

June 2018

thinking

Connecting our Community with Current Issues

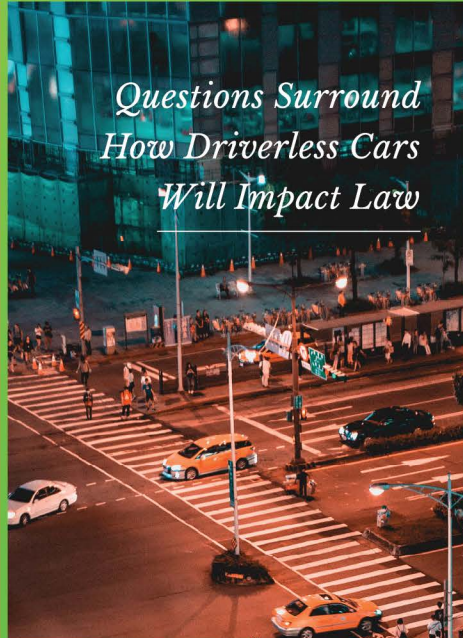


*Arizona Supreme Court Rules
Liberty of Business Owners Trumps
Risk of Harm to Children*

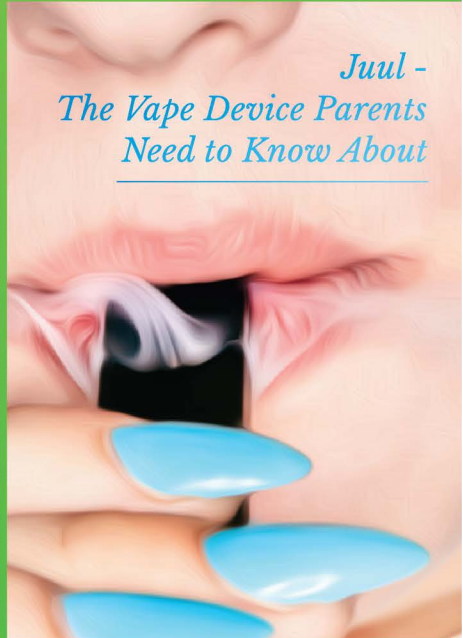


*Administrative Cuts
No Answer For
Education Woes*

#REDFORED



*Questions Surround
How Driverless Cars
Will Impact Law*



*Juul -
The Vape Device Parents
Need to Know About*



Schmidt, Sethi & Akmajian
ATTORNEYS

azinjurylaw.com

Happenings

Ted Schmidt



Ted Schmidt was elected a Fellow of the **International Academy of Trial Lawyers [IATL]** in 2010. The IATL is a highly exclusive international organization that limits its membership to just **500 lawyers** from the United States. The Academy seeks out only those trial lawyers who have demonstrated excellence in courtroom advocacy throughout their careers. The selection process is rigorous. Only those attorneys capable of providing the best advocacy are considered, and each nominee is extensively evaluated by colleagues and judges to determine his or her qualification. In May, 2018 Ted was **selected to serve as Co-Chair of the Arizona State Committee** for the IATL where he will be primarily responsible for identifying other Arizona lawyer who may be deserving of fellowship in the Academy.

Dev Sethi



Dev Sethi travelled to Boulder, CO for the Spring Meeting of the National Institute of Trial Advocacy's Board of Directors and Advisory Board. Dev serves on NITA's Advisory Board. For the last 40 years NITA has been the nation's leader in legal advocacy skills training. This season's meetings focused on keeping NITA's unique learning by doing training model at the forefront of advocacy as client needs and demands of the justice system continue to evolve

Peter Akmajian



On May 4, 2018, Peter Akmajian was on the faculty of a continuing legal education program sponsored by the American College of Trial Lawyers held at the Sandra Day O'Connor College of Law at Arizona State University entitled "It's All About the Evidence". This was a lively and interactive program where Peter and the other faculty, all Fellows of the American College, presented mock trial vignettes regarding evidence problems that trial lawyers face day-to-day. This was a day-long program with 100 students in attendance live as well as many others on a webcast.

Both Peter and Ted are honored to be Fellows of the American College of Trial Lawyers, an invitation only group of select trial lawyers from the U.S. and Canada. Part of the College's mission to preserve the right of trial by jury and to improve the standards and professionalism of trial practice, and this seminar helped to fulfill that mission.

