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# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

**Contents**



## Dear Professor,

Happy New Year! Welcome to McGraw-Hill's January 2011 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 2, Issue 6 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the January 2011 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. The extent to which debt collectors can use technology (more specifically, social media) in their debt collection efforts;

2. The efforts of the Consumer Product Safety Commission (CPSC) in regulating the safety of products used by children, and the limitations on the CPSC's efforts;

3. A toddler's death due to a fall in a National Basketball Association (NBA) arena, and the potential liability of the arena owner for the child's death;

4. Videos related to a) a recent Federal Bureau of Investigation (FBI) raid of hedge fund offices in a massive "insider trading" investigation; and b) unfair competition allegations in a case involving two non-profit health care organizations;

5. An "ethical dilemma" related to whether the federal government should regulate the profit of health insurance companies by mandating that a certain percentage of health insurance premiums be expended on actual medical care; and

6. "Teaching tips" related to Article 1 ("Woman Sues Debt Collectors Over Alleged Facebook Harassment") and Video 1 ("FBI Raids Hedge Fund Offices") of the newsletter.

As you undertake Spring Semester 2011, I hope you continue to find this resource a valuable teaching tool!

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# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

**Of Special Interest**

This section of the newsletter covers three (3) topics:

1) The extent to which debt collectors can use technology (more specifically, social media) in their debt collection efforts ;

2) The efforts of the Consumer Product Safety Commission (CPSC) in regulating the safety of products used by children, and the limitations on the CPSC's efforts; and

3) A toddler's death due to a fall in a National Basketball Association (NBA) arena, and the potential liability of the arena owner for the child's death.

## Hot Topics in Business Law

### Article 1: "Woman Sues Debt Collectors Over Alleged Facebook Harassment"

**http://www.huffingtonpost.com/2010/11/17/melanie-beacham-sues-debt-collectors-harassment_n_785105.html**

As the article indicates, a Florida woman who fell behind on her car payments is suing the company she claims has been using Facebook to contact her family members in a campaign to embarrass and intimidate her into paying the debt.

When Melanie Beacham of St. Petersburg had to take a medical leave of absence from her job this summer, she alerted the company, Mark One Financial, that she would likely fall behind on her monthly $362 car payments. Two months later, Mark One representatives allegedly began calling Beacham up to 20 times a day and contacting her cousin and sister on Facebook.

The plaintiff's court filings allege that on July 30, a Mark One representative using the pseudonym "Jeff Happenstance" sent a message to Beacham's cousin asking him to have Beacham call a phone number that leads to a debt collection agent at Mark One. Beacham said the company also contacted her sister, who lives in Georgia.

"I was in shock. It was very disturbing, aggravating, and embarrassing," Beacham reported through her attorney, Billy Howard, a Tampa representative of the regional law firm Morgan & Morgan.

Howard has filed a motion to enjoin Mark One from using Facebook to contact Beacham's family and friends, which he says would be the first injunction of its kind in the United States. He called the practice of harassing a debtor's family members through social networking "psychological torture," and said he has no doubt Mark One acted illegally in this case.

"The law says you can't do anything that is considered harassing or abusive," Howard said. "What they did clearly falls into that category."

A spokesperson for Mark One Financial said they were no longer responding to media inquiries regarding Beacham's case, but Bruce Newmark, the

company's managing director, reported that they use Facebook only when there is no other way to contact a person.

When pressed on documents related to "Jeff Happenstance," Newmark claimed ignorance. "I don't know if that's the case," he said of his company's alleged pursuit of Beacham via Facebook alias. "I think you're bringing up something we didn't have any knowledge of."

In Beacham's view, the numerous phone calls and voicemails she received from Mark One suggest that they knew there were better ways to find her.

Howard said that in his law practice, he has been seeing more and more cases of debt collectors using Facebook to illegally pressure people into paying debts.

"I've seen it happen to a number of my clients, and it seems like Facebook is going to be the new way to harass people," he said. "It's certainly one of the cheapest ways to track down someone's friends and family and coworkers, and it can lead to such embarrassment that people will pay money whether they owe it or not. It's a one-stop shop for harassment."

Howard, who has successfully sued Mark One in the past, said he is confident that the jury will find in favor of his client.

"Debt collectors usually have two arguments -- 'It wasn't me,' and 'We didn't do anything wrong,'" he said. "The first one is not available to them, so now they are saying they didn't do anything wrong, but we think a jury will find to the contrary."

## Discussion Questions

1. The Fair Debt Collection Practices Act (FDCPA) applies to the instant case. Research the FDCPA, and describe its essential provisions.

