

ROBINS  KAPLAN LLP



# JUSTICE REPORT

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ROBINS KAPLAN SECURES A  
GROUNDBREAKING **\$7.75 MILLION  
VERDICT** AGAINST CRC INDUSTRIES,  
INC., A MANUFACTURER OF  
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SAVE THE DATE

TRIAL ADVOCACY SEMINAR

**RULE**  
*of* **LAW**



**WEDNESDAY, OCTOBER 30**  
Additional information and registration coming soon!

**ROBINS KAPLAN** LLP

The graphic features a dark blue background with a grid of small, light blue squares. A yellow banner in the top left corner contains the text 'SAVE THE DATE'. The main title 'TRIAL ADVOCACY SEMINAR' is in white, and 'RULE of LAW' is in large, light blue letters. A yellow icon of the scales of justice is on the right. The date 'WEDNESDAY, OCTOBER 30' and the text 'Additional information and registration coming soon!' are in white. The firm name 'ROBINS KAPLAN LLP' is at the bottom.

Past results are reported to provide the reader with an indication of the type of litigation in which we practice and does not and should not be construed to create an expectation of result in any other case as all cases are dependent upon their own unique fact situation and applicable law. This publication is not intended as, and should not be used by you as, legal advice, but rather as a touchstone for reflection and discussion with others about these important issues. Pursuant to requirements related to practice before the U. S. Internal Revenue Service, any tax advice contained in this communication is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U. S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

# Robins Kaplan Secures Landmark \$7.75 Million Verdict in Aerosol Duster Misuse Case

## INSIGHTS FROM A TRIAL TEAM LAWYER

By: Rashanda Bruce, Robins Kaplan LLP Associate

In April 2024, Robins Kaplan attorneys secured a groundbreaking \$7.75 million verdict against CRC Industries, Inc., a manufacturer of aerosol dusters. The verdict stemmed from a tragic 2019 incident when Cynthia McDougall was killed after a driver huffed CRC Duster, lost control of his vehicle, crossed over the center line into oncoming traffic, and struck Mrs. McDougall's vehicle head on. Aerosol dusters like CRC Duster, typically marketed as a dust and lint remover, contain the gas 1,1-Difluoroethane (DFE) and are commonly misused to get "high." When huffed, users experience significant impairing effects from the DFE.



While the driver had already been found accountable for his actions through the criminal justice system, CRC Industries had not. CRC's lack of accountability was critical to Rashanda Bruce, an associate in the firm's Mass Tort and Personal Injury groups, whose practice focuses on representing individuals and families in complex personal injury and wrongful death cases.

"I have always had a passion for helping people," she says. "In 2010, I started at Robins Kaplan as a case assistant. I became a paralegal in the mass tort department and held that role until departing for law school. During that time, I learned firsthand how important tort law and product safety is through cases like *Chantix* and *Stryker Hip Implants*. So, for me, litigating the dusting cases against product manufacturers was an opportunity to do hard but important work for people like the McDougalls."

Rashanda rejoined the firm as an associate in February 2020 and became an instrumental member of the dusting team. From the beginning, Rashanda was involved in all aspects of the McDougall case, including helping draft the complaint, completing fact and expert discovery, and arguing and defeating summary judgment. At trial, one of her roles included cross-examining the driver, an assignment for which she felt immense responsibility.

"Unlike our other dusting cases, the driver who crashed into Mrs. McDougall has never admitted to huffing. So, in addition to proving that CRC failed to take reasonable steps to protect against the foreseeable misuse of its product, our team had to prove that, one, the driver huffed CRC Duster while driving on the day of the crash, and two, the driver's actions were intentional. A yes from the jury to these two questions meant CRC would be responsible for all awarded damages, regardless of how much fault the jury attributed to the driver and CRC. As the attorney cross-examining the driver, I wanted a 'yes' for accountability and justice for the McDougalls," Rashanda says.