Matt Schmidt



Matt Schmidt was recently elected to the Board of Directors for the Empower Coalition, a nonprofit aimed "to improve lives in the greater Tucson community by empowering charitable organizations with resources necessary to carrying out their missions." Empower's current focus is on providing financial assistance to local veterans' groups. He is also the President of the newly created Engage Foundation, a nonprofit established to put kids in a position to achieve by providing new, free and safe opportunities to participate in activities that are challenging, inspiring and underrated.

Congratulations to our High School Graduates!

Lisa Aguilar's son, AJ, graduates from Cienega High School where he served as Student Body President and worked in a basic science lab at the University of Arizona where he published a journal article on a study to manipulate mosquito DNA so that it would not transfer to humans. AJ will be a freshman at the University of Arizona Honors College in the Fall. Bear Down!

Anissa Amado's daughter, Abrianna, graduates from Canyon del Oro High School where she was a member of the Spanish Club and the Art Club. She was a four year player on the varsity softball team as a pitcher and second baseman and managed to keep straight A's all through her senior year. She will be attending NAU in the Fall. Go Lumberjacks!



We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please visit our website.

azinjurylaw.com



Arizona Supreme Court Rules Liberty of Business Owners Trumps Risk of Harm to Children

Ted Schmidt

In 2016 Governor Doug Ducey engineered an increase in the number of justices on the Arizona Supreme Court from five to seven. The stated reason for the increase was that more justices were needed to handle the work load. The facts seem to suggest otherwise. In 1948 when there were only three justices on the Arizona Supreme Court they managed to author 72 published opinions. In 1970 the now five judge court was able to publish 222 opinions. In 2015, the year before Governor Ducey added two more justices to the court, the Supreme Court only authored 31 opinions.

It has been suggested that Ducey's real reason for wanting two more Supreme Court justices was that he would get to pick them and could thus stack the court with pro-business jurists. We are now seeing the fruits of this political maneuver.

In the landmark case of *Quiroz v Alcoa Inc.*, 790 Ariz. Adv. Rep. 8, (May 11, 2018) (J. Gould)



Scan to Read the Courts Decision

(tiny.cc/Quiroz-Alcoa) the Arizona Supreme Court placed the interests of business owners ahead of risk of harm to children.



Chief Justice Bales in his dissent said it best: "The majority holds that an employer who knew its workers were being exposed to toxic asbestos dust on the job and failed to warn them or provide reasonable protective measures, such as overalls, showers, or changing facilities, owed no duty of care to children who developed mesothelioma from dust carried home in their parents' work clothes. Although the employer created the risk of physical harm - and failed to warn its employees or the persons ultimately injured - the [Supreme Court] concludes that the employer must be immunized from even the prospect of liability, no matter how reckless or otherwise unreasonable its conduct may have been. This result, the [court] contends, serves to protect the employer's 'individual liberty'. One would think the children had a greater right to be free from others unreasonably exposing them to risks of debilitating and life-threatening illness."

This case is one of the first in the country to address the question of secondary asbestos exposure and sets a troubling precedent for future cases in Arizona and elsewhere. Placing the interests of corporate America ahead of individual citizens, and children no less, is a sad step for our state yet consistent with a trend that began with *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010) where the U.S. Supreme Court held that corporations are people and protected by the First Amendment from prohibitions on campaign expenditures. The entire policy behind tort law is to protect us from the acts of wrongdoers. This opinion gives wrongdoers a pass in the name of corporate liberty. ♦

***The entire policy
behind tort law is to
protect us from the
acts of wrongdoers.***

Juul – The Vape Device Parents Need to Know About

Dev Sethi

High school administrators around Arizona are on high alert to keep students from sneaking hits in bathroom stalls or in the back of classrooms. A principal in Annapolis, MD recently ordered stall doors pulled out of bathrooms to curb the problem. Despite their best efforts, juuling has taken over.

E-cigarettes are not new. And we have previously written about the horrific injuries caused by exploding batteries in those

You have to be 18 to buy them. But in reality they are easily available online and at the local convenience store.

A pod contains as much nicotine as two packs of cigarettes, and flavors ranging from mango to crème brulee.