*The Fair Debt Collection Practices Act, often referred to as the "FDCPA", was passed by the United States Congress in response to abusive conduct by collection agencies. The purpose of the FDCPA is to provide guidelines for collection agencies which are seeking to collect legitimate debts, while providing protections and remedies for debtors. The FDCPA applies to personal, family, and household debts, including debts associated with the purchase of a car, for medical care, for retail financing, for first and second mortgages, and for money owed on credit card accounts.*

*The FDCPA restricts debt collectors from engaging in conduct including the following:*

- *Contacting a third party who does not owe the debt, such as a relative, neighbor, or your employer. Co-signers to the debt, however, may be contacted by the debt collector;*
- *Threatening to refer your account to an attorney, harm your credit rating, repossession or garnishment, without actual intention of action on the threat. Please note that a debt collector may warn you of an actual impending intention to refer your case to an attorney or to report*

*your debt to a credit agency. What they cannot do is use a false threat to try to intimidate you into paying;*
- *Making repeated telephone calls or telephone calls at unreasonable times. The act defines unreasonable times as contact before 8:00 a.m. or after 9:00 p.m., unless you have given the debt collector permission to contact you during those hours;*
- *Placing telephone calls to an inconvenient place. For example, contacting you at work in violation of a policy by your employer that is known to the debt collector or following a request by you that they not contact you at work;*
- *When placing a telephone call to you at work, informing your employer of the purpose of the call, unless first asked by the employer;*
- *Using obscenity, racial slurs or insults;*
- *Sending letters which appear to have come from a court;*
- *Seeking collection fees or interest charges not permitted by your contract or by state law;*
- *Requesting post-dated checks with the intention to prosecute if they bounce;*
- *Suing in courts far removed from your place of residence;*
- *Making certain false representations in association with efforts to collect the debt, including the false claim that the person contacting you in relation to the debt is an attorney, falsely claiming to have started a lawsuit, using a false name, or using stationery that is designed to look like an official court or government communication;*
- *Using false claims to collect information about the debtor, such as pretending to be conducting a survey;*
- *Threatening you with arrest if you do not pay the debt.*

*For further coverage of the FDCPA, please refer to the following web address*:

***http://www.expertlaw.com/library/consumer/fair_debt_collection.html***

2. Aside from committing physical violence or threatening physical violence, should there be any legal constraints on creditor efforts to collect past-due debts? Why or why not?

*This is an opinion question, so student responses will likely vary. There is a strong argument to be made, however, that psychological abuse through overly aggressive debt collection methods can be just as damaging to the debtor as physical violence. The FDCPA proscribes psychological abuse imposed through overly aggressive debt collection methods.*

3. In your reasoned legal opinion, did Mark One Financial violate the Fair Debt Collection Practices Act? Why or why not?

*Since Mark One Financial contacted the debtor's cousin and sister, it does appear that the company violated the FDCPA. See the first "bulleted" section in response to Discussion Question 1above.*

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

## Article 2: "Toxic Metals Found in Cartoon Drinking Glasses"

http://www.msnbc.msn.com/id/40309111/ns/health-kids_and_parenting

According to the article, drinking glasses depicting comic book and movie characters such as Superman, Wonder Woman and the Tin Man from "The Wizard of Oz" exceed federal limits for lead in children's products by up to 1,000 times, according to laboratory testing commissioned by The Associated Press (AP).

The decorative enamel on the superhero and Oz sets — made in China and purchased at a Warner Brothers Studios store in Burbank — contained between 16 percent and 30.2 percent lead. The federal limit on children's products is 0.03 percent.

The same glasses also contained relatively high levels of the even-more-dangerous cadmium, though there are no federal limits on that toxic metal in design surfaces.

In separate testing to recreate regular handling, other glasses shed small but notable amounts of lead or cadmium from their decorations. Federal regulators have worried that toxic metals rubbing onto children's hands can get into their mouths. Among the brands on those glasses: Coca-Cola, Walt Disney, Burger King and McDonald's.

Coca-Cola, which had been given AP's test results last week, announced recently that after retesting it was voluntarily recalling 88,000 glasses.

The AP testing was part of the news organization's ongoing investigation into dangerous metals in children's products and was conducted in response to a recall by McDonald's of 12 million glasses this summer because cadmium escaped from designs depicting four characters in the latest "Shrek" movie.

The New Jersey manufacturer of those glasses said in June that the products were made according to standard industry practices, which includes the routine use of cadmium to create red and similar colors.

To assess potential problems with glass collectibles beyond the "Shrek" set, AP bought and analyzed new glasses off the shelf, and old ones from online auctions, thrift shops and a flea market. The buys were random.

The fact it was so easy to find glasses that appeal to kids and appear to violate the federal lead law suggests that contamination in glassware is wider than one McDonald's promotion.

The irony of the latest findings is that AP's original investigation in January 2010 revealed that some Chinese manufacturers were substituting cadmium for banned lead in children's jewelry; that finding eventually led to the McDonald's-Shrek recall; now, because of the new testing primarily for cadmium in other glassware, lead is back in the spotlight as well.

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

AP's testing, conducted by ToyTestingLab of Rhode Island, found that the enamel used to color the Tin Man had the highest lead levels, at 1,006 times the federal limit for children's products. Every Oz and superhero glass tested exceeded the government limit: The Lion by 827 times and Dorothy by 770 times; Wonder Woman by 533 times, Superman by 617 times, Batman by 750 times and the Green Lantern by 677 times.

Federal regulators will decide whether the superhero and Oz glasses are "children's products" and thus subject to strict lead limits; if U.S. Consumer Product Safety Commission staffers conclude the glasses to fall outside that definition, the lead levels would be legal.

Judging by the agency's own analysis, obtained by the AP under the Freedom of Information Act, the Oz and superhero glasses appeal to kids.

"Licensed characters based on action superhero themes or friendship themes are very popular" with children ages 6 to 8, CPSC staff wrote when explaining why the "Shrek" glasses, which featured the cartoon ogre and his friends, would end up in children's hands.

Warner Brothers said, "It is generally understood that the primary consumer for these products is an adult, usually a collector."

