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at issue: **Dangerous
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KSS Obtains Asbestos Victory *Federal Jury Returns \$17 Million Verdict*

A federal jury in Phoenix awarded \$17 million in damages to the family of a retired civilian employee of the U.S. Navy who died from the fatal asbestos disease mesothelioma after working for years in the Norfolk Naval Shipyard in Virginia.

Trial testimony showed that George Coulbourn worked as a shipyard machinist from 1959 to 1966, where he primarily repaired and maintained equipment on naval ships. Those duties included the regular removal of asbestos-containing gaskets and packing from valves manufactured by the defendants and their predecessors.

Mr. Coulbourn died in 2012 at age 73, less than a year after being diagnosed with mesothelioma, a terminal cancer found in the lining of the lungs that is primarily caused by asbestos exposure. He and his wife retired to Lake Havasu City, Arizona, following Mr. Coulbourn's almost 37-year career as a civilian employee of the U.S. Navy.

Jurors returned their verdict April 22 following a three-week trial and four hours of deliberations. They assessed \$9 million in compensatory damages with 20 percent responsibility for Mr. Coulbourn's injuries and death against Connecticut-based industrial product manufacturer Crane Co. and 5 percent against Cincinnati-based valve manufacturer William Powell Co. Jurors determined that other companies, who settled prior to trial, and the U.S. Navy were liable for the remaining 75 percent of exposure.

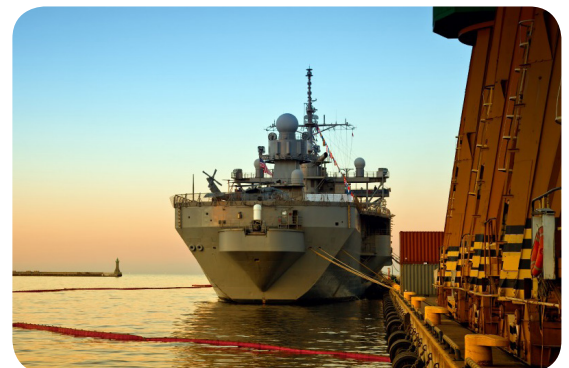
The verdict also included \$5 million in punitive damages against Crane Co. and \$3 million against William Powell Co. A key document in the case

was an internal industry meeting minutes that confirmed a pattern of developing research findings that allowed asbestos defendants to deny the well-known dangers of their product.

"These companies have been denying the hazards of their asbestos products for decades, but the truth is that they have known since at least the 1930s that asbestos could kill," said Dev Sethi, who represented the family. "They never warned Mr. Coulbourn about the potential hazards. He died due to their negligence, and this jury held them accountable. Hopefully, this verdict will help the Coulbourn family find a measure of comfort and closure after so much pain."

Dev Sethi and KSS joined David Greenstone and Jordan Blumenfeld-James of Simon Greenstone as lawyers for the Coulbourn family.

The case is Sandra Brown Coulbourn, surviving wife and on behalf of decedent's surviving statutory beneficiaries, George Coulbourn, Jr., Scott Alan Coulbourn and Shannon Coulbourn Moses v. Crane Co., et al., No. CV 3:13-cv-08141-PCT-SRB.



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A Patient's Modern Struggles Receiving Medical Treatment

— Matt Schmidt

Many medical providers have worked cooperatively with their patients, who are our clients, in helping them navigate the important medical/legal issues that often accompany injuries. Unfortunately, we are seeing a growing trend of providers who refuse to get involved at any level. This decision places their patients in a difficult position -- without the help of their treating physician, for example, it is difficult to meaningfully present a picture of future prognosis or future care requirement. Indeed, without the help of the treating doctor's input, it can be difficult to unwind the causal connection between an event and an injury. Most problematic and troubling -- we are seeing many doctors and physical therapists who refuse to even see a patient who is involved in a related injury claim.

Why are doctors refusing to participate? You have to ask them, but one thing is clear -- the growing interdependence of doctors and hospital networks that employ physicians certainly has something to do with it. Banner Healthcare, which recently took over University Medical Center, has made it crystal clear -- their employee doctors will not offer any help to patients involved in a legal matter.

As a result, some providers have found ways to hinder both a plaintiff's ability to receive necessary medical treatment and obtain valuable medical evidence for their lawsuit. In the unfortunate event you or a loved one is injured due to someone else's negligence, it is important for you and your attorney to be aware of these current uphill battles.

1. On the extreme end, some medical providers have completely closed their doors and denied medical treatment to anyone who has been injured and filed an insurance or negligence claim. Some intake forms actually ask whether the injury is due to a motor vehicle accident or if the person has filed a claim as a result of their injury. If the patient answers "yes," the provider simply tells the person they will not treat her. The injured person is then required to go from place to place, delaying necessary treatment to seek a provider who will take her in.