The problem with juuling devices, say experts, is that they are made for adults but marketed in a way that appeals to children. A single pod

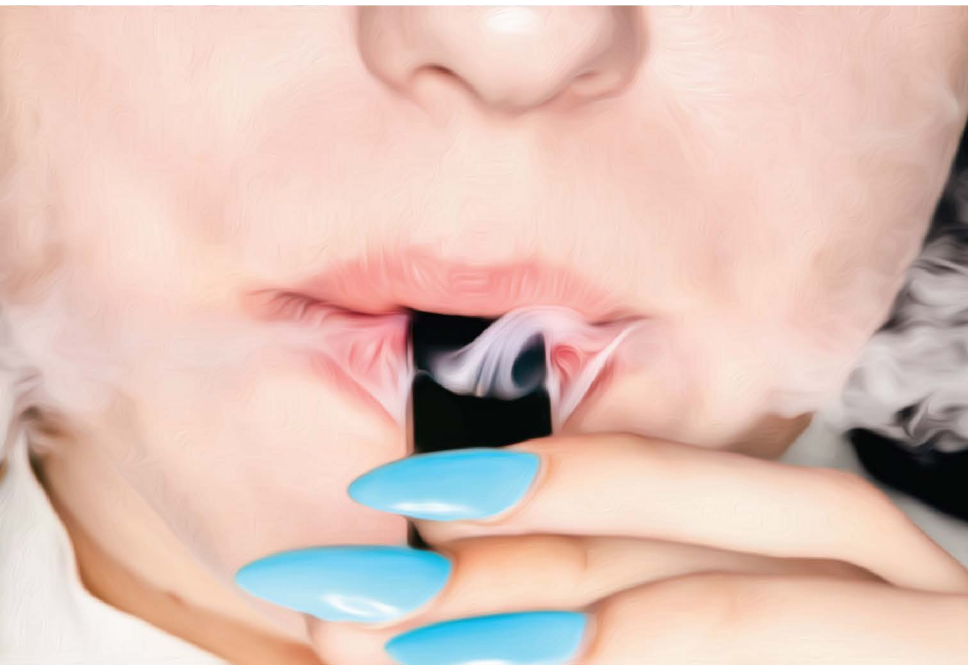
contains as much nicotine as two packs of cigarettes, and the pods come in kid-friendly flavors ranging from mango and fruit medley to crème brulee and cool mint. They leave behind no smoke or tell-tale odor. Reports from schools have kids hiding a Juul in a variety of creative places and sneaking hits. It is dangerous and disruptive. School administrators complain that they can't recall any fad catching on so quickly and in this way. Local school districts have sent home letters alerting parents to the issue and note that the overwhelming majority of discipline referrals relate to juuling.

The long-term health impacts of e-cigarettes are still unknown, but doctors and public health officials worry about the range of immediate harmful side effects

e-cigarette or vape pens. The game changer is the Juul, a small e-cigarette device that has exploded in popularity with teens. Think of it as the iPhone for nicotine consumption. The design is the perfect camouflage. It looks like the most common school supply. The Juul looks like a small flash drive – perfectly innocuous and now as much a part of every student's back to school list as pens and pencils. Users buy sweet-flavored, nicotine packed pods to smoke. Because of the size and shape of the device, it is easily hidden and used in plain sight.

of nicotine on developing brains. The “nicotine in these products can rewire an adolescent's brain, leading to years of addiction,” said Scott Gottlieb, the head of the FDA. The FDA is taking some steps to regulate Juul and its ilk, but it has delayed implementation of any regulation until 2022. Unfortunately, by then, a generation of students will pass through the doors of their high school with Juuls as a regular part of their experience. ♦

Local school districts note the majority of discipline referrals relate to juuling.



Questions Surround How Driverless Cars Will Impact Law

Matt Schmidt

In a regular human driver on human driver car collision, the law is fairly straightforward. The driver (or drivers) at fault for the collision are responsible to compensate any parties they injured for an amount that equitably reflects both what the injured party has suffered and what the at-fault driver's percentage of fault is. Though minimal by modern standards, drivers are also legally required to carry automobile insurance to assist in compensating injured parties in collisions they caused.

But many questions have been raised about how driverless cars will impact the current law. Driverless cars, after all, are not human—they are robots, and you can't sue a robot. Some argue that companies making these cars must be protected from liability so that mistakes can be made, found and corrected, leading to cars on the road that are eventually and potentially safer than those driven by humans. This, like other "tort reform" myths, is another political agenda to convince people that if injured parties file lawsuits, it will be cost prohibitive for these companies—worth hundreds of billions of dollars—to move their driverless car programs in a safe and progressive direction. Recently, the U.S. government has attempted to get more driverless cars tested in the market by trying to pass legislation that would provide more protections to the companies that make them. There are currently no federal regulations that oversee the industry.