However, on Warner Brothers' website, the superhero glasses are sold alongside kids' T-shirts with similar images and a school lunch box. An online retailer, www.retroplanet.com, describes the 10-ounce glasses as "a perfect way to serve cold drinks to your children or guests."

The importer, Utah-based Vandor LLC, said it "markets its products to adult collectors." The company said less than 10,000 of each set had been sold and that the products were made under contract in China.

The company said that superhero and "Oz" glasses both passed testing done for Vandor by a CPSC-accredited lab, including the same lead content test that ToyTestingLab did for AP — a test only required of children's products. Spokeswoman Meryl Rader did not answer when asked why a test specific to children's products would be performed on glasses the company said were not intended for kids.

"The results were well within the legal limits" of 0.03 percent lead, Rader wrote in an e-mail. The company would not share those results.

Informed in general terms of AP's results, CPSC spokesman Scott Wolfson said that the agency would pursue action against any high-lead glasses determined to be children's products. The agency has authority to enforce lead levels for glasses going back decades, he said.

AP's testing showed Vandor's Chinese manufacturer also relied on cadmium. That toxic metal comprised up to 2.5 percent of the decorative surface of the Oz and superhero glasses, nearly double the levels found in the recalled "Shrek" glasses. But the CPSC only limits how much

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

cadmium escapes from the designs, not how much cadmium the designs contain. Even that regulation is new: The CPSC used the "Shrek" glasses to establish a standard for how much cadmium coming out of children's glassware creates a health hazard.

Five of the glasses that AP tested, including one ordered from the online Coca-Cola store, shed at least as much cadmium as the CPSC found on the "Shrek" glasses. While those five could have been deemed a health hazard under the CPSC guidelines used for the recall, recent revisions tripled the allowable amount of cadmium and the agency may no longer consider them a problem. The agency has said its upward revision means the "Shrek" glasses did not need to be recalled.

The all-red Coke glass shed three times more cadmium than the Puss in Boots "Shrek" glass that worried federal regulators the most last summer. Coke Zero and Diet Coke glasses did not exhibit the same problem.

In announcing that it was voluntarily recalling 22,000, four-glass sets "for quality reasons," the Coca-Cola Co. said the glass designed to look like a red can of Coca-Cola "did not meet our quality expectations. While recent tests indicated some cadmium in the decoration on the outside of the glass, the low levels detected do not pose a safety hazard or health threat."

The company said consumers who purchased the glasses from Coke's online store will receive an automatic credit; customers who bought the glasses in retail stores will be instructed on what to do.

The glasses, which Coke said were "designed for the general adult population," were manufactured in the United States by Arc International, the same company that made the recalled "Shrek" glasses.

In all, AP scrutinized 13 new glasses and 22 old ones, including glasses sold during McDonald's promotion for a 2007 "Shrek" movie. The used glasses date from the late 1960s to 2007, mostly from promotions at major fast-food restaurants. Thousands of such collectibles are available at online auction sites; countless others are kept in American kitchen cabinets, and used regularly by children and adults.

First, AP screened them using a state-of-the-art Olympus Innov-X gun that shoots X-rays into a glass and delivers an estimate of how much lead, cadmium or various other elements are present.

The glasses were then sent to ToyTestingLab, which is accepted by the CPSC as an accredited laboratory for a range of procedures.

The glasses were tested according to the procedure that the safety commission used in the "Shrek" recall. The decorated surface of each glass was stroked 30 times with water-soaked wipes, with each stroke representing a hand touch. The wipes were then analyzed for how many micrograms of lead, cadmium or other elements they collected.

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

Finally, for seven of the superhero and Oz glasses the lab extracted samples of the decorations. That colored enamel was analyzed for its total lead content.

"I was extremely surprised at the levels," said Paul Perrotti, ToyTestingLab's director, of the total content test. He said his lab has seen glasses that fail to meet government standards, "But not 30 percent lead."

Despite what Perrotti described as "grossly high" levels, the wipe testing picked up very little lead coming out from these seven glasses. His staff had to use a diamond-tipped grinder to remove the colors, suggesting the enamel was strongly bonded to the glass.

Perrotti and glass engineers interviewed by AP said the surface of the glasses AP tested could break down with repeated use, scouring and trips to the dishwasher, making the metals more accessible.

Following a cascade of problems with products manufactured in China, Congress in 2008 passed strict new limits that effectively ban lead in any children's product. The underlying materials in these products — including the baked-in enamel — cannot be more 0.03 percent lead.

Lead has long been known to reduce IQ in kids; recent research suggests cadmium also can damage young brains. Cadmium also is a carcinogen that can harm kidneys and bones, especially if it accumulates over time.

Cadmium, however, also happens to be an indispensable pigment for an important part of the color palette — without it there is no "fire engine red" (think Superman's cape and Dorothy's slippers). Lead on the other hand is not essential.

A lot of a toxic metal in a glass does not necessarily mean a health hazard. Most of the 35 lab-tested glasses were safe under normal conditions — their decorations shed very low or no detectable amounts of lead or cadmium. Among those that did release higher levels in the wipe test, none gave off nearly enough to make someone immediately sick, according to AP's analysis of the results.

Instead, the concern is low levels of exposure over weeks or months, whether kids also are eating a sandwich or licking their fingers.

