

Product liability practice is their passion

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For Phillips Lytle partner Craig Leslie, defending product liability cases is a passion. He loves coming to work every day and learning something new.

“I enjoy it tremendously,” he said, noting that he took lots of science classes in college. “One of the things that plays well is that I have a curious mind, and when you’re dealing with products cases, you have to have that.”

Attorney James Scime also is passionate about his job. He represents plaintiffs in product liability cases.

“Products are safer because of what we do,” said Scime, who is with Lipsitz Green Scime and Cambria. “Workplaces are safer; machines are safer.”

While Phillips Lytle provides defense representation 98 percent of the time, Lipsitz Green represents plaintiffs 100 percent of the time. Both firms are on the list of Product Liability Law Firms in this week’s print issue of the Buffalo Law Journal.

According to the list, Phillips Lytle has the most attorneys practicing product liability law at 42. Barclay Damon is second with 21. Lipsitz & Ponterio is third with 15 attorneys, but the firm only takes plaintiff cases connected to asbestos exposure. Lipsitz Green is fourth with 14 attorneys practicing product liability law.

For Lipsitz & Ponterio, taking on asbestos cases becomes personal, said Michael Ponterio, a founding partner.

“Each family that you meet has a different story,” he said. “We go to our clients’ houses and try to make the best of a bad situation in their lives. The best we can do is compensate them. At least it’s some recognition that a wrong was committed.”

The people he works with are in a tough spot and would give anything to have their health back, he said.

“These are some of the hardest-working families, and that’s what keeps us going and motivates us to do the best job we can for these people,” he said.

Clients range from World War II veterans to middle-aged people who were around asbestos as children and have been diagnosed with mesothelioma. Asbestos dust lays dormant in the body for years, Ponterio said.



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Phillips Lytle partner Craig Leslie says he learns something new every day in the practice of product liability law.

Scime's clients would rather have their health than have to retain an attorney to file a lawsuit, he said.

"If someone is seriously injured, they didn't hit the lottery," he said, adding that minor injuries do not result in product liability lawsuits. "They would give everything back to be made physically whole again."

On both sides of product liability law, experts are increasingly important and consulted on most cases. That means lawsuits are also becoming more expensive, Scime said.

On the defense side, experts evaluate everything from how a product was used to examining surveillance video of an incident.

On the plaintiff side, experts often include economists to determine the economic impact of an injury and vocational specialists who are able to determine if a plaintiff is able to work and at what level, Scime said.

For Leslie of Phillips Lytle, part of the process involves looking at how the product was used and determining if all the instructions were followed. Modifications to make a product work better or ignoring operating procedures could have an impact on a case.

"We see that relatively frequently," he said.

Cases often involve employers who don't maintain their equipment properly, despite being aware of the dangers of using the equipment. If, for instance, an employee is hurt using the equipment, they are limited to worker's compensation under New York state law.

"The product has a safety feature that for whatever reason the employer decides to either defeat or decides not to repair," Leslie said. "To me, that's crazy. Those folks should know better."

The employee may sue the manufacturer of the product, but it's the employer's responsibility to ensure the equipment is working properly, he said.

"It's not the manufacturer's fault; it's the fault of the employer who didn't maintain and properly use the equipment," he said.

Phillips Lytle is the only law firm on the list that does both defense and plaintiff work on product liability, although the percentage of plaintiff cases is low at 2 percent. While rare, Leslie said the firm will take on plaintiff cases.

"We typically approach the question of whether we will take a plaintiff-side case on a case-by-case basis," he said. "There are business and legal reasons that we do not take a lot of those cases. It's a rarity."

Overall, New York product liability law is fair, Scime said.

"I wouldn't say, as someone who represents claimants, that it overly favors plaintiffs," he said. "We do have a burden of proving that it's not reasonably safe."

There are different kinds of defects, according to Scime.

"There are defects in design and there's a defect in manufacturing," he said. "There are also questions on whether the warnings, if any, are adequate."

He often has conversations with prospective plaintiffs where they explain that they're not the type of people who would jump to sue someone.

“It’s nothing other than putting the financial burden of injury where it belongs, on the responsible party” he said. “If an injured person is the sole cause of their injury, then they’re responsible. I don’t think there’s anything wrong philosophically, or from a societal standpoint, on placing the financial burden on those responsible for causing the injury, if in fact it’s the result of a defective product.”

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