

## **Faulty Wheelchair Disputed In Product Liability Case**

### **\$75K Settlement From Manufacturer, Distributor**

The plaintiff is a physically handicapped 40-year-old woman with infantile cerebral palsy. She has minimal large and small motor skills. She has been wheelchair-bound her entire life and was recently approved for receipt of an electronic wheelchair. She received the wheelchair from the distributor, Wright & Fillippis. The wheelchair was manufactured by Invacare Corp., of Cleveland, Ohio, the largest manufacturer of wheelchairs in the country.

The plaintiff was on a wheelchair lift that was attached to her mother's van to assist in loading and unloading the wheelchair. The plaintiff testified that she was strapped into the wheelchair and had it turned off completely. Although the plaintiff has difficulty speaking and sometimes being understood, she is very intelligent. She also testified that she thoroughly read the manuals regarding the operation of the wheelchair and that she was positive that it was turned off when she was on the wheelchair lift.

The plaintiff further testified that when she was at the top of the lift, which is approximately three feet off the ground, the wheelchair lurched forward, vaulting her and the wheelchair she was strapped into off the lift and onto the pavement.

As a result, she sustained damage to her wrist and broke a plate in her mouth.

Defendant Wright & Fillippis secured the wheelchair from the plaintiff several days after the incident, removed the electronics and forwarded them to Invacare Corp. for complete testing. The results from Invacare were that there were no defects in the chair, and that the accident was completely caused by "user's error."

It was suggested that, because of the plaintiff's spastic movements that she has no control of, the control stick on the wheelchair was accidentally hit, causing the chair to lurch forward off the wheelchair lift.

The case was reassigned to Visiting Judge Charles Simon. On the third day of trial, plaintiff's counsel filed a motion requesting that the judge recuse himself and grant a mistrial because of perceived irregularities during trial. The judge granted the motion and entered an appropriate order. The case was returned to the initial judge and scheduled for court-ordered facilitation. With the assistance of facilitator Hon. Michael Stacey, the parties were able to resolve the case.

The plaintiff's position throughout the litigation was that the defendants' switched wheelchairs on her after the injury occurred, and the wheelchair that was returned to her was not the wheelchair that she was in at the time of the fall. The defendants contested this, indicating that the serial numbers matched both on the wheelchair frame and the electronics.

**Allocation of fault:** Liability was highly disputed.

**Attorney for the plaintiff:** James O. Elliott