In addition to the seven contaminated Oz and superhero glasses, 10 others raised concern over longer-term contact — two for both lead and cadmium, five for lead only and three for cadmium only. According to widely used computer modeling, the contamination that came off three of the glasses could measurably increase a child's blood lead level.

If half of what gets onto a child's hand enters their mouth, as the CPSC calculates, seven of the glasses would require fewer than 20 hand touches for kids age 6 and under to exceed U.S. Food and Drug Administration guidelines for the maximum amount of lead they should ingest in a day.

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

Most of the 10 additional glasses were released before 2000, including a Disney "Goofy" glass distributed by McDonald's that shed lead and cadmium, and three "Return of the Jedi" glasses from 1983 released by Burger King. One of the "Jedi" glasses hit the FDA lead level for 6-year-olds after just eight touches.

Both fast food chains said in statements that their glasses met applicable safety standards at the time they were manufactured. Disney, which ran several promotions with McDonald's for glassware AP tested, had no comment.

Using computer modeling, nationally recognized toxicologist Dr. Paul Mushak, who has advised government agencies including the CPSC and now operates a consulting practice in North Carolina, concluded that if half of what came off the glasses was ingested, it could raise a 5- to 6-year-old's blood lead level by 11 percent on the high end and 4 percent on average.

The blood level changes didn't alarm Mushak, but he expressed concern because lead from the glasses would be absorbed into the bones, only to be released much later in life, for example in menopausal women.

Mushak suggested that the safety commission's wipe test could underestimate real-world exposure, because it uses water on the wipes, a very mild approach. AP's testing showed that when glasses were subjected to a wipe wetted with artificial sweat, the amounts of lead or cadmium that came off were up to four times higher than water wipes.

Members of the association representing the U.S. glassware industry say the glasses are safe and strongly protest that the wipe test does not accurately reflect how much lead or cadmium escapes in the real world.

Myra Warne, executive director of the Society of Glass and Ceramic Decorated Products, said she is frustrated that the CPSC used it, rather than a more commonly used method developed by the FDA.

"As we are aware, government agencies don't always (or perhaps often) share their insight and knowledge with one another which is likely why CPSC and others are fixated on improper test protocol for our products," she wrote in an e-mail.

**Note: For an update concerning the above-referenced case, please see the following article:**

**“Feds Dismiss Recall Of Lead-Laced Glasses Over Technicality”**

**http://www.huffingtonpost.com/2010/12/11/wizard-of-oz-glass-recall-lead-feds-drop-recall-_n_795434.html**

A federal agency reversed itself recently and said lead-laced Wizard of Oz and superhero drinking glasses are, in fact, for adults – not children's products subject to a previously announced recall.

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

The stunning about-face came after the Consumer Product Safety Commission said last month the glasses were children's products and thus subject to strict federal lead limits.

Lab testing by The Associated Press found lead in the colored decorations up to 1,000 times the federal maximum for children's products. The CPSC has no limits on lead content on the outside of adult drinking glasses.

"A premature statement was made regarding two sets of glasses identified in (AP's) story that has now been determined to be inaccurate," said agency spokesman Scott Wolfson. It was Wolfson who said the day after the AP published its investigation November 21 that the two sets of four glasses each – one featuring characters including Superman and Wonder Woman, the other Dorothy and other characters from the classic Oz movie – were children's products and that the agency would investigate them.

Soon after, the importer of the glasses, Utah-based Vandor LLC, said it was pulling them from the market and would work with the agency to formally recall them.

Wolfson said CPSC staff didn't have the glasses in hand when the agency declared them children's products.

"After thoughtful analysis by child behavior experts at CPSC, it has been determined that the glasses are not children's products," Wolfson said Friday. He added that "the size, weight, packaging and price of the glasses sampled by CPSC are consistent with glasses more commonly used for consumption of adult beverages."

But Wolfson went on to say: "These glasses are not primarily intended for use by a child 12 or younger. ... Since these glasses are not intended for use by young children, it is recommended that parents not provide them to children to use."

The 10-ounce glasses clearly appeal to kids, according to the man who wrote the guidelines that the agency still uses to determine what kinds of items children of different ages use.

"Kids would choose this glass over a plain glass," said Jim Therrell, a professor at Central Michigan University. "If you consider that they are all movie based, they're all fantasy based, the fantasies would probably range in appeal to ages 4 to 5 at the low end up through 11, 12."

Under federal law, an item is a "children's product" if it is "primarily intended" for those 12 and under.

Wolfson said the agency used Therrell's guidelines in the new ruling that the glasses are adult products.

The importer of the Chinese-made glasses had insisted they were targeted to adult collectors. AP bought them at a Warner Brothers Studios store in Burbank, Calif.; at Warner Brothers' online store,

businesslaw

Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

they were sold next to children's T-shirts and lunchboxes, while they were touted as perfect for kids on another website.

In a recent e-mail to AP, Vandor spokeswoman Meryl Rader wrote that the company was working with CPSC's Office of Compliance but didn't have specifics on the recall plan. "The company's trade customers were notified of the pending voluntary recall on November 23 and will be further notified once recall specifics have been developed and approved by the CPSC," she said.

Rader did not reply to e-mails and a telephone call Friday asking whether the company would go through with the recall.

While Wolfson acknowledged the agency had been working with the importer on a recall plan, he emphasized that the CPSC never made a formal recall announcement.

