. Ct. App. 1995).

54. I have again resisted the temptation to create a long and impressive footnote. Any reader who wants to know which 48 cases these are can write to me, and I will be happy to provide that list.

55. Many of the cases involved allegations of several torts.

56. *E.g.*, Alberts v. Wickes Lumber Co., No. 93 C 4397, 1995 WL 616685 (N.D. Ill. Oct. 19, 1995).

57. *E.g.*, Jacobs v. E.I. Du Pont de Nemours & Co., 67 F.3d 1219 (6th Cir. 1995).

58. *E.g.*, Goldsmith v. Polygram Diversified Ventures Inc., No. 94 CIV. 8888, 1995 WL 614560 (S.D.N.Y. Oct. 19, 1995).

59. *E.g.*, Fisher Controls Int'l, Inc. v. Gibbons, 911 S.W.2d 135 (Tex. Ct. App. 1995).

60. *E.g.*, Childers v. A.S., 909 S.W.2d 282 (Tex. Ct. App. 1995).

61. *E.g.*, Reddick v. Carfield, 656 N.E.2d 518 (Ind. Ct. App. 1995).

62. *E.g.*, Hagerman v. Metro-North Commuter R.R., No. 94 CIV. 5356, 1995 WL 614562 (S.D.N.Y. Oct. 19, 1995).

63. *E.g.*, Arnold v. Ford, No. 01-A-01-9505-CV00203, 1995 WL 611280 (Tenn. Ct. App. Oct. 19, 1995).

cases,⁶⁴ surprisingly few, given the current outcry over how the supposed proliferation of such cases is affecting our nation.⁶⁵ There were only four medical malpractice cases,⁶⁶ two legal malpractice cases,⁶⁷ and one veterinary malpractice case.⁶⁸

One last observation: The day's lineup of cases was enriched slightly by a technological glitch. The opinion in *Bosley v. Kearney R-1 School District*⁶⁹ was originally dated October 4, 1995. However, "[d]ue to some computer file errors, portions of the . . . opinion were omitted, and others were included which should have been left out."⁷⁰ A new order was therefore substituted for the previous one. The date of the final, revised opinion: October 19, 1995.

II. THE CASES

A. *The Facts*

From Mrs. Palsgraff's unfortunate encounter with the fireworks-driven scales,⁷¹ to little Brian Dailey's prank of pulling the chair out from under Ruth Garratt,⁷² to the lady who thought she could fly because Batman could,⁷³ facts make the world of torts go around. On October 19, 1995, there was no shortage of interesting and unusual fact patterns. The plaintiff in one case slipped and fell on what appeared to be ice cream in a Wal-Mart store.⁷⁴ A customer at another store was injured when a stacked toilet paper display fell on her.⁷⁵ An elementary student was hit in the eye with a hockey stick.⁷⁶ Another plaintiff fell off a bridge.⁷⁷

Among the unusual fact patterns presented on October 19 were the circumstances of *Stratmeyer v. United States*.⁷⁸ The plaintiffs had purchased fifty-two head of cattle, and commingled them with their existing herd. Unknown to the plaintiffs, however, the purchased cattle had been part of a herd exposed to brucellosis, a highly conta-

64. *E.g.*, *Hatch v. Maine Tank Co.*, 666 A.2d 90 (Me. 1995).

65. *See, e.g.*, Neil A. Lewis, *President Vetoes Limits on Liability*, N.Y. TIMES, May 3, 1996, at A1.

66. *E.g.*, *Mitchell v. New Milford Hosp.*, No. CV 92 0060555, 1995 WL 631017 (Conn. Super. Ct. Oct. 19, 1995).

67. *Mitchell v. Biomagnetic Resonance, Inc.*, No. 95-2076, 1995 U.S. App. LEXIS 35443 (6th Cir. Oct. 19, 1995); *Johnson v. Hollon*, No. 0125524, 1995 Conn. Super. LEXIS 2951 (Conn. Super. Ct. Oct. 19, 1995).

68. *Stratmeyer v. United States*, 67 F.3d 1340 (7th Cir. 1995).

69. 904 F. Supp. 1006 (W.D. Mo. 1995).

70. *Id.* at 1012.

71. *Palsgraf v. Long Island R.R.*, 162 N.E. 99 (N.Y. 1928).

72. *Garratt v. Dailey*, 279 P.2d 1091 (Wash. 1955).

73. *Breunig v. American Family Ins. Co.*, 173 N.W.2d 619 (Wis. 1970).

74. *Dunn v. Wal-Mart Stores, Inc.*, 909 S.W.2d 728 (Mo. Ct. App. 1995).

75. *Lazzara v. Marc Glassman, Inc.*, 667 N.E.2d 1275 (Ohio Ct. App. 1995).

76. *Garcia v. Kusan, Inc.*, 655 N.E.2d 1290 (Mass. App. Ct. 1995).

77. *Sisk v. Williamson County*, 657 N.E.2d 903 (Ill. 1995).