Aerosol dusters are a cheap and easy way to get high that are undetected by routine drug screens. These characteristics made aerosol dusters appealing to the driver, who was on probation at the time of the McDougall crash. During Rashanda's cross-examination, the driver admitted that he huffed aerosol dusters in the past to avoid detection while on probation. The driver also admitted that if during the trial he testified that he huffed CRC Duster prior to the crash, it would be a problem. Additionally, the driver admitted he had lied to Rashanda under oath during his deposition about using duster at work.

"I knew the driver had given various versions about why he had CRC Duster and what led to the crash, but I did not expect him to admit to lying to me under oath. When he did, I hoped it would be enough for the jury to answer 'yes' to those questions." Ultimately, that is exactly what happened. After 15 witnesses, two weeks of trial, and approximately 10 hours of deliberations, the jury found CRC 22.25% at fault, attributing the rest to the driver but holding CRC responsible for the entire verdict amount due to the driver's intentional acts.

Following the \$7.75 million verdict on liability, a second phase of the trial was held on the issue of punitive damages. Although the jury did not award punitive damages, they attached a note to their verdict stating, "[a]fter much deliberation, we, as the jury, have agreed that we expect CRC to use this as an opportunity to be a leader in their industry and spearhead an effort to address inhalant abuse," noting that "testimony and evidence shows that there is much more that could be done to combat the misuse of aerosol products, ESPECIALLY, Duster."

The jury closed with the following message: “Please do not confuse our decision not to award punitive damages with a lack of regard for the loss of Cindi McDougall. Our hearts go out to her husband, son, family and community.”

Robins Kaplan has represented over a dozen families whose loved ones have been injured or killed due to aerosol duster misuse, but the McDougall case was the only one to go to trial. The groundbreaking decision marks the first time a jury has held an aerosol duster manufacturer accountable for misuse of its product.

*McDougall v. CRC Industries, Inc., et al.* was not Rashanda’s first Robins Kaplan trial. “I have known since I was 14 that I wanted to be a lawyer, but I did not appreciate what it meant to be a ‘trial lawyer’ until about 14 years ago, when I joined one of the firm’s case teams headed to trial. My experience was invaluable. Through that case and others, including McDougall, I have only deepened my passion and knowledge.”

While she helped obtain a favorable verdict in this case, she acknowledges that practicing in this area of law can be challenging. “I represent clients who have suffered a loss, and I cannot undo their harm or bring their loved one back. But what I remind myself that I can do, and what I remain committed to doing, is helping hold wrongdoers accountable and obtaining some measure of justice for families. That is what matters to me and what I sought out to accomplish in this case. It was and will always be my honor to have represented the McDougalls and our other clients in these cases.”

The trial team, led by Philip Sieff and Tara Sutton, included Rashanda Bruce, Michael Reif, Julie Reynolds, Lisa Weyrauch, Robin Dusterhoft, Mandy Guttormson, Ginny Barker, Nick Adler, Pao Lee, and the trial support team.

**“I have always had a passion for helping people ... litigating the dusting cases against product manufacturers was an opportunity to do hard but important work for people like the McDougalls.”**

— ASSOCIATE RASHANDA BRUCE





GO BRUINS!

GO BRUINS!

OF OUR  
CATION

# TO SEIZE OR NOT TO SEIZE:

## CAMPUS PROTESTS AND POLICE USES OF FORCE

By: Marc Betinsky, Robins Kaplan LLP Partner

Dozens of college and university campuses experienced protests in April and May of 2024 due to the ongoing conflict in the Middle East. Many were peaceful, but some turned violent — and they engendered a wide variety of law enforcement responses. Some protests were met with dialogue and discussion between police, demonstrators, and campus leaders. Others, however, were met with force. At the University of Texas, for instance, riot-gear-clad officers mounted on horseback used pepper spray, flash-bang grenades, and impact projectiles to disperse the crowds. Many people were injured.