## Discussion Questions

1. In your reasoned opinion, has the Consumer Product Safety Commission (CPSC) satisfied its responsibilities to consumers (more specifically, children) in this case? Why or why not?

*Although whether the CPSC has satisfied its responsibilities to consumers is debatable, in your author's opinion, the CPSC's special obligation to child consumers has not been fulfilled. Even though the glasses might not have been primarily intended for those twelve (12) years of age and under, this case is replete with evidence that children are likely to use the glasses due to their "Wizard of Oz" and "superhero" themes. Although reversal of the recall might be justified on a technicality, the overriding purpose of the special CPSC provisions concerning children, protecting them from harmful products, has not been fulfilled in this case.*

2. As the articles indicate, under federal law, an item is a "children's product" if it is "primarily intended" for those 12 and under. In light of this case, should the law be rewritten to better protect children from the types of products identified in this case? If so, how (specifically) would you change the wording of the law to better protect children?

*Although the wording of a revised law could take many forms, your author proposes the following language:*

*An item is a "children's product" if it is either 1) "primarily intended" for those 12 and under, or 2) "especially attractive" to those 12 and under, so that a child's use of the product is "reasonably foreseeable."*

*Feel free to propose your own language concerning a revised law that would better protect children in cases like this, and/or entertain suggestions from your students.*

3. In your reasoned opinion, should the importer of glasses, Utah-based Vandor LLC, carry through on a voluntary recall of the glasses? Why or why not?

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill **January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

*Although the CPSC's technical ruling favors Vandor LLC, the company would likely benefit from engaging in a voluntary recall of the glasses. From a legal standpoint, Vandor could still be held liable under negligence, strict product liability and/or breach of warranty (for example, the implied warranty of merchantability) theories should children (or other consumers, for that matter) be harmed by the glasses. Also, many students may argue that Vandor has an ethical obligation to engage in a voluntary recall, even though the CPSC's recent ruling gives the company technical favor under the law.*

**Article 3: "Toddler Dies after 50-Foot Fall at Lakers Game"**

**http://www.msnbc.msn.com/id/40310035/ns/us_news-life/**

According to the article, the family of a 2-year-old boy was posing for pictures in a luxury suite high inside Staples Center when he managed to scale a clear safety barrier and fell more than 20 feet to his death.

Lucas Anthony Tang suffered head injuries Sunday when he landed on rows of seats minutes after a Los Angeles Lakers basketball game. The boy later died at a hospital.

"Somehow the child went over the edge of the section," Officer Julie Sohn said.

Police were releasing few details about the incident as they tried to determine what happened.

Sohn said the boy's family was taking photographs at the time of the fall.

According to media reports, the toddler's family was looking at digital photographs and lost track of him. He somehow got over the top of the glass barrier.

Sohn, however, said she could not confirm those details.

The luxury boxes have tiers of seats, fronted by concrete walls. Atop the walls are glass barriers. The barrier varies in height but at its lowest point is about the height of an adult's waist, said Michael Roth, a spokesman for Staples and its owner, AEG.

Roth declined to be more specific about the height and it was not immediately clear from which point the boy fell. He said the toddler fell into a general seating area about 30 rows up from the court.

The child fell 25 to 50 feet, according to various estimates from police detectives, fire officials and Roth.

Witnesses said the boy was moving his arms, legs and head when paramedics put him in an ambulance, Roth said.

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill **January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

The luxury box met all building requirements, Roth said. The 950,000-square-foot stadium opened in 1999 and has 160 luxury suites on three levels. "In 11 years, we've never had an incident like this," he said.

A message seeking comment from the city Department of Building and Safety was not returned.

The police department's juvenile division, which has investigative responsibility when a victim is under age 11, was handling the probe. "It's procedural" and did not necessarily indicate that a crime was involved, Sohn said.

The arena was conducting its own investigation, Roth said.

Roth declined to release details about the boy's family but said the luxury box — as with most suites — probably was owned by a corporation.

"Our condolences and prayers go to the Tang family," Roth said a short prepared statement.

The Lakers organization issued a statement expressing shock and sadness at the tragedy.

"To go from a moment of happiness and enjoyment, to the loss of this boy's life, is tragic and heartbreaking. We would like to ask Lakers fans to join us in keeping Lucas and his family in our thoughts and prayers," the statement said.

## Discussion Questions

1. In the instant case, there is some evidence that the parents' inattentiveness might have contributed to their child's death. In your reasoned opinion, would/should this prevent recovery for the child's death?

*As a general rule, parental inattentiveness will not prevent recovery for a child's death in the event that the defendant owed a legal obligation to the child, and that obligation was breached. In cases like this, a court would evaluate the Staples Center's legal obligation, and whether it breached its obligation, largely independent of what the child's parents did or did not do.*

2. From a legal standpoint, was the child's contributory negligence responsible for his death? Did the child assume the risk? In either event, would the child's contributory negligence or assumption of the risk prevent recovery for his death?