78. 67 F.3d 1340 (7th Cir. 1995).

gious disease.⁷⁹ Prior to the sale, state and federal veterinarians had detected the brucellosis, and had taken some safety steps with regard to the seller's herd. The federal veterinarian, however, knew nothing about the subsequent sale, and played no part in it.⁸⁰ Under the Federal Tort Claims Act, the plaintiffs claimed that the United States was liable for the veterinarian's negligence in failing to inspect the cattle, in failing to quarantine the entire exposed herd, and for failing to warn prospective buyers about the brucellosis.⁸¹ The Seventh Circuit held that the suit failed for lack of a duty owed to the plaintiffs.⁸² The duty owed by government veterinarians is a duty owed to the public as a whole, according to the court, under Indiana's public duty doctrine.⁸³ Absent the assumption of some special relationship, for instance when a governmental actor makes assurances that are relied upon by some individual, no duty flows to particular individuals.⁸⁴ Accordingly, the court of appeals affirmed the district court's summary judgment in favor of the United States.⁸⁵

Many of the October 19 cases serve as a reflection of our times and culture. In *Franklin v. Village of Riverdale*,⁸⁶ the plaintiff alleged assault and battery arising out of her arrest at the scene of a near-riot. The disturbance was accompanied by shouts of "Rodney King" from the crowd.⁸⁷ Another case arose out of a gay rights protest at an appearance by former President George Bush.⁸⁸ Other cases involved sexual misconduct, both by adults⁸⁹ and children.⁹⁰ Woodstock '94, the twenty-fifth anniversary celebration of the original rock festival, gave rise to a contract interference and defamation case.⁹¹

A sort of reverse liposuction for cattle was at the center of the controversy in *Galveston County Fair & Rodeo v. Kauffman*.⁹² The young owner of a prize steer was stripped of his championship because of allegations that he injected air under the steer's hide to

79. *Id.* at 1342.

80. *Id.* at 1343.

81. *Id.*

82. *Id.* at 1347.

83. *Id.* at 1344, 1347.

84. *Id.* at 1347.

85. *Id.* at 1343, 1348.

86. No. 94 C 3983, 1995 WL 616678 (N.D. Ill. Oct. 19, 1995).

87. *Id.* at *2.

88. *Lyons v. City of Lewiston*, 666 A.2d 95 (Me. 1995).

89. *See, e.g., Alberts v. Wickes Lumber Co.*, No. 93 C 4397, 1995 WL 616685 (N.D. Ill. Oct. 19, 1995) (involving alleged sexual assault between fellow employees).

90. *See, e.g., Childers v. A.S.*, 909 S.W.2d 282 (Tex. Ct. App. 1995) (involving children playing "doctor").

91. *Goldsmith v. Polygram Diversified Ventures Inc.*, No. 94 CIV. 8888, 1995 WL 614560 (S.D.N.Y. Oct. 19, 1995).

92. 910 S.W.2d 129 (Tex. App. 1995, writ denied).

improve its appearance, a process known as "airing."⁹³ The court's opinion is full of delightful passages such as, "He [an expert] also was troubled by the fact that the carcass was allowed to hang much longer than usual due to the controversy, noting that if a carcass hangs long enough, air bubbles begin to form from bacterial action."⁹⁴ The owner's father was ridiculed at work by his co-workers, who called him "Air Kauffman."⁹⁵ Incidentally, the steer in question was named "Reebok."⁹⁶ However, and somewhat inexplicably, the court never refers to the steer as "Air Reebok."⁹⁷

Another unusual fact pattern was presented in *Kleinert v. Kimball Elevator Co.*,⁹⁸ or what we might call the Case of the Yo-Yo Elevator. Deanna Kleinert got on the elevator on the sixth floor. Forty minutes later, she was still trapped inside. During that time, the elevator "intermittently and erratically rose and fell"⁹⁹ in a process an elevator expert later referred to as "yo-yoing."¹⁰⁰ Kleinert was thrown around inside the elevator and injured. She finally escaped by prying open the doors and jumping down to the floor below.¹⁰¹ The appellate court reversed the trial court's directed verdict in favor of the defendants, holding that there was sufficient evidence to permit a finding of negligence.¹⁰² For purposes of remand, the court also held that the defendants should be held to the higher standard of care applicable to common carriers: "[T]he risk presented when transporting passengers vertically is as great as transporting passengers horizontally in a conveyance such as a bus or train."¹⁰³

One opinion wins the prize for the most bizarre case of the day. The plaintiff in *Anonymous v. Kaye*¹⁰⁴ was a graduate of Seton Hall University School of Law who apparently wanted to remain, well, anonymous. He proceeded *pro se* in a suit against seven judges of the New York Court of Appeals, seven judges of the Supreme Court of New Jersey, and Seton Hall's Law School and its dean. He also tried to sue the law school's trustees, leading the court to observe: "While Plaintiff purports to sue the Trustees of Seton Hall University School of Law, the law school has no trustees."¹⁰⁵ Plaintiff's attempt to take the New York Bar Exam had been frustrated by Seton Hall's refusal to issue the required certifications, because of a

93. *Id.* at 132. Not to be confused with "erring."