One potential outcome will be federal regulations that, if complied with, trump any state laws or regulations. This has already been tried in other industries, however, and has proved to create substantial obstacles for parties injured by federally approved medical devices and medication. Federal regulations generally protect the industry making the product more so than the consumer injured by it. As the law stands currently, a driverless car has to be treated like a product. Proving a product defect in the vehicle that caused a collision can be extremely complex and expensive. If the part causing the defect was manufactured or designed by a foreign company, a substantial amount of the liability can be deflected to a judgment proof defendant. Companies could potentially make litigation more difficult for those injured by self-driving cars than those injured by human employees, all after placing a product into commerce that saves these companies a fortune.

There are currently no federal regulations that oversee this novel industry.

There are better ways to protect innocent people that are injured by a faulty driverless car. A robot car can be treated just like a human for the purposes of car collision litigation and evaluated by the reasonableness of the computer's actions rather than the complexities of a design/manufacturing defect. Computer defects can amount to automatic liability with minimum auto insurance requirements. Companies can be taxed to create a fund to compensate injured parties. States can be held liable for their own lack of oversight, regulations and warnings. ♦

Dev Sethi

A common retort to the push for increased infrastructure and resources is that school districts are

For a while we've wondered would happen if everyone who cared about public education stood up. Now we know -- change happens. Please don't sit down. ♦

***We cannot allow this moment
to pass without action.***





BABY POWDER

Pure and Clean or Carcinogen?

Peter Akmajian

How many of us have used baby powder or other talcum powder products? I recall the haze of talc in my high school locker room. Many women have used talc products to stay “fresh and clean”. The Johnson & Johnson company manufactures and markets many of these products and enjoys sales of hundreds of millions of dollars.

But what exactly is talcum powder? It is a mineral mined from the earth. It is soft. It absorbs moisture. It reduces friction. It makes a nice powder. Johnson & Johnson started selling talc imported from Italy back in 1894 to address irritation caused by its bandages. It later learned from customers that talc helped diaper rash so the company came up with the concept of baby powder.

But there’s a dark side to this wholesome appearing product. Decades ago, scientists began seeing links between various cancers, including ovarian cancer, and the use of talc products. Many scientific studies have been conducted, and recent “meta-analyses” or review of multiple medical

studies, have concluded that “in general, there is a consistent association” between talc use and ovarian cancer. In addition, talc is sometimes mined in areas where there are also deposits of the known carcinogen asbestos, and there is concern for cross-contamination.

Johnson & Johnson provides no warning labels on its talc products because it takes the position there is no cancer risk. It relies on scientists and experts who dispute a causal link. However, other manufacturers have begun adding such warnings stating that “frequent application of talcum powder in the female genital area may increase the risk of ovarian cancer” or that “medical evidence suggests that women who

use talcum powder as a feminine hygiene product run a greater risk of developing ovarian cancer.”

Over the past few years, cancer victims who believe their talc use caused cancer have sued Johnson & Johnson and other companies. The first court win for a plaintiff was in 2013, when a South Dakota jury found Johnson & Johnson liable but declined to award damages.

However, in the ensuing years, thousands of lawsuits have been filed and are now pending*. Another half dozen juries found in favor of plaintiffs and have awarded tens of millions of dollars. In one Los Angeles case in 2017 where a jury awarded a plaintiff over \$400 million against Johnson & Johnson, the evidence included the warning labels used by other companies. (The trial judge later nullified this verdict due to jury misconduct.)

As recently as April of this year, a New Jersey jury awarded the plaintiff, a man who developed mesothelioma cancer, a total of \$117 million against Johnson & Johnson

and a California talc mining company. This latest case alleged that there was cross-contamination of the talc with asbestos and that this caused the mesothelioma. This case was the first to go to trial in New Jersey, where Johnson & Johnson makes it headquarters. We at Schmidt, Sethi & Akmajian are handling talcum powder litigation. If you or a loved one feel you may have been harmed by the use of this product, consider giving us a call. There is no charge for a consultation. ♦

***Juries have awarded
millions of dollars, &
thousands of lawsuits
are now pending.***



**1790 East River Road, Suite 300
Tucson, Arizona 85718**

PRSTD STD
U.S POSTAGE
PAID
TUCSON, AZ
PERMIT NO. 657



Our Attorneys:

*Dev Sethi, Matt Schmidt,
Ted Schmidt & Peter Akmajian*

*Exclusively representing
individuals in significant
injury and wrongful death
matters.*

We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please visit our website.

azinjurylaw.com
520.790.5600



**Schmidt, Sethi
& Akmajian
ATTORNEYS**



Are you interested in our thinking? Call 520.545.1674 to receive your own copy of our newsletter or email ialmazan@azinjurylaw.com.