*In those jurisdictions that recognize contributory negligence, if the plaintiff's negligence (however slight) contributed to his or her own harm, the plaintiff is prohibited from recovering from the defendant. The defense of "assumption of the risk" argues that if the plaintiff actively, voluntarily and willingly proceeded in the face of danger, appreciating the danger, the plaintiff will not be allowed to recover from the defendant. Described another way, both the contributory negligence and assumption of the risk doctrines can be absolute defenses to liability. Concerning children,*

businesslaw

Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

*however, a child cannot (as a general rule) be deemed to have been contributorily negligent, nor can a child be deemed to have assumed the risk. Especially in situations (like the instant case) involving a toddler, the law presumes that children do not have the mental capacity to be able to fully appreciate danger. Appreciation of danger is a key element necessary to reach a conclusion of contributory negligence or assumption of the risk.*

3. In your reasoned legal opinion, does the preponderance (i.e., "greater weight") of the evidence indicate negligence on the part of the Staples Center and its ownership? Why or why not?

*Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to reach a verdict of negligence, the fact-finder (in other words, the jury) would have to conclude that the defendant 1) owed a duty of care to the plaintiff; 2) breached the duty of care; and 3) caused demonstrable harm to the plaintiff.*

*In the instant case, there is not yet enough evidence to indicate negligence on the part of the Staples Center and its ownership. Although most students will likely agree that the Staples Center/luxury box owner owed a duty of care to the toddler, questions remain as to whether the defendant: 1) breached the duty of care; and 2) actually caused the harm. The discovery process of litigation will likely "shine further light" in terms of answering these questions, and barring settlement, the ultimate determination of negligence may be left to a juryn .*

businesslaw

# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

## Video Suggestions

**Video 1: "FBI Raids Hedge Fund Offices"**

**http://video.foxnews.com/v/4430924/fbi-raids-hedge-funds-offices?r_src=ramp**

**Discussion Questions**

1. Is a Federal Bureau of Investigation (FBI) search of hedge fund offices (business property) subject to the warrant requirement of the Fourth Amendment to the United States Constitution, or does the Fourth Amendment warrant requirement only apply to the search of a private residence?

*The Fourth Amendment warrant requirement applies to businesses as well as individuals. As a general rule, before business property is searched, government officials must first have "in hand" a warrant based on "probable cause" that when a search is conducted, the search will reveal incriminating evidence.*

2. In the video, Judge Andrew Napolitano refers to the FBI's request that a hedge fund executive wear a "wire" to expose incriminating statements made by clients. Although the executive declined the request, assume he had acquiesced, and the wire revealed incriminating evidence. Would this constituted "entrapment" on the part of the FBI? Why or why not?

*Such an arrangement would not constitute in entrapment. In order to successfully assert an entrapment defense, the defendant must convince the court that but for the government's incessant involvement, the defendant would not have committed a crime. If the hedge fund executive had chosen to wear a "wire," the wire would have likely revealed statements a suspect would have made regardless of the presence of such technology. Whether evidence obtained via the use of a wire would be admissible in court would be an evidentiary matter for a trial court judge to decide.*

3. In your reasoned opinion, is it unethical to trade on insider information? Should it be illegal? Explain your responses.

*This is an opinion question, so student responses will likely vary. The primary justification for insider trading laws is that it is not fair for insiders to have access to information that is not available to the general public.*

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# Proceedings

A monthly newsletter from McGraw-Hill **January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

*Widespread insider trading would likely lead to a diminution in public confidence in the stock market.*

**Video 2: "WakeMed Confronts UNC Health Over 'Predatory Actions'"**

**http://abclocal.go.com/wtvd/video?id=7815431**

Note: For a related article, see "WakeMed Wants Financial Info From UNC Hospitals" at **http://www.businessweek.com/ap/financialnews/D9JQ20OG3.htm**. The article is referenced immediately below:

According to the video-related article, one of North Carolina's largest private hospital systems says the state is becoming unfair competition, duplicating services and luring health providers with a huge, tax-funded checkbook.

Raleigh-based WakeMed Health & Hospitals filed public records requests recently seeking documents related to UNC Health Care, Rex Healthcare and subsidiary organizations.

WakeMed argues that the publicly owned hospitals are essentially building duplicate networks in areas like surgery and cardiac care while leaving WakeMed to shoulder most of the burden in so-called charity care for patients without health insurance or other means of paying for services.

"The last thing we should expect from state government is behavior that ignores the good of non-profits overall," WakeMed CEO Bill Atkinson said at a recent news conference.

Karen McCall, a spokeswoman for UNC Health Care, said the organization is reviewing WakeMed's request for records.

Much of WakeMed's complaints are about Rex, the Raleigh-based hospital system that was founded in 1894. Rex describes itself on its website as a "private, not-for-profit health care system" that is also part of the state-run UNC network.

UNC bought Rex in 2000, after floating $100 million in bonds to pay for the acquisition. Atkinson said that, as a result, Rex essentially has the best of both worlds, operating like a competitor in the marketplace while backed with taxpayer money.

"You can't have it both ways," he said.

WakeMed is particularly unhappy with what it says is the balance of charity care in Wake County. Atkinson said WakeMed provides 80 percent of it.

"Any time we see a nonprofit organization doing very little nonprofit work and being subsidized by state money, it's time to call attention to that," he said.

Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

WakeMed's request includes IRS forms, audited financial statements, correspondence and other records. The next step will largely depend on what those records reveal, Atkinson said, although he doesn't expect WakeMed to file a lawsuit.

## Discussion Questions

1. This case study involves two (2) nonprofit organizations (WakeMed is a private, not-for-profit health system, while UNC Health Care is a public, not-for-profit health system.) Given the nonprofit status of both institutions, why is WakeMed concerned about "unfair competition?"