Do these injured protesters have constitutional recourse against the police? Typically, a person injured by a police officer’s use of force may assert a claim under the Fourth Amendment, which prohibits “unreasonable searches and seizures” by government officials. Recently, however, law enforcement officers have begun to assert that force used in such situations does not implicate the Fourth Amendment at all, because “dispersing” or “repelling” a crowd—even if by force—is not a “seizure” under the Fourth Amendment. And an increasing number of courts have been willing to accept that argument.<sup>1</sup>

Does this make sense? After all, the U.S. Supreme Court has long recognized that “the mere grasping or application of physical force with law authority” was sufficient to constitute a seizure.<sup>2</sup> When a police officer raises and fires a “less lethal” launcher, or sprays pepper spray, or deploys tear gas to disperse a crowd and causes injury, hasn’t there been an application of physical force with lawful authority?

Some courts have recognized that the use of so-called “riot-control” or less-than-lethal weapons against persons in a crowd necessarily implicates the Fourth Amendment. For example, in *Nelson v. City of Davis*,<sup>3</sup> officers were dispatched to an apartment complex near a college campus to break up what one participant called “the biggest party in history.” Officers fired pepperball guns<sup>4</sup> to disperse a group of 15-20 individuals gathered in a breezeway. One round struck Timothy Nelson in the eye, permanently injuring him. The officers sought to dismiss Nelson’s subsequent lawsuit, arguing they were intending only to disperse the crowd. The Ninth Circuit rejected that argument and held that by purposefully firing their weapons in the area of the crowd, officers seized Nelson when he was struck. By contrast, in *Dundon v. Kirchmeier*, 85 F.4th 1250, 1254-56 (8th Cir. 2023), the Eighth Circuit held that it was not clearly established that individuals at a Dakota Access Pipeline protest in North Dakota were seized when struck by water cannons, bean-bag projectiles, tear gas, and rubber bullets fired by police officers attempting to disperse the crowd.



The Robins Kaplan Civil Rights and Police Misconduct Group recently defeated one of these “no seizure” arguments in a case brought by renowned *Los Angeles Times* journalists Carolyn Cole and Molly Hennessy-Fiske. They were covering protests in Minneapolis in the wake of George Floyd’s murder when they were pepper-sprayed and injured by Minnesota State Patrol troopers. Cole and Hennessy-Fiske sued, and the troopers sought dismissal on the ground that they were simply trying to disperse the crowd, and thus no seizure occurred. Chief Judge Patrick J. Schiltz of the District of Minnesota rejected that argument, in the process noting its absurdity:

[D]efendants’ theory would seem to empower police officers to use any level of force to disperse or repel a crowd—including fire hoses, police dogs, live ammunition, and even flame throwers. Because no “seizure” would occur, it *would not matter* for purposes of the Fourth Amendment whether the force applied was reasonable.

*Cole v. Lockman*, No. 21-cv-1202, 2024 WL 328976, at \*5 (D. Minn. Jan. 29, 2024). It remains to be seen whether more courts will be willing to reach the same logical, common-sense conclusion.

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1. See, e.g., *Wilansky v. Morton Cnty.*, No. 1:18-cv-236, 2024 WL 1543020, at \*5-7 (D.N.D. Apr. 5, 2024) (protester not seized when struck and burned by flash-bang grenade, destroying her forearm); *Ratliff v. City of Fort Lauderdale*, No. 22-cv-61029, 2023 WL 3750581, at \*8 (S.D. Fla. June 1, 2023) (protester shot in eye with 40-millimeter impact round not seized).
  2. *California v. Hodari D.*, 499 U.S. 621, 624 (1991) (emphasis added).
  3. 685 F.3d 867 (9th Cir. 2012).
  4. Pepperballs travel “at a velocity of 350 to 380 feet per second, ... break open on impact and release OC powder into the air, which has an effect similar to mace or pepper spray. Pepperballs therefore combine the kinetic impact of a projectile with the sensory discomfort of pepper spray.” *Id.* at 873.