94. *Id.* at 134.

95. *Id.*

96. *Id.* at 131.

97. *Id. passim.*

98. 905 P.2d 297 (Utah Ct. App. 1995).

99. *Id.* at 298.

100. *Id.* at 299.

101. *Id.* at 298.

102. *Id.* at 300.

103. *Id.* at 301.

104. No. 94 Civ. 2882 (JFK), 1995 WL 617795 (S.D.N.Y. Oct. 19, 1995).

105. *Id.* at *6 n.3.

residency deficiency arising out of plaintiff's having been disciplined for plagiarism.¹⁰⁶ The suit was based in part on a theory of defamation. All of the defendants were successful in having the case dismissed on a variety of grounds.¹⁰⁷

B. *The Legal Issues and Opinions*

The seventy-eight cases decided on October 19, 1995 spanned a wide range of tort issues, as the following sampling of the opinions indicates.

How does one define the significance of a case? Prestige of the court? Cutting-edge issues of law? Magnitude of the injuries alleged? If any or all of these are appropriate criteria, then *Jacobs v. E.I. Du Pont de Nemours & Co.*¹⁰⁸ may be the most significant case decided on October 19, 1995. In that litigation, twenty-seven cases were consolidated for the appeal.¹⁰⁹ The plaintiffs had all been recipients of the TMJ Interpositional Implant ("IPI"), an artificial cartilage replacement for the temporomandibular (jaw) joint ("TMJ"). The Du Pont teflon in the IPI was alleged to have caused a variety of serious physical problems, including tumors, bone degeneration, hearing loss, and facial paralysis.¹¹⁰ The manufacturer/distributor of the IPI had filed for bankruptcy,¹¹¹ so Du Pont was apparently targeted as the "deep pocket." The Sixth Circuit decided the case against a backdrop of numerous other federal court decisions litigating the same claims.¹¹² Among the theories advanced by the plaintiffs were strict liability for defective design and failure to warn, and negligent failure to test the teflon as used in the IPI.¹¹³ The court affirmed the district courts' grants of summary judgment in favor of Du Pont.¹¹⁴ The court held that the state law claims were not preempted by the 1976 Medical Device Amendments to the Food, Drug and Cosmetic Act;¹¹⁵ that as a component part manufacturer, Du Pont under Ohio law had no duty to warn end-users of the finished product;¹¹⁶ and that even if there were a duty to warn, Du Pont was entitled to rely on warnings it gave to the manufacturer/distributor, under the "sophisticated intermediary" rule.¹¹⁷ The court concluded with a dose of policy:

106. *Id.* at *1, *4.

107. *Id. passim* (improper venue, lack of personal jurisdiction, and *res judicata*).

108. 67 F.3d 1219 (6th Cir. 1995).

109. *Id.* at 1222.

110. *Id.* at 1225.

111. *Id.* at 1224.

112. *Id.* at 1223 n.4.

113. *Id.* at 1222.

114. *Id.* at 1247.

115. *Id.* at 1234-36 (construing 21 U.S.C. § 360k(a) (1994)).

116. *Id.* at 1236-38.

117. *Id.* at 1238-40.

If we adhered to Appellants' theory, access to raw materials like Teflon for entrepreneurs seeking new applications would either disappear or be undermined by an inevitable increase in price. This, of course, would stymie the kind of beneficial scientific innovation which, sadly, did not take place here, but which has occurred in many other areas of human endeavor.¹¹⁸

*Oxley v. Sabine River Authority*¹¹⁹ raised a common and intensely practical problem inherent in modern tort law: the apportioning of fault, by percentages, among multiple negligent parties. The plaintiff, a retired electrical worker, was severely burned when electricity arced from a transformer at a construction site where he was providing a consultation.¹²⁰ The jury apportioned fault as follows: 25% to the manufacturer of the transformer; 25% to the project's managing agent; 25% to the local electric utility company; 10% to the state agency responsible for the site; 10% to the seller of the transformer; 5% to the electrical subcontractor; and 0% to the plaintiff.¹²¹ Various parties contended on appeal that certain percentages assigned were either too high or too low. In each instance, after recounting the pertinent facts, the appellate court affirmed the jury's apportionment.¹²² The court observed, "When two permissible views of the evidence exist, the jury's choice between them cannot be manifestly erroneous."¹²³ The court indicated that it would have to find the jury was "clearly wrong"¹²⁴ or had "manifestly or legally erred"¹²⁵ before it would make any change. As the court put it, "We are not persuaded at this late stage in the proceedings to 'second guess' the jury's fault assessments"¹²⁶

Oxley also presented a couple of interesting damages issues. As a result of the burns suffered by the plaintiff, the lower half of his right leg had to be amputated and his left leg was rendered non-functional; he was in the hospital for ninety-nine days, and had over thirty surgical procedures.¹²⁷ The jury awarded \$2,200,000 in general damages, separate from an award of \$875,000 for past and future medical expenses.¹²⁸ In upholding the jury's award, the appellate court noted that in addition to his other injuries, the plain-

118. *Id.* at 1241.

