

## PRODUCTS LIABILITY

### *Court Overturns \$5.2 Million Punitive Award in Taser Gun Verdict*

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A former associate with our firm (now a professor at UC Davis) recently reported on the case *Betty Lou Heston, et al. v. City of Salinas*, C 05-03658 JW, U.S. District Court, Northern District of California (San Jose) Lexis 2007 U.S. Dist. Lexis 96095, a case in which Taser International, Inc. ("Taser") was found liable for the wrongful death of a 40-year-old California man, Robert C. Heston ("Heston"). [See, "Manufacturer of Stun Gun Liable for Products Liability Claim", by Dylan Malagrino, *Trial Bar News*, August/September 2008 at p. 23.] On June 6, 2008, the jury awarded a total of \$6,221,000 in damages — \$1,021,000 in compensatory damages and \$5.2 million in punitive damages. In October 2008, however, Judge James Ware of the United States District Court for the Northern District of California granted Taser's Renewed Motion for Judgment with respect to the award for punitive damages in the case.

The court found that the jury's award of \$200,000 in punitive damages to the Estate and \$5,000,000 in punitive damages to the family was improper as a matter of law. The ruling reduced plaintiff's award significantly -- from \$6,221,000 in damages to a mere \$153,150. Then, on January 30, 2009, the court ordered defendant Taser to pay plaintiff's lawyers more than \$1.4 million in legal fees. Judge Ware concluded the award is "appropriate because the lawyers took a significant risk in pursuing the case, which provided a significant public benefit," regardless of whether the attorney's fees were greater than the reduced award achieved by Heston's heirs. *Heston v. City of Salinas* (N.D.Cal., 2009) 2009 WL 248362, 1, 2.

The evidence presented at trial established that Heston died on February 20, 2005, after his father called Salinas Police Department reporting Heston was out of control and likely under the influence of drugs. Heston's father asked the police to remove Heston from his home. Salinas police deployed shock devices ["tasers"] to Heston multiple times, using a Taser M26-model stun gun and subjecting Heston to more than 75 seconds of continuous electric jolts while other officers handcuffed him. Shortly thereafter Heston went into cardiac arrest, suffering severe and irreversible brain damage that ultimately led to his death.

The original suit by Heston's heirs against Taser alleged failure to warn of the dangers of the device, as well as excessive force against the Salinas police officers. The lawsuit argued that Taser's M26 models were unreasonably dangerous and defective for use on citizens because they were not sold with adequate testing or sufficient warnings about the effects of multiple shocks for an extended duration. The lawsuit emphasized the effect of Taser's products and their "failure to warn" on people who might be under the influence of drugs. The complaint also alleged that despite Taser's

chief marketing claim that their weapon was "non-lethal" and "an alternative to deadly force," the device does in fact cause cardiac arrest and death when used in excess.

Based on these claims in the survival action (brought by the Executor of the Heston Estate), the jury awarded \$21,000 in compensatory damages and \$200,000 in punitive damages to the Estate. The jury determined Taser knew, or should have known, that its M26 model was dangerous because prolonged exposure to the device created a substantial risk of cardiac arrest. The jury found Taser failed to adequately warn purchasers of the device of the risks associated with its use, which included the Salinas police department. However, the jury also found that Heston was 85% at fault in causing his injuries. The jury attributed 85% of the cause of death to the actions of Heston because he fit the well-established symptom pattern for methamphetamine intoxication (also a possible cause of cardiac arrest) and associated "excited delirium" (a condition arguably linked to sudden death to persons in police custody). Accordingly, the judgment for compensatory damages in favor of Heston's Estate was reduced to 15% or \$3,150, but the award of \$200,000 in punitive damages remained intact. *Heston v. City of Salinas, supra*, 2009 WL 248362, 2. In October 2008, the court ruled that plaintiffs failed to establish "conscious disregard," and overturned the Estate's \$200,000 punitive award against Taser.

With respect to the wrongful death action brought by the parents, the jury awarded \$1,000,000 in compensatory damages and \$5,000,000 in punitive damages to the parents. However, the court's October 2008 order simply noted "punitive damages are not available in a wrongful death action." In overturning the entire \$5,000,000 punitive award, the court cited various public benefits that will remain from the compensatory ruling alone (\$150,000), including the fact that police in Australia have cited the *Heston* case as an example of how they can develop policies to better handle people showing possible signs of "excited delirium." *Heston v. City of Salinas, supra*, 2009 WL 248362, 1, 4.

In aggregate, the court's recent orders recast the dice in the field of tasers and stun guns. Political groups have long been advocating for better regulations and policy reform, including passing legislation that would require the devices to be used only as an alternative to deadly force. These efforts have been regularly met with opposition. Today, the *Heston* decision stands as the only time Taser has been found negligent in a death related case. Still, reform in the industry remains in the control of Taser and other manufacturers. It is yet to be seen whether the *Heston* decision and the "specter of further litigation" will motivate them to "reconsider" whether to better label and test their products. *Heston v. City of Salinas, supra*, 2009 WL 248362, 1, 4.