*Even "non-profits" must compete. For WakeMed and UNC Health Care, the competition would be on at least two (2) "fronts": competition for patients, and competition for personnel.*

2. In your reasoned opinion, does this video case study definitively prove that private medical care is more efficient than (and therefore preferable to) publicly-subsidized medical care? Alternatively, does it prove that publicly-subsidized medical care is better than private care? Explain your response.

*In your author's opinion, this case study proves nothing in terms of the relative efficiencies of private medical care versus publicly-subsidized medical care. This is one of the key issues surrounding the new federal health care law; namely, whether increased government involvement (through regulation and funding) in the health care sector would lead to greater efficiencies and better health care for patients.*

3. In your reasoned opinion, does the evidence in this case indicate unfair competition on the part of UNC Health Care? Why or why not?

*This is an opinion question, so student responses will likely vary. The best argument for WakeMed is that public funding of UNC Health Care gives them an unfair advantage, while the best argument for UNC Health Care is that at the foundation of its "public system" status is public funding!*

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# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

**Of Special Interest**

This section of the newsletter addresses the question of whether the federal government should regulate the profit of health insurance companies by mandating that a certain percentage of health insurance premiums be expended on actual medical care.

## Ethical Dilemma

Note: This month's Ethical Dilemma is based on the following article:

**"Obama Administration Issues Rules on Insurance Company Spending"**

**http://www.foxnews.com/politics/2010/11/22/obama-administration-issues-rules-insurance-company-spending/**

Health insurance premiums should go for actual medical care -- not insurers' overhead and profits -- the Obama administration said recently in rules that for the first time require the companies to give consumers a rebate.

The regulation unveiled by the Health and Human Services Department calls for insurance companies to spend at least 80 cents of the premium dollar on medical care and quality. For employer plans covering more than 50 people, the requirement is 85 cents. Insurers that fall short of the mark will have to issue their customers a rebate.

Part of the new health care law, the rule is meant to give consumers a better deal. Administration officials said it will prevent insurers from wasting valuable premiums on administration, marketing and executive bonuses. "While some level of overhead costs is certainly necessary, we believe they have gotten out of hand," said Health and Human Services Secretary Kathleen Sebelius.

Some insurers have complained the approach is heavy handed, and doesn't take into account the costs of marketing to individuals and small employers. Indeed, some are threatening to pull out of the individual market, and four states have already asked the federal government for an exemption from the rule, fearing it could lead to loss of coverage.

But industry watchers said the final regulations wound up being more manageable than investors initially feared. Analyst Les Funtleyder, who covers the industry for Miller Tabak, noted that HHS has wide latitude to adjust the rules to prevent market disruptions.

"From an expectations point of view, these are rules that managed care can live with in 2011," he said.

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# Proceedings

A monthly newsletter from McGraw-Hill **January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

Currently, there is no uniform requirement that health insurers spend a minimum share of premiums on medical care. Consumer groups say somewhere between 80 to 85 cents on the dollar represents good value, but many plans spend in the range of 60 to 80 cents.

That will change on January 1, 2011, when the rule goes into effect. Starting in 2012, as many as 9 million customers could get rebates averaging $164, officials estimate. It could be a discount on premiums or a payment by check or credit card.

Consumers shopping for health insurance in the future will be able to compare what plans in their area spend on medical care. They'll have to learn some new jargon: the proportion insurers spend on care is termed the "medical loss ratio." Overall, the new requirement applies to plans that cover about 75 million people.

One major exception involves large employer plans. Generally major companies pay their employees' health care expenses directly, hiring an insurance company to act as an outside administrator. To employees, it looks like they are covered by an insurer, but it's actually their company that's paying. Because most big firms pay up front, they already have a strong incentive to be as efficient as possible.

Administration officials say they don't anticipate the kinds of dire disruptions that some health insurance companies have warned about.

"No one is going to lose their coverage," said Jay Angoff, head of the HHS office of insurance oversight.

Developed in conjunction with state insurance regulators, the regulation provides for adjustments to ease the impact of the requirements if problems emerge.

Very small insurers with fewer than 1,000 enrollees will not be required to provide rebates, and those with fewer than 75,000 enrollees will get an adjustment. Limited benefit plans popular in low-wage industries will get more time to comply, and may also be able to claim adjustments. States can apply for a waiver if state regulators conclude that the requirement would destabilize local markets, for example if a large insurer pulled out.

**Discussion Questions**

1. In your reasoned opinion, do insurance companies have an ethical obligation to devote a certain percentage of health care insurance premiums to actual medical care? Why or why not?

*What a controversial question! This question goes "to the heart" of what constitutes fair profit in the free enterprise system. Even for students who believe that insurance companies have an ethical obligation to devote a certain percentage of health care insurance premiums to actual medical care, the "devil is in the details" of determining what that specific percentage should be.*

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Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

*As the article indicates, the Obama administration has determined that 80 cents of each insurance premium dollar (85 cents for employer plans covering more than 50 people) is the "magic" number.*

2. Do you support federal government intervention mandating that insurance companies devote a certain percentage of health care insurance premiums to actual medical care? Why or why not?