# MASS TORT INVESTIGATIONS

## EXACTECH

Exactech has recalled approximately 160,000 hip, knee, and ankle total replacement devices due to accelerated wear from defective packaging. The defective devices have caused the need for a revision surgery due to osteolysis (bone loss), pain, and swelling. Robins Kaplan LLP partner Rayna Kessler serves as the MDL Liaison Counsel in the multi-district litigation *In re: Exactech Polyethylene Orthopedic Products Liability Litigation*, MDL No. 3044, 1:22-md-03044-MMH.

## REPORTED CHILD SEX ABUSE

Robins Kaplan LLP is investigating instances of reported child sexual abuse by individuals associated in some capacity with the American Kennel Club (AKC), an organization that hosts thousands of dog show events a year and throughout the country. News publication *Business Insider* recently published an article which alleges some adults, including a former AKC employee and a dog breeder, were convicted of sexually abusing minors.<sup>3</sup> After they were convicted, the perpetrators were not suspended by the organization or local clubs, giving them the ability to return to the sport.

## BAUSCH & LOMB AREDS 2 PRESERVISION EYE VITAMINS

Robins Kaplan LLP is investigating a potential link between the use of this nonprescription product and serious injury. Bausch & Lomb AREDS 2 Preservision Eye Vitamins are typically used for eye health – specifically macular degeneration. However, the high levels of zinc in the product can result in copper deficiency. We are investigating a potential connection between copper deficiency and serious injury, including myelopathy and neuropathy.

## ELMIRON

The painful bladder syndrome drug Elmiron updated its labeling to warn that pigmentary changes in the retina have been identified with long-term use of the drug<sup>1</sup> nearly two years after the journal of the American Academy of Ophthalmology published an article linking Elmiron to pigmentary maculopathy<sup>2</sup> (which may cause permanent vision changes, such as difficulty reading, slow adjustment to changes in lighting, and blurred vision).

## PHILIPS CPAP AND BILEVEL PAP RECALL

In June 2021, Philips Respironics recalled certain CPAP, BiPAP, and mechanical ventilator devices after disclosing that the sound abatement foam used in the devices was degrading, causing small particles from the foam to break loose and come through the air hose. The possible risks resulting from the particulate and chemical exposure from the recalled devices include toxic and carcinogenic effects to the liver, kidneys, and other organs.

## CAMP LEJEUNE

Robins Kaplan LLP attorneys are working on behalf of victims who were exposed to water contamination at Camp Lejeune in Jacksonville, North Carolina. If you or a loved one lived or worked at (USMC) Base Camp Lejeune in Jacksonville from 1953 to 1987, you may be entitled to a claim and additional compensation for your pain and suffering.

## SYNOVO TOTAL HIP RESURFACING SYSTEM

Robins Kaplan LLP is investigating potential injuries related to the Synovo Total Hip Resurfacing System. The FDA issued a Safety Communication on January 3, 2024, advising against using the system due to significant modifications that lacked safety and effectiveness. Individuals who received implants after 2019 were urged to contact their healthcare providers if experiencing symptoms such as pain, loosening, or grinding.

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1. U.S. Food and Drug Administration, June 16, 2020 Supplemental Elmiron Package Insert. DRUGS@FDA, available at [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2020/020193s014lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/020193s014lbl.pdf).

2. William A. Pearce et al., Pigmentary Maculopathy Associated with Chronic Exposure to Pentosan Polysulfate Sodium. *OPHTHALMOLOGY*. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>.

3. Business Insider, "The American Kennel Club's Pedophile Problem" <https://www.businessinsider.com/american-kennel-club-akc-pedophile-problem-2024-4>

## CASE RESULTS

### \$7.75 MILLION VERDICT IN AEROSOL DUST REMOVER ABUSE CASE

Robins Kaplan secured a landmark \$7.75 million verdict against CRC Industries for its failure to prevent the foreseeable misuse of its aerosol dust remover products. This is the first dust remover case of its kind to go to trial. The verdict follows the 2019 death of Cynthia McDougall, who was killed in a vehicle crash after an individual who huffed CRC Duster struck her car head-on. Products like CRC Duster, typically marketed as a dust and lint remover, are commonly abused to get “high.” When huffed, users experience significant impairment effects from the chemical used as a propellant. In Minnesota, product manufacturers have a duty to prevent foreseeable misuse of their products. This case highlighted the well-known abuse of aerosol dust remover products, like CRC Duster, and CRC Industries’ neglect to prevent such abuse.