119. 663 So. 2d 497 (La. Ct. App. 1995).

120. *Id.* at 501.

121. *Id.*

122. *Id.* at 503-07.

123. *Id.* at 503 (citing *Stobart v. State Through Dep't. of Transp. & Dev.*, 617 So. 2d 880 (La. 1993)).

124. *Id.* at 504.

125. *Id.* at 507.

126. *Id.*

127. *Id.* at 510.

128. *Id.* at 501.

tiff suffered a complete loss of vision in one eye.¹²⁹ Then, in a footnote, the court made one final observation that may have in fact been very important to the jury: "Oxley was blind in one eye prior to the accident."¹³⁰

How about \$500,000 for loss of consortium? That was what the jury awarded to the plaintiff's wife, Bessie Oxley.¹³¹ That's a lot of consortium. On appeal the court upheld the award, paying "great deference" to the jury's determination, which it emphasized is by nature "highly subjective."¹³² The court went on:

Mr. and Mrs. Oxley were planning to retire in the Toledo Bend area, to spend the rest of their life fishing and enjoying the pleasures that area has to offer. Obviously, as a result of this accident, the Oxleys' plan for their "golden years" will not materialize and their lives have been drastically altered. While Mrs. Oxley testified their love for each other has remained undaunted, their relationship as husband and wife has changed to patient and nurse.¹³³

The court noted that the award was the highest for loss of consortium ever rendered in Louisiana.¹³⁴

This same case gave rise to another opinion issued the same day. In that companion case, the court addressed an insurance dispute involving one of the defendants.¹³⁵ Prior to the plaintiff's injury, Utility Data Service ("UDS"), the manager on the construction project, had asked its insurance agent to procure liability coverage with limits of \$600,000 per occurrence. The coverage actually obtained only had a \$300,000 limit.¹³⁶ UDS sued the insurance agent for negligence, in an action the court characterized as "analogous to a malpractice claim brought against an attorney or a physician."¹³⁷ Because the complaint sounded in tort, the court held, it was barred by a one-year limitations period.¹³⁸

In *Stewart Title Guaranty Co. v. Aiello*,¹³⁹ the court addressed the novel question of how long an insurance company's duty of good faith and fair dealing lasts. Stewart Title had refused to pay a claim arising out of a cloud on the Aiellos' title, forcing litigation. That suit was settled at the last minute by means of a stipulated judgment

129. *Id.* at 510.

130. *Id.* at 510 n.2.

131. *Id.* at 510.

132. *Id.* (quoting *Johnson v. Aetna Cas. & Sur. Co.*, 575 So. 2d 934 (La. Ct. App. 1991)).

133. *Id.* at 511.

134. *Id.*

135. *Oxley v. Sabine River Auth.*, 664 So. 2d 493 (La. Ct. App. 1995).

136. *Id.* at 495.

137. *Id.* (discussing *Roger v. Defrene*, 613 So. 2d 947 (La. 1993)).

138. *Id.*

139. 911 S.W.2d 463 (Tex. Ct. App. 1995).

against Stewart Title.¹⁴⁰ Thereafter, Stewart Title resisted collection of the judgment by ignoring the plaintiffs' letters and phone calls, and even by failing to appear when subpoenaed for depositions regarding collection of the judgment.¹⁴¹ Finally, plaintiffs sued Stewart Title again, this time for the tort of bad faith. Stewart Title argued that the bad faith claim must fail, because once the stipulated judgment was entered, the relationship changed from a fiduciary relationship between insurer and insured to a mere debtor-creditor relationship.¹⁴² The court held that the duty of good faith survives, even after the entry of judgment, until all the relevant acts arising out of the insurer-insured relationship are completed.¹⁴³ The court thus upheld a judgment that had included \$200,000 in exemplary damages.¹⁴⁴

In *Hagerman v. Metro-North Commuter Railroad*,¹⁴⁵ a federal district court made some interesting observations about the tort of intentional infliction of emotional distress. A railroad employee had been required to submit to random drug screening. His urine sample tested positive, as did a follow-up sample.¹⁴⁶ The employee was fired as a result. However, the testing lab refused to verify the result, and then lost the sample.¹⁴⁷ The court recited the oft-quoted Restatement standard, that actionable conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community"¹⁴⁸ and concluded, "Neither the taking of the urine sample by Metro-North nor its subsequent loss by Maryland constitutes the requisite outrageous conduct."¹⁴⁹ In a footnote, the court commented on the "common law" rule:

It is true that speaking of "the common law" in the singular is often misleading because the common law is "emphatically plural" and a common law rule that is consistent with the law of one state will almost inevitably be inconsistent with the law of another. In this case, however, the New York rule comports with the Restatement position in requiring "outrageous" conduct. Moreover, the requirement of outrageous conduct for claims of intentional infliction of emotional distress appears to

140. *Id.* at 467.

141. *Id.* at 468.

142. *Id.* at 469-70.

143. *Id.* at 471.

144. *Id.* at 467, 473.