*Student opinions will likely vary in response to this question. Those opposed to government intervention might argue that health care insurance should be a "free market" product uninhibited by the "shackles" of government control, while those in favor of government intervention might argue that health care insurance should be regulated in the interests of fairness to consumers, who have little if any control over the insurance product themselves.*

3. Comment specifically on the propriety of the federal government regulation requiring insurance companies to spend at least 80 cents of each premium dollar on medical care and quality (for employer plans covering more than 50 people, the requirement is 85 cents.) Is 20 cents on each insurance premium dollar (less overhead expenses) a "fair" profit?

*Since this is an opinion question, student responses will likely vary. As indicated in response to Discussion Question 1 above, even for students who believe that insurance companies have an ethical obligation to devote a certain percentage of health care insurance premiums to actual medical care, the "devil is in the details" of determining what that specific percentage should be.*

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# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

**Of Special Interest**

This section will assist you in covering:

1) Article 1 of the newsletter ("Woman Sues Debt Collectors Over Alleged Facebook Harassment"); and

2) Video 1 of the newsletter ("FBI Raids Hedge Fund Offices").

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## Teaching Tips

**Teaching Tip 1 (Related to Article 1): The Federal Trade Commission's "Debt Collection FAQs: A Guide for Consumers"**

Please see the following Federal Trade Commission (FTC) web address for insightful information regarding the essential details of the Fair Debt Collection Practices Act (FDCPA):

http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm

**Teaching Tip 2 (Related to Video 1): "The SEC's Absurd War Against Insider Trading"**

For a view challenging the Securities and Exchange Commission's (SEC's) current efforts to combat insider trading, please see the following article by CNBC anchor Michelle Caruso-Cabrera:

http://www.cnbc.com/id/40318804/The_SEC_s_Absurd_War_Against_Insider_Trading

According to Mrs. Caruso-Cabrera:

The Wall Street Journal Reports they are now investigating what are known as Expert Networks. These are private consulting firms that specialize in providing information and expertise on particular industries and companies. Hedge funds and mutual funds hire them to get an investment edge.

The Journal highlights a company that is being probed by the SEC, which does "channel checks" with manufacturers of technology equipment for bigger companies. That kind of research gives insight into strength of order flow and can provide clues as to the direction of the industry. (Oftentimes, they are run by, or staffed with, former employees of the companies in question. Sounds similar to the revolving door of members of Congress who become lobbyists.)

This focus on Expert Networks has lead to much discussion about where is the line between good due diligence and insider information. The question isn't worth answering. There should be no rules against insider trading because they are akin to price controls and, by default, asymmetric in enforcement. If insiders could trade, stock prices would more likely reflect the true conditions of a company. As for asymmetric enforcement, you can prosecute when someone actually trades. But what do you do when someone

refrains from a trade due to insider info? Milton Friedman convinced me there should be no rules against insider trading many years ago when I interviewed him, and his arguments still stand today.

But to simplify—why on earth would we want less information to flow, rather than more? Are we to be an investing community that relies solely on corporate press-releases? Think of how horrendous that would be.

The response I often get is that it is “unfair” for one investor to have more information than another investor—that the average individual investor will be at a disadvantage. By that logic, maybe we should prohibit investing in any company with any news for a full 24 hours after the news comes out? That way everyone has the opportunity to get the information and trade on it at the same time. When a company reports earnings at 4:05 p.m., most of the working world is still in the office doing their jobs.

By the “fairness” logic, we should allow enough time for everyone to get the information. The way the system works right now is that only professional investor, retirees, and people who work the night shift can trade on information the second it comes out. In the name of fairness, don’t we want everyone to be able to do so? I’m joking of course. But hopefully you get my point.

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# Proceedings

A monthly newsletter from McGraw-Hill

**January 2011** Volume 2, Issue 6

The McGraw-Hill Companies

## Chapter Key for McGraw-Hill/Irwin Business Law texts

| | Hot Topics | Video Suggestions | Ethical Dilemma | Teaching Tips |
|---|---|---|---|---|
| **Kubasek et al., Dynamic Business Law** | Chapters 9 and 45 | Chapters 5, 7 and 8 | Chapters 44 and 45 | Chapters 7 and 45 |
| **Kubasek et al., Dynamic Business Law: The Essentials** | Chapters 5 and 25 | Chapters 2, 4 and 5 | Chapters 23 and 25 | Chapters 2 and 25 |
| **Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition** | Chapters 7 and 48 | Chapters 3,5 and 8 | Chapters 47 and 48 | Chapters 5 and 48 |
| **Barnes et al., Law for Business, 10th Edition** | Chapters 7 and 46 | Chapters 4, 5 and 6 | Chapters 4 and 46 | Chapters 5 and 46 |
| **Brown et al., Business Law with UCC Applications Student Edition, 12th Edition** | Chapters 6 and 20 | Chapters 2, 5 and 6 | Chapters 2 and 20 | Chapters 5 and 20 |
| **Reed et al., The Legal and Regulatory Environment of Business, 15th Edition** | Chapters 10 and 17 | Chapters 6, 10 and 12 | Chapters 1 and 17 | Chapters 12 and 17 |
| **McAdams et al., Law, Business & Society, 9th Edition** | Chapters 7 and 15 | Chapters 2, 5 and 7 | Chapters 8 and 15 | Chapters 2 and 15 |

## This Newsletter Supports the Following Business Law Texts

Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
Kubasek et al., Dynamic Business Law, 2009© (0073524913)
Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
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