2. Some medical providers are taking advantage of legal claims by refusing to accept an injured person's health insurance, even though they routinely accept the insurance plan being offered. Instead, the patient is told he will only be treated if the provider can bill him in full or charge him "on a lien." Because a claim exists, the provider knows there is a good chance they can be reimbursed at the full rate of the treatment instead of the insurance plan's contractual rate, which is much lower.

Tip: Before even walking into a provider's office, call and ask point blank whether the provider treats people who 1. Have been in an MVA and/or 2. Have filed any sort of claim due to injury. If they do, ask the provider whether they will accept your insurance plan. This will save a lot of time.

3. Some providers will treat the plaintiff, but refuse to get involved in the litigation unless subpoenaed for deposition or trial testimony (In fact, Banner has recently forbidden any of its employees from speaking with attorneys outside of providing sworn testimony). Once subpoenaed, many refuse to be very cooperative. To dissuade interaction, others charge astronomical hourly rates for their time. This comes at a huge cost to the plaintiff, who needs solid opinions from a medical expert to validate her claims.



Call and ask point blank whether the provider treats people who 1. Have been in an MVA and/or 2. Have filed any sort of claim due to injury. If they do, ask the provider whether they will accept your insurance plan. This will save a lot of time.

LAWYERS GOOGLING JURORS AND JURORS GOOGLING LAWYERS

TRIALS IN A CYBERWORLD

— Ted Schmidt

If you've never done this, go on the internet and "Google" yourself, your best friend or a work partner. If you want to really get personal search out these same folks on www.DirtSearch.org or www.dogpile.com or www.infosearch.com. These are just a few of a myriad of websites designed to search and pry into the lives of people at a level where most of us expect privacy. This is important to know for many reasons, but has now become important to prospective jurors, lawyers and judges.

It has become somewhat common place now for lawyers to do extensive "Google" searches of prospective jurors to help them pick a jury. This detailed personal information can also be used by lawyers to craft their presentation in a way most persuasive to the people chosen to sit on the panel.

Similarly, it has become even more common place for jurors to "Google" the lawyers on the case, the parties, the judge and even the underlying facts and circumstances of the case.

Courts and the American Bar Association have begun grappling with this new dynamic. The ABA says it is ethical for lawyers to "Google" prospective jurors as part of the jury selection process while it is conversely advisable to instruct the jury they cannot "Google" anything about the case; they must decide the case solely on what is presented in the courtroom.

Despite this position by the ABA some courts feel it is beyond the bounds of appropriate juror investigation to

allow anybody to be "Googling" anybody. Ironically, as Google began trial on May 9th in a copyright infringement case where it is being sued by Oracle for \$9 billion, the judge told the lawyers they could only "Google" prospective jurors if they were willing to let the judge inform the jurors that the lawyers were in fact doing this. This threat was enough to scare the lawyers off from researching jurors this way.



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It is expected going forward that more and more courts will allow lawyers to "Google" prospective jurors within limits while jurors will be strictly instructed not to do internet research on the case, perhaps with lawyers or court staff monitoring juror internet activity to assure this is not occurring.



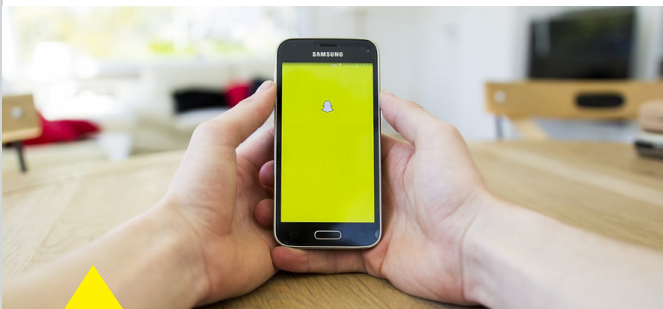
Word to the wise: You now have yet another reason to be very circumspect about what you post on social media and be prepared for much more of your life to be an open book to others than was ever the case before in all aspects of your life—even jury service.



A NEW DISTRACTED **DRIVING DANGER** SNAPCHAT'S SPEED FILTER

— Dev Sethi

Snapchat is projected to hit 200 million users this year. It is a social media/picture sharing app that allows users to send pictures or short videos to friends, while incorporating different filters, captions, and effects. The unique allure is that these images self-destruct in a few seconds, and then they are gone – in what users typically think is – forever. Turns out that is not entirely true. Snapchat, itself, retains images. And, of course, screen shots can capture these fleeting “snaps.”