145. No. 94 CIV. 5356 (DLC), 1995 WL 614562 (S.D.N.Y. Oct. 19, 1995).

146. *Id.* at *1.

147. *Id.*

148. *Id.* at *2 (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965)).

149. *Id.*

present one of those rare instances in which the common law is indeed, "emphatically singular."¹⁵⁰

A somewhat unusual defense was offered by a familiar retailer in *Dunn v. Wal-Mart Stores*,¹⁵¹ a case that arose in Mountain View, Missouri. The plaintiff claimed she fell in a slippery store aisle, perhaps due to spilled ice cream on the floor.¹⁵² At trial, Wal-Mart tried to introduce testimony from one of its employees regarding that store's record for safety. Specifically, the proffered testimony was that the Mountain View store had previously won the "Store of the Year Safety Award."¹⁵³ The trial judge excluded the testimony.¹⁵⁴ The Court of Appeals affirmed: "[E]vidence showing the non-occurrence of other accidents is not competent to show that a place where an accident occurred was reasonably safe and free from danger."¹⁵⁵

Medical malpractice litigation was represented on October 19 by *Flanagan v. Labe*.¹⁵⁶ In that case, the plaintiff claimed that his collapsed lung and emphysema had worsened as a result of negligent nursing care in the hospital.¹⁵⁷ Although the trial court had allowed plaintiff's expert witness, a registered nurse, to testify about the standard of care required of nurses and the breach thereof, the court refused her testimony on the issue of medical causation and diagnosis.¹⁵⁸ Without evidence of causation, the plaintiff found himself on the losing end of a summary judgment motion.¹⁵⁹ The Superior Court affirmed, holding that because nurses are not statutorily authorized to practice medicine, they are likewise "not authorized to formulate medical diagnoses and [are] therefore not competent to provide a jury with such formulations."¹⁶⁰

How about hedonic damages? On October 19, 1995, the Supreme Court of Kentucky refused to recognize this trendy new form of recovery:

150. *Id.* *2 n.3 (citations omitted).

151. 909 S.W.2d 728 (Mo. Ct. App. 1995). More typically, the attempt would be by the plaintiff to show that a store's prior experience with a continuing hazard put it on notice of the risk, providing a basis for the liability. See *Jasko v. F.W. Woolworth Co.*, 494 P.2d 839, 840-41 (Colo. 1972).

152. *Dunn v. Wal-Mart Stores*, 909 S.W.2d at 729.

153. *Id.* at 734.

154. *Id.*

155. *Id.* (quoting *Gilbert v. Bluhm*, 291 S.W.2d 125, 132 (Mo. 1956)). On October 19, 1995, Wal-Mart was in the hands of a jury in another tort case. See Lorraine Blackwell, *Wal-Mart Case Jury to Resume Deliberations*, RICHMOND TIMES-DISPATCH, Oct. 19, 1995, at B3 (defamation action by former employee).

156. 666 A.2d 333 (Pa. Super. Ct. 1995).

157. *Id.* at 334.

158. *Id.* at 335.

159. *Id.*

160. *Id.* at 338.

“The hedonic value of life refers to the value of the pleasure, the satisfaction, or the ‘utility’ that human beings derive from life, separate and apart from the labor or earnings value of life. To determine the hedonic loss, we seek to measure the value of human beings separate from the value of their output as mere ‘economic machines’” This court recognizes that there is measurable value to one’s life other than his or her earning capacity. However, this value is already recoverable in the recognized category of mental suffering. There is no need to allow for the recoupment of hedonic damages as a separate category of loss.¹⁶¹

A Wisconsin appellate court explained the tort of intentional interference with a prospective contract in *Foseid v. State Bank*.¹⁶² “An individual improperly interferes with a prospective contract by ‘(a) inducing or otherwise causing a third person not to enter into or continue [a] prospective relation or (b) preventing the other from acquiring or continuing [a] prospective relation.’”¹⁶³ The court emphasized that the interference must be intentional, in the sense of a “purpose” to interfere with the contract,¹⁶⁴ or at the very least with knowledge to a substantial certainty that the interference would occur.¹⁶⁵

One venerable doctrine of the tort law came under attack in *Lockhart v. List*.¹⁶⁶ The case arose out of an automobile accident that had happened over nine years earlier, in 1986. Alix Lockhart had driven through a series of “S-curves,” and had just come around the final bend to find the defendant’s garbage truck blocking her lane of travel.¹⁶⁷ She was unable to brake in time to avoid hitting the truck. In the subsequent lawsuit, the defendant argued that Lockhart herself had been negligent for failing to stop her car within the “assured clear distance ahead.”¹⁶⁸ Lockhart in response argued that she should not be held to the usual negligence standard, because under the sudden emergency doctrine, she had been faced with an unexpected peril which permitted little or no opportunity for reasoned action.¹⁶⁹ The trial court, however, refused to instruct the jury on the sudden emergency doctrine, which it called “bogus” and a “confusing malignant mutation of our jurisprudence.”¹⁷⁰ In

161. *Adams v. Miller*, 908 S.W.2d 112, 116 (Ky. 1995) (citations omitted).

