



ROBINS KAPLAN JUSTICE REPORT

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THE DANGERS OF “DUSTING”

ROBINS  KAPLAN LLP

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DUSTING SPRAY DEATHS AND INJURIES

BY JASON DEPAUW



JASON DEPAUW

Robins Kaplan LLP is investigating and litigating “dusting” cases, which arise when someone inhales—or “huffs”—compressed gas dusting spray for its intoxicating effects while driving and then strikes a pedestrian or other driver, killing or catastrophically injuring that innocent bystander.

A compressed gas dusting spray is typically marketed for use as a dust and lint remover for computer keyboards and other

electronics. The compressed gas dusting sprays work by blowing a stream of high-pressure gas out of an aerosol-type can to clear dust and debris from the surface of whatever product or device is being cleaned. Compressed gas dusting sprays are commonly referred to as “dust-off,” and several manufacturers have produced versions over the years. The two major brand names are “Dust-Off” and “Ultra Duster,” but these are not the only brands out there (for example 3M has or had its own branded dusting spray).

Compressed gas dusting sprays are often erroneously—and with deadly consequences—referred to as “compressed air” or “canned air.” These sprays, in fact, contain no air whatsoever. The active ingredient of compressed gas dusting sprays is 1-1, difluoroethane (or “DFE”). DFE is a refrigerant-based propellant, and when added to other products (like shaving cream, for example), acts to propel the product out of the can. In the case of compressed gas dusting sprays, the DFE is the sole product in the can.

DFE is not just a harmless gas. When inhaled, DFE causes a near immediate narcotic-like intoxicating effect for a brief period of time that will often cause the inhaler to pass out almost instantly. We are seeing substantial evidence of widespread abuse of this product nationwide, because, not only is it very cheap relative to other drugs, it can be easily purchased without restrictions and in any quantity in most jurisdictions, right off of the retailer’s shelf. This makes the product easily accessible to children and adolescents.



FIRM ADDS LEADING CIVIL RIGHTS, PERSONAL INJURY ATTORNEYS TO MINNEAPOLIS OFFICE

Robins Kaplan LLP is pleased to welcome leading civil rights and personal injury attorneys Robert Bennett, Katie Bennett, Andrew Noel, and Marc Betinsky to the firm's Minneapolis office.

Together the group has more than 75 years of experience representing clients in a wide range of cases, including personal injury and civil rights cases that have changed the legal landscape. The team's recent work has captured national attention in litigation seeking redress for civil rights violations and police misconduct, police shootings, and prison neglect and abuse. Their most noteworthy victories include a 2019 landmark settlement of \$20 million with the city of Minneapolis on behalf of the family of Justine Ruszczuk, who was shot by a Minneapolis police officer in July 2017. It was the largest settlement of a case involving a fatal police shooting nationwide. The group also secured a \$3 million settlement in the fatal police shooting death of Philando Castile.

The group's work is consistently celebrated by the legal community, with Robert Bennett named an "Attorney of The Year" by *Minnesota Lawyer* six times and as one of Minnesota's top 100 Super Lawyers three times. He and Andrew Noel are perennial "Super Lawyers," and Katie Bennett has been named a "Rising Star" since 2015. Andrew and Katie have also been named an "Attorney of the Year" by *Minnesota Lawyer*.

Collectively, Robert, Katie, Andrew, and Marc have obtained over \$100 million on behalf of victims. Robert and Andrew worked in collaboration with attorneys from Robins Kaplan to help secure over \$54 million on behalf of the victims of the Minneapolis 35W bridge collapse.



(From left to right, Andrew Noel, Katie Bennett, Robert Bennett, and Marc Betinsky)

MASS TORT INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **Premature Hip Implant Failures** – Litigating cases involving premature hip failures, such as Stryker Rejuvenate and Stryker LFIT COCR V40.¹
- **Roundup** – Exposure to Roundup® has been linked to an increased risk of cancer, including Non-Hodgkin's lymphoma, hairy cell leukemia, multiple myeloma, B-cell lymphoma, and lymphocytic lymphoma.²
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).³
- **Tribal Opioid Claims** – Litigating on behalf of Native American Tribes claims against the manufacturers and distributors of prescription opioids for their alleged role in creating the opioid epidemic.
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.⁴

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1. Concerns about Metal-on-Metal Implants, available at www.fda.gov
 2. ARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides, 2015.
 3. See, e.g., Kluger, Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients, *Annals of Oncology* at 1 (May 9, 2012); Prevezas et al., Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer, *160 Br. J. Dermatology* 883-885 (2009); Tallon et al., Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature, *63 J. Am. Academy of Derm.* 333-336 (2010).
 4. M. Anderka et al. Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects. *Birth Defects Res A Clin Mol Teratol.* (Jan. 2012); JT Anderson et al. Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study. *Phar-macoepidemiology and Drug Safety.* (Oct. 2013).