Snapchat is Now the Third Most Popular Social Network Among Millennials. Many industry insiders were shocked when social media network Snapchat, which allows users to send photo messages that automatically delete themselves shortly after being viewed.

A new effect, the MPH filter, is becoming cause for concern. The filter uses your smartphone's built in GPS and accelerometer functions to superimpose your speed on your picture. This app is built and targeted to teenagers and there is worry that that these new and inexperienced drivers are ignoring the app's caution to

avoid snapping and driving. Instead, they are using the filter to brag about how fast they are going.

A case recently filed in Georgia appears to be the first to link Snapchat's MPH filter to a crash. An 18 year old driver is alleged to have ignored the pleas of her passengers to slow down, arguing that she was “just trying to get the car to 100 miles per hour to post it on Snapchat.” She pushed her car to 118 mph, snapped a photo, and then smashed into another vehicle. Investigators concluded that she was driving 107 mph at the instant of impact.

While on the stretcher, receiving lifesaving care from paramedics, the young driver snapped and posted another picture. The caption this time, “Lucky to be alive.”



The image demonstrates the new MPH snapchat feature. The filter uses your smartphone's built in GPS and accelerometer functions to super impose your speed on your picture. This app is built and targeted to teenagers and there is worry that that these new and inexperienced drivers are ignoring the app's caution to avoid snapping and driving.



TAKATA AIRBAG

RECALL GROWS TO 63 MILLION VEHICLES

— Dev Sethi

Federal safety regulators have announced a mass expansion of the ongoing Takata airbag recall. At least 35 million additional airbags made by the auto parts supplier Takata need to be fixed. This more than doubles the scope of what was already the largest automotive recall in American history.

The airbags have a documented danger of unintentionally and unexpectedly exploding, throwing off metal parts and shrapnel. At least 11 deaths and many more injuries have been linked to the safety defect.

The recall expansion brings the total number of recalled vehicles to over 63 million in the United States alone. This is approximately one in four of every vehicle on the road. This recall has been building since 2008, when Takata first pulled back 4,000 vehicles. For years the company

publically denied any design problems. Instead, it insisted that the small problem was the result of manufacturing quality control problems.



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NHTSA, the government agency tasked with overseeing auto safety issues, has fined Takata \$70 million, and the company faces an additional \$130 million hammer if it does not meet certain requirements by the end of 2018.

Internally, though, Takata engineers were concerned that ammonium nitrate, a cheap potent propellant in the airbag system was a safety concern. In 2015, the company admitted that its products were, in fact, defective and that the ammonium nitrate in the inflator system was the problem.

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To determine if your vehicle is affected by the Takata airbag recall, visit www.safercar.gov or <http://bit.ly/TakataAirBags>.



When you suffer from a **Potentially Life Threatening Problem,** be clear and definitive with the Doctor

— James Campbell

There are certain symptoms that should be large red flag for a doctor. Be it at the emergency room at a hospital, an urgent care center, or your own doctor's office, if a patient comes in with certain complaints, a doctor should take immediate notice and initiate emergency care.

My cases tell me; however, doctors frequently do not understand their patient complains of a life threatening condition until it is too late. There can be disconnect between the patient's description of the severity of their symptoms, and the doctor's frequently cryptic documentation. This article will tell you how to talk to your doctor to improve the odds they act on your concerns with the appropriate urgency.

Do not downplay the problem. When explaining symptoms, patients sometimes minimize the severity of their concerns. They do not want to be seen as an alarmist. The reality is, however, they are quite concerned about their very real problem, or else they would not have taken the time, inconvenience, and expense of seeing the doctor. So, do not downplay your problem and tell the doctor, "I feel good, but I just have this new little pain in my chest and I sometimes find it hard to breathe." Rather, start the conversation with, "I have new chest pain that is constant, and I can't catch my breath." Be direct, clear, and upfront about why you are seeing the doctor.

Be ready to tell the doctor more about your symptoms. Tell him when the symptom started, how it started, how bad it is, what makes it worse, and what makes it better. Put some thought into this before you get into the office, and then clearly tell him this information even if he does not ask it.

Do not bury the lead. Describe your most serious complaints first and clearly. That is, do not first tell your doctor about less severe problems and then get to your real concerns. My father recently went to the hospital because he was having chest pain and new shortness of breath. I learned later, he mixed these urgent concerns with descriptions of his chronic back pain. As a result, he remained in the ED for many hours without getting the appropriate treatment for what turned out to be very significant cardiac dysrhythmia that was causing severe heart failure. Had the first things out of his mouth been, "I have chest pain and shortness

of breath," he would have quickly been evaluated and diagnosed.