162. 541 N.W.2d 203 (Wis. Ct. App. 1995).

163. *Id.* at 209 (quoting *Cudd v. Crownhart*, 364 N.W.2d 158, 160 (Wis. Ct. App. 1985)).

164. *Id.* But the intent need not be “malicious,” nor show “ill will.” *Id.* at 210 n.10.

165. *Id.* at 210 n.11.

166. 665 A.2d 1176 (Pa. 1995).

167. *Id.* at 1178.

168. *Id.*

169. *Id.* at 1180.

170. *Id.* at 1178 n.1.

reversing, the Pennsylvania Supreme Court did not comment directly on the trial court's views, except to say that the sudden emergency doctrine "has been recognized in Pennsylvania since 1854 and has most assuredly survived the advent of comparative negligence in this Commonwealth."¹⁷¹

*Bosley v. Kearney R-1 School District*¹⁷² gives us a brief glimpse into the difficult and sometimes frustrating life of the trial judge. In that case, which involved allegations of sexual harassment, the defendants moved for summary judgment. In response to the motion and its statement of facts, the plaintiffs wrote, "Plaintiffs do not disagree to any material extent with the statement of undisputed facts."¹⁷³ This created some confusion for Judge Bartlett: "It became clear, however, in plaintiffs' argument and affidavits that they do in fact disagree with some of the facts set forth by the defendant. Plaintiffs' admission on one hand and implicit denial on the other created a dilemma: which do the plaintiffs intend for me to act upon?"¹⁷⁴

An appellate court in another October 19 case reported the following incident involving a frustrated trial judge:

During the trial of this medical malpractice case, the trial judge became impatient with the bickering between counsel, and humorously threatened to lock them in a closet filled with weapons so they could settle their disputes. The two isolated comments in this vein were addressed to both counsel, were not objected to by either side, and did not prejudice plaintiffs.¹⁷⁵

Common sense is alive and well, at least in some courts. In *Kane v. R.D. Werner Co.*¹⁷⁶ an Illinois appellate court held that a products liability suit based on inadequate warning labels (on a ladder) must fail, because the injured plaintiff admitted that he never read the warning labels. "[S]ince plaintiff failed to read the warning labels, the alleged inadequate content of those warnings could not have proximately caused his injuries . . ."¹⁷⁷

IV. CONCLUSION

I close with a few parting observations of a miscellaneous and somewhat personal nature. I appreciate the judges who managed to build some creativity into the wording of their opinions. For example, one judge talked of the plaintiff having been "hoodwinked" by

171. *Id.* at 1183 n.7.

172. 904 F. Supp. 1006 (W.D. Mo. 1995).

173. *Id.* at 1014.

174. *Id.* at 1014-15.

175. *Alonso v. Powers*, 632 N.Y.S.2d 551, 551 (N.Y. App. Div. 1995).

176. 657 N.E.2d 37 (Ill. App. Ct. 1995).

177. *Id.* at 39.

the defendant.¹⁷⁸ Another court spoke of a party's "skullduggery."¹⁷⁹ Another opinion resisted the temptation to engage in what it called "appellate tinkering,"¹⁸⁰ and characterized the defendants' arguments as "hollow cries."¹⁸¹ A federal district court judge lamented that he was faced with "a slew of motions."¹⁸² My favorite? The judge who referred to the sudden emergency doctrine as "bogus" and a "confusing malignant mutation of our jurisprudence."¹⁸³

On a more substantive note, the Restatement remains a favorite source of authority for courts writing tort opinions. At least eleven of the October 19 opinions cited to and relied on the Restatement (Second) of Torts.¹⁸⁴

In a perverse sort of way, I admire the spunk of the defendants in *Renz v. 33rd District Agricultural Association*.¹⁸⁵ The plaintiffs had complained about the noise and fumes connected with the defendant's nearby motorcycle races. In response, the defendant assured the plaintiffs that it was "working on" the problem.¹⁸⁶ Defendant then raised its noise limit to make the motorcycle races even louder.¹⁸⁷ A nuisance action resulted.¹⁸⁸

Some of the major corporate players in our country were involved as defendants in these tort cases, including Wal-Mart,¹⁸⁹ Du Pont,¹⁹⁰ Georgia-Pacific,¹⁹¹ Mobil Oil,¹⁹² and General Motors (two cases!).¹⁹³ The biggest defendant of the day? The United States of America.¹⁹⁴ The tastiest defendant of the day? Sara Lee!¹⁹⁵

178. *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277, 279 (11th Cir. 1995).

179. *Stratmeyer v. United States*, 67 F.3d 1340, 1344 (7th Cir. 1995).

180. *Oxley v. Sabine River Auth.*, 663 So. 2d 497, 507 (La. Ct. App. 1995).

181. *Id.* at 509.

182. *Anonymous v. Kaye*, No. 94 CIV. 2882 (JFK), 1995 WL 617795 (S.D.N.Y. Oct. 19, 1995).

183. *Lockhart v. List*, 665 A.2d 1176, 1178 n.1 (Pa. 1995). *See supra* text accompanying notes 166-71.