STATE OF MINNESOTA SUES JUUL

Robins Kaplan has partnered with law firm Zimmerman Reed to represent the State of Minnesota in its litigation against e-cigarette manufacturer, JUUL, for deceptively marketing its nicotine products and targeting Minnesota's youth.

The Office of Minnesota Attorney General Keith Ellison filed the complaint on December 4, 2019 on behalf of the State, seeking to prevent JUUL from engaging in further deceptive actions and to recover costs for the damage JUUL has inflicted on the State and its citizens. The filing was announced at the State Capitol by Governor Tim Walz and Attorney General Keith Ellison, along with educators and governmental agencies, including the Department of Health, that support this important step.

The complaint alleges that JUUL has violated multiple state consumer-protection laws, breached its duty of reasonable care, and created a public nuisance. Robins Kaplan is proud to once again lead the charge against the tobacco industry's targeting of Minnesota youth. You can find more about the State's lawsuit at: https://www.ag.state.mn.us/Office/Communications/2019/12/04_JUUL.asp.



In fact, approximately 9% of people in the United States over 12 years old have misused products like compressed gas dusting sprays for their intoxicating effects.¹ This is a nationwide epidemic.

Dusting can cause a sense of euphoria that lasts only minutes but can be prolonged by continued use.² Dusting provides a cheap and very accessible alternative to alcohol, marijuana, and other substances.³ The euphoric effect of dusting is often followed by dizziness, loss of coordination or control, suffocation, loss of consciousness, and death.⁴

The harmful effects of DFE extend well beyond just the person inhaling the product. When users inhale the product while driving, they often lose consciousness or coordination and lose control of their vehicle, striking pedestrians or other vehicles. This results in catastrophic injuries and death to innocent bystanders—devastating the lives of many people and their families. We believe that dozens—if not more—of these tragic incidents occur every year throughout the country.

These many deaths and injuries are all completely preventable. That people inhale the dusting spray for its intoxicating effect has been known to the manufacturers for many years. About 15 years ago the manufacturers of these products started to add a bitterant to the spray specifically to deter people from inhaling the product. However, the bitterant is effectively useless as a deterrent.

The evidence we've seen also clearly demonstrates that, in addition to the manufacturers, certain nationwide retailers have known for years that dusting sprays are abused for their intoxicating effects and that the bitterant employed in the dusting sprays is ineffective, yet they continue to sell these products at incredible volume without regard to their clearly defective design and inadequate warnings.

At Robins Kaplan we're committed to holding the compressed gas dusting spray manufacturers and retailers accountable for the devastating injuries and deaths these innocent bystanders have suffered as a result of the completely foreseeable and preventable misuse of their products.

1. <https://www.drugabuse.gov/drugs-abuse/inhalants>

2. <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/inhalant-abuse/art-20044510>

3. <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/inhalant-abuse/art-20044510>

4. <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/inhalant-abuse/art-20044510>



CASE RESULTS

\$3.4 Million Settlement for Dust Explosion Burn Victim

Continuing their work in fire and explosion cases, Phil Sieff and Business Litigation Chair Jason Pfeiffer recently reached a partial settlement of \$3.4 million for a man who was burned in a dust explosion at a Midwest manufacturing facility. The case continues against other non-settling parties.

\$14.5 Million Settlement for Victim of Spinal Cord Injury

Phil Sieff, working with outside co-counsel, reached a \$14.5 million settlement at early mediation on behalf of a 43-year-old man who sustained a severe spinal cord injury in a fall. The settlement was reached less than one year from when Phil was retained.

\$1.1 Million Settlement in Wrongful Death of 77-Year Old Man

Teresa Fariss McClain and Leah Fitzgerald reached a medical malpractice settlement in the amount of \$1,100,000 for the wrongful death of a 77-year-old male related to a misdiagnosis of an abdominal aortic aneurysm by a Twin Cities health provider.

RECOGNITION

2020 PARTNER ANNOUNCEMENT



**TERESA
FARISS MCCLAIN**



**BRANDON
VAUGHN**



**KATE
JAYCOX**



**RAYNA
KESSLER**



**HOLLY
DOLEJSI**

The Medical Malpractice/Personal Injury and Mass Torts Groups are pleased to announce the advancement of Teresa Fariss McClain, Brandon Vaughn, Kate Jaycox, Rayna Kessler, and Holly Dolejsi to the firm partnership. These promotions were effective January 1, 2020.

TRIAL ADVOCACY RECAP

ROBINS KAPLAN HOSTS ANNUAL TRIAL ADVOCACY SEMINAR

On October 14, Robins Kaplan LLP hosted the 2019 Trial Advocacy Seminar, a conference focused on developing advocacy skills in the courtroom. This year's seminar was themed "Back to Justice" and examined the impact that technology has on seeking justice for clients.

Held at the Radisson Blu in Minneapolis, the event was attended by over 350 people. The attorneys of Robins Kaplan LLP would like to thank all those whose presence and participation made the seminar a success.



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