Know the "red flag" words and symptoms. Doctors are trained to listen for certain "red flag" words to signal their patient may be suffering from a life threatening condition. For example, if a doctor or hospital hears their patient complain of "chest pain," they are supposed quickly to institute a "chest pain protocol" to make sure their patient is not suffering from a heart attack. Below is a list of common emergency conditions, the symptoms, and the red flag words that physicians are trained to recognize and act upon.

Emergency Condition	Common Symptom	Red Flag Words
Heart attack	Chest pain, new shortness of breath, shoulder pain, jaw pain, sweating, faintness, and nausea	Chest Pain New Shortness of breath
Stroke	New numbness in face, arm or leg (especially on one side); new speech or vision problems; discoordination; severe headache	Worst head ache I have ever had
Sepsis (Blood Infection)	Fever, rapid heart rate, rapid breathing, not urinating, confusion, severe pain somewhere in body	Fever and heart beating fast or breathing fast
Aortic aneurysm	Sudden, excruciating, and constant chest, abdominal, groin, or back pain.; a pain in the chest that comes from back; a sudden tearing or ripping sensation in chest or abdomen; shortness of breath	"sudden terrible, pain in chest or abdomen" "ripping or tearing horrible pain"

When you have symptoms bad enough for you go to see the doctor, you need to clearly and plainly describe the symptom. They may be distracted and seen up to 20 other patients that day. To counteract this distraction, patients must not downplay their problems, tell the doctor about the most serious problems up front, and be focused when describing symptoms of potentially life threatening conditions.

Angel Charity

Since its inception 34 years ago, Angel Charity of Children has raised and distributed over \$24,000,000 to charities serving children in Pima County. The

2016 beneficiaries include Imago Dei School in downtown Tucson and the Educational Enrichment Foundation, which provides scholarships to TUSD students in poverty, allowing them to participate in extracurricular activities.

Smaller grants were also made to Nourish, to help children with feeding challenges receive direct nutrition and feeding therapy in the early critical stages of growth, and to St. John the Evangelist Catholic School, allowing it to purchase classroom computers.

Kinerk Schmidt & Sethi is proud to support Angel Charity and invites you to **The Big Deal**, a night of poker and good times. The event, which will raise money for this year's beneficiaries, will be on Saturday, August 27, 2016 at Hacienda Del Sol. For more information or to buy tickets, visit www.angelcharity.org or call Dev Sethi.



CLE by the Sea

Each summer the State Bar of Arizona hosts a CLE program at the Hotel Del Coronado. This is an opportunity for lawyers from around the state to catch up and get updated on new developments in a beautiful setting. **Ted Schmidt** and **Dev Sethi** are Co-Chairs of this year's Trial Practice Track. The program is "Behind Closed Doors" -- We are all curious. What happens behind closed doors? "What is the mediator telling them?" "What does the jury think of my evidence?" This three day session will put you in the room and answer those questions and more. Follow the life of a compelling lawsuit from key depositions to mediation, and then through trial and jury deliberations. You will get a unique perspective into the "other room." Attendees will have the opportunity to stop the process and ask the faculty questions about their approach and strategy. A nationally recognized trial consultant will present a session on the psychology of persuasion, and the ever popular case law and rules update will close the session.



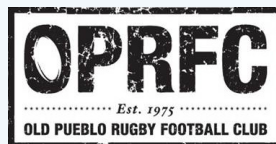
Jim Campbell

Jim is busy on the baseball diamond managing the Sabino Canyon Little League Majors team. It's a young but willing team of scruffy 10 – 12 year olds. Jim is also chairing the Trial Section's continuing legal education seminar at this year's Arizona Bar Convention. The topic of the seminar is effective expert depositions.



Matt Schmidt

Matt Schmidt, President of the Old Pueblo Rugby Football Club, has launched Engage, a project designed to support various local charities and provide more recreational opportunities to underprivileged youth. In a coordinated effort with Big Brothers and Big Sisters of Tucson, OPRFC will host two fun-filled, minimal-contact rugby clinics this October 21 and 22 for BBBST's kids, their mentors, and children on the waiting list. OPRFC is currently in contact with other youth programs in hopes to fill its summer and fall schedule with additional programs. At the end of each program, OPRFC will give each child an athletic bag including a rugby ball, water bottle and T-shirt. Because rugby only requires a ball and a patch of land, this will give kids the opportunity to share the various games they have learned with their friends.



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KSS has joined Facebook. There you will find our up to the minute reports on current legal developments, new cases and interesting issues of the day. Just search for **Kinerk, Schmidt & Sethi** on Facebook and "like" our page.



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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 give us a call.

Are you interested in our thinking? If you would like to be added or removed from our mailing list for the KSS newsletter, please contact Irma Almazan 520.545.1666 or ialmazan@kss-law.com.

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