184. *E.g.*, *Jamar v. Patterson*, 910 S.W.2d 118, 121 (Tex. App. 1995) (citing RESTATEMENT (SECOND) OF TORTS § 390 cmt. c (1965)).

185. 46 Cal. Rptr. 2d 67 (Cal. Ct. App. 1995).

186. *Id.* at 68.

187. *Id.*

188. *Id.*

189. *Dunn v. Wal-Mart Stores, Inc.*, 909 S.W.2d 728 (Mo. Ct. App. 1995). *See supra* text accompanying notes 151-55.

190. *Jacobs v. E.I. Du Pont de Nemours & Co.*, 67 F.3d 1219 (6th Cir. 1995).

191. *Leaf River Forest Prod., Inc. v. Ferguson*, 662 So. 2d 648 (Miss. 1995).

192. *325-343 E. 56th St. Corp. v. Mobil Oil Corp.*, 906 F. Supp. 669 (D.D.C. 1995).

193. *Bellia v. General Motors Corp.*, No. 68489, 1995 WL 614509 (Ohio Ct. App. Oct. 19, 1995); *Golla v. General Motors Corp.*, 657 N.E.2d 894 (Ill. 1995).

194. *Stratmeyer v. United States*, 67 F.3d 1340 (7th Cir. 1995).

195. *J.T. Gibbons, Inc. v. Sara Lee Corp.*, No. CIV.A.93-4050, 1995 WL 619770 (E.D. La. Oct. 19, 1995).

I marveled at the plaintiff who received \$45,000 from a jury for slipping on ice cream.¹⁹⁶ I felt sorry for the plaintiff who received an award of \$4.62 million at trial, only to see it reduced to zero on appeal.¹⁹⁷

If I am ever a party in a tort case,¹⁹⁸ I know who I want for my lawyer: Mr. Keaton, of the law firm of Keaton & Keaton, P.C.¹⁹⁹

All of this, and more, in a single day's worth of tort cases. It is no wonder that those of us who teach and practice in the tort field never tire of its rich variety.

196. *Dunn v. Wal-Mart Stores, Inc.*, 909 S.W.2d 728, 729 (Mo. Ct. App. 1995).

197. *Fisher Controls Int'l, Inc. v. Gibbons*, 911 S.W.2d 135, 137-38 (Tex. App. 1995).

198. Cf. Douglas H. Cook, *How I Spent my Sabbatical, or What Happens When a Torts Professor is a Juror in a Negligence Case*, 14 REV. LITIG. 219, 246 n.44 (1995).

199. *Reddick v. Carfield*, 656 N.E.2d 518 (Ind. Ct. App. 1995). Cf. PAGE KEETON & ROBERT E. KEETON, *KEETON & KEETON'S CASES & MATERIALS ON TORTS* (2d ed. 1977).

APPENDIX

UNITED STATES COURT OF APPEALS

Sixth Circuit

- Jacobs v. E.I. Du Pont de Nemours & Co., 67 F.3d 1219 (6th Cir. 1995).
- New Connecticut Bank & Trust v. Mussa (*In re* Cleveland Tankers, Inc.), 67 F.3d 1200 (6th Cir. 1995).
- Vawter v. Deller, No. 95-1317, 1995 WL 620960 (6th Cir. Oct. 19, 1995).
- DeCarli v. Crusoe's Rivertown Motors, Inc., No. 93-2534, 1995 WL 620964 (6th Cir. Oct. 19, 1995).
- Mitchell v. Biomagnetic Resonance, Inc., No. 95-2076, 1995 U.S. App. LEXIS 35443 (6th Cir. Oct. 19, 1995).

Seventh Circuit

- Stratmeyer v. United States, 67 F.3d 1340 (7th Cir. 1995).

Eleventh Circuit

- City Bank & Trust Co. v. Vann (*In re* Vann), 67 F.3d 277 (11th Cir. 1995).

UNITED STATES DISTRICT COURTS

Northern District Illinois

- Bomboir v. National R.R. Passenger Corp., 902 F. Supp. 160 (N.D. Ill. 1995).
- Franklin v. Village of Riverdale, No. 94 C 3983, 1995 WL 616678 (N.D. Ill. Oct. 19, 1995).
- Alberts v. Wickes Lumber Co., No. 93 C 4397, 1995 WL 616685 (N.D. Ill. Oct. 19, 1995).
- Hayes v. City of Chicago Police Dep't, No. 95 C 1459, 1995 U.S. Dist. LEXIS 15698 (N.D. Ill. Oct. 19, 1995).