### \$1.2 MILLION CIVIL RIGHTS SETTLEMENT FOR ESTEEMED JOURNALISTS

Robins Kaplan civil rights attorneys resolved a case brought on behalf of two decorated journalists, Carolyn Cole and Molly Hennessy-Fiske, against members of the Minnesota State Patrol who surrounded and pepper-sprayed them while they covered the aftermath of George Floyd’s murder for the *Los Angeles Times*. The State Patrol agreed to a \$1,200,000 settlement.

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## EVENTS



#### PLAINTIFF POWER HAPPY HOUR

Robins Kaplan partner Rayna Kessler hosted another edition of ‘Plaintiff Power Happy Hour’ in May, a long-standing network event in New York City that invites plaintiff lawyers to learn about each other’s practices and foster a referral network. If you are a plaintiff attorney interested in attending a future event, contact Robins Kaplan partner Rayna Kessler at [RKessler@RobinsKaplan.com](mailto:RKessler@RobinsKaplan.com).

## TARA SUTTON NAMED 2024 LAWDRAGON LEGEND

Tara Sutton has been recognized as a 2024 Lawdragon Legend. This exclusive list honors highly acclaimed attorneys who have been chosen 10 times for *Lawdragon's* "500 Leading Lawyers in America" list. This year, Sutton is one of just 33 attorneys nationwide to be named a Lawdragon Legend.

## ROBERT BENNETT SELECTED FOR LIFETIME ACHIEVEMENT AWARD

Robert Bennett has been honored with *The National Law Journal's* Lifetime Achievement Award. This award recognizes trial attorneys who have demonstrated excellence over their entire career. Bennett, a partner in the firm's Civil Rights and Police Misconduct Group, is known for taking high-profile cases, shedding light on injustice, and prompting change.

## BRANDON VAUGHN INDUCTED INTO THE INTERNATIONAL SOCIETY OF BARRISTERS

Brandon Vaughn was inducted into the International Society of Barristers during the organization's annual meeting on Monday, March 18. Founded in 1965, the International Society of Barristers is an invitation-only organization comprised of outstanding trial lawyers from around the globe. Membership is extended to those who have demonstrated excellence in advocacy, integrity, and collegiality, with only a select few invited to join each year.

## 13 PARTNERS SELECTED TO LAWDRAGON 500 LEADING PLAINTIFF CONSUMER LAWYERS LIST

The Lawdragon 500 Leading Plaintiff Consumer Lawyers guide recognizes elite plaintiff attorneys across the United States who bring justice to those harmed by violations of consumer rights. Congratulations to Katie Bennett, Robert Bennett, Brendan Johnson, Rayna Kessler, Teresa Fariss McClain, Munir Meghjee, Andrew Noel, Timothy Purdon, Peter Schmit, Philip Sieff, Roman Silberfeld, Tara Sutton, and Brandon Vaughn!

## RAYNA KESSLER AND RAOUL SHAH NAMED TO LAW360 2024 EDITORIAL ADVISORY BOARDS

Rayna Kessler was selected to the New Jersey editorial advisory board and Raoul Shah was named to the Personal Injury and Medical Malpractice editorial advisory board. As board members, they will provide feedback on *Law360's* coverage and offer insight on content and thought leadership themes within their area of specialism.



## SMRLS LAWYERS ON ICE

Robins Kaplan was proud to sponsor a team, including our own Michael Reif and William Manske, at the Southern Minnesota Regional Legal Services (SMRLS) 21st Annual Lawyers on Ice event. This long-running hockey tournament raises funds to support SMRLS and its mission to provide high-quality legal services to low-income individuals.

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