Southern District New York

- Goldsmith v. Polygram Diversified Ventures Inc., No. 94 CIV. 8888, 1995 WL 614560 (S.D.N.Y. Oct. 19, 1995).
- Hagerman v. Metro-North Commuter R.R., No. 94 CIV. 5356, 1995 WL 614562 (S.D.N.Y. Oct. 19, 1995).
- Carbotrade SpA v. Bureau Veritas, 901 F. Supp. 737 (S.D.N.Y. 1995).
- Anonymous v. Kaye, No. 94 CIV. 2882, 1995 WL 617795 (S.D.N.Y. Oct. 19, 1995).
- Gabourel v. Bouchard Transp. Co., 94 CIV. 5897, 1995 U.S. Dist. LEXIS 15309 (S.D.N.Y. Oct. 19, 1995).
- Cargill Inc. v. Bureau Veritas, 902 F. Supp. 49 (S.D.N.Y. 1995).

Three Crown Ltd. Partnership v. Salomon Bros., Inc., 906 F. Supp. 876 (S.D.N.Y. 1995).

Other District Courts

- Strickland v. Royal Lubricant Co., 911 F. Supp. 1460 (M.D. Ala. 1995).
Zellers v. Liberty Nat'l Life Ins. Co., 907 F. Supp. 355 (M.D. Ala. 1995).
325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).
Johnson v. Greater Southeast Community Hosp. Corp., 903 F. Supp. 140 (D.D.C. 1995).
Flannagan v. Bader, 905 F. Supp. 933 (D. Kan. 1995).
J.T. Gibbons, Inc. v. Sara Lee Corp., Civ. A. No. 93-4050, 1995 WL 619770 (E.D. La. Oct. 19, 1995).
Statia Terminals N.V. v. Huber Inc., Civ. A. No. 95-1633, 1995 WL 619775 (E.D. La. Oct. 19, 1995).
Bosley v. Kearney R-1 Sch. Dist., 904 F. Supp. 1006 (W.D. Mo. 1995).
Doe v. Dendrinios, No. 95-4471, 1995 WL 621567 (E.D. Pa. Oct. 19, 1995).
Pen Coal Corp. v. William H. McGee & Co., 903 F. Supp. 980 (S.D. W. Va. 1995).

BANKRUPTCY COURT

American Gen. Fin. v. Taylor (*In re Taylor*), 187 B.R. 736 (Bankr. N.D. Ala. 1995).

CALIFORNIA

- Renz v. 33rd Dist. Agric. Ass'n, 46 Cal. Rptr. 2d 67 (Ct. App. 1995).
McCoy v. Zahniser Graphics, Inc., 45 Cal. Rptr. 2d 871 (Ct. App. 1995).
Cisneros v. U.D. Registry, Inc., 46 Cal. Rptr. 2d 233 (Ct. App. 1995).
Lincoln v. Schurgin, 45 Cal. Rptr. 2d 874 (Ct. App. 1995).

CONNECTICUT

- Mitchell v. New Milford Hosp., No. CV 92 0060555, 1995 WL 631017 (Conn. Super. Ct. Oct. 19, 1995).
McNeal v. Deloughery, No. CV950372339, 1995 WL 643157 (Conn. Super. Ct. Oct. 19, 1995).
O'Shea v. Dean, No. CV 90-0305624, 1995 Conn. Super. LEXIS 2959 (Conn. Super. Ct. Oct. 19, 1995).
Traunig v. Knutson Mortgage Corp., No. CV 95-0551598 S, 1995 Conn. Super. LEXIS 2942 (Conn. Super. Ct. Oct. 19, 1995).
Johnson v. Hollon, No. 0125524, 1995 Conn. Super. LEXIS 2951 (Conn. Super. Ct. Oct. 19, 1995).

Koscomb v. Rogers, No. CV93 30 65 33 S, 1995 Conn. Super. LEXIS 2940 (Conn. Super. Ct. Oct. 19, 1995).

ILLINOIS

Bubb v. Springfield Sch. Dist. 186, 657 N.E.2d 887 (Ill. 1995).
Golla v. General Motors Corp., 657 N.E.2d 894 (Ill. 1995).
Sisk v. Williamson County, 657 N.E.2d 903 (Ill. 1995).
Herzog v. Lexington Township, 657 N.E.2d 926 (Ill. 1995).
Kane v. R.D. Werner Co., 657 N.E.2d 37 (Ill. App. Ct. 1995).

INDIANA

Reddick v. Carfield, 656 N.E.2d 518 (Ind. Ct. App. 1995).

KENTUCKY

Adams v. Miller, 908 S.W.2d 112 (Ky. 1995).
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S.W.2d 455 (Ky. 1996).

LOUISIANA

Oxley v. Sabine River Auth., 664 So.2d 493 (La. Ct. App. 1995).
Oxley v. Sabine River Auth., 663 So.2d 497 (La. Ct. App. 1995).
Gordon v. Willis Knighton Med. Ctr., 661 So.2d 991 (La. Ct. App.
1995).

MAINE

Lyons v. City of Lewiston, 666 A.2d 95 (Me. 1995).
Hatch v. Maine Tank Co., 666 A.2d 90 (Me. 1995).

MASSACHUSETTS

Garcia v. Kusan, Inc., 655 N.E.2d 1290 (Mass. App. Ct. 1995).

MISSISSIPPI

Leaf River Forest Prod., Inc. v. Ferguson, 662 So.2d 648 (Miss.
1995).

MISSOURI

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