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Attorneys At Law



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#### Personal Injury/Wrongful Death

- Motor vehicle accidents
- Products liability
- Construction accidents
- Premises liability
- Medical malpractice
- Nursing home negligence & neglect

#### Complex Litigation &

- Class Action
- Civil rights/discrimination
- Consumer protection
- Mass torts

#### Corporate, Business, & Commercial Law

- Business & commercial law
- Business organizations
- Contracts

#### Construction Law

## Guidant Corporation and St. Jude pacemaker and defibrillator warnings

On June 17, 2005, the Food and Drug Administration (FDA) reported that Guidant Corporation had recalled certain implantable cardiac defibrillators (ICDs) and cardiac resynchronization defibrillators. Guidant Corp. is an Indiana-based world leader in the design and development of cardiovascular medical products. Then, on June 24, 2005, Guidant Corp. issued a second safety advisory to warn doctors that many of its devices may malfunction and pose serious cardiovascular risk.

More recently, on January 23, 2006, Guidant Corporation announced that 54,000 pacemakers manufactured from October 19, 1998, to December 5, 2000, may experience product failure due to faulty hermetic seals. This is an expansion of prior warnings and could result in an FDA recall. Hence, these particular devices could require surgical removal from patients, as opposed to mere medical monitoring for health problems. St. Jude pacemakers also have been the subject of recent FDA warnings and scrutiny. If you have a pacemaker or defibrillator manufactured by Guidant or St. Jude, you may wish to speak to one of our lawyers about these recent warnings and recalls.

## CIVIL JUSTICE

Our nation's civil justice, or tort, system holds corporations and citizens accountable when their behavior fails to meet society's expectations of treating each other with respect and care. Those who call for so-called "tort reform" want only to eliminate that kind of accountability, most often to benefit large companies and their CEOs.

Our practice supports America's civil justice system as a fundamental check on the power of businesses and governments, and we oppose all efforts to limit the legal rights of citizens.

Although tort-reform proponents claim our justice system is rife with "junk lawsuits" and out-of-control juries that render wildly high monetary verdicts, many authoritative studies have shown that exactly the opposite is the case.

Here is what an August 2005 report issued by the U.S. Department of Justice's Bureau of Justice Statistics showed about the number of civil cases resolved in U.S. district courts in the past 20 years:

- The total number of civil justice cases dropped 79 percent between 1985 and 2003.
- In 1985, judges or juries rendered verdicts in 3,600 civil justice trials. By 2003, the number had dropped to fewer than 800 trials.
- The number of civil justice cases decided by judges or juries—as a percentage of all civil justice cases—fell from ten percent in 1970 to two percent in 2003.
- In the fiscal years of 2002 and 2003, 98 percent of personal injury cases were resolved by mediation, settled out of court, or handled in some other way that avoided trials, judges, or juries. Only two percent of all cases required trials to be resolved.
- Product liability claims made up 13 percent of all cases, and medical malpractice claims accounted for only 10 percent of cases. Fair-minded juries decided 73 percent of all personal injury trials.
- Nonasbestos product liability trials decreased by two-thirds between 1990 and 2003, from 279 to 87. Plaintiffs won in only one in three cases.
- Punitive damages tend to be awarded less and less frequently in civil justice trials.

*Dedicated to providing high-quality, dependable legal counsel.*

# Patients' rights in hospitals

Going to a hospital for an emergency or a prescribed surgery or treatment can make anyone anxious. On top of that, many individuals and their families fail to understand what their rights are as patients.

Since most hospitals and care-providing centers prepare documents that specify their patients' rights, everyone can request a copy. Many institutions' patients' rights statements comply with the requirements of the Joint Commission on Accreditation of Healthcare Organizations.

## The rights patients should be entitled to include:

- Respectful care
- Notification of next of kin upon admission
- Privacy
- Personal safety
- Confidentiality of treatment
- Understand the full extent of medical conditions
- Comprehend the ramifications of all prescribed treatments
- Participate in decisions about treatment
- Request or refuse service or treatment, according to law
- Formulate advance directives for care
- Review and contest billing
- File a grievance about service or treatment
- Receive service and care without regard to gender, economic status, educational background, race, color, religion, ancestry, national origin, sexual orientation, marital status, or the source of payment for care.



*Patients believing their patient rights have been transgressed should contact legal counsel.*

# Auto accidents and injuries

## Colossus®? What's that?

Colossus software, developed by Computer Sciences Corporation, is used by several dozen national insurance companies to predict settlement values of accident and other injury claims.

Although marketers claim Colossus ensures fairness by considering many input factors, such as medical treatment, pain, and impairment level, critics express alarm. Their concerns include the software's lack of flexibility of input factors, such as pain and suffering and loss of consortium, reduced input from claims adjusters, and proprietary software secrecy.

Detractors, who perceive Colossus as a means of lowering claims values of the injured, were even more concerned when executives at a large insurance company boasted that Colossus had reduced claims payouts across the board by 20 percent.

Drivers involved in accidents who are concerned with settlement fairness can take several steps:

- Obtain the counsel of an attorney familiar with accident litigation.
- Determine whether Colossus software is being used by insurers in the settlement.
- Insist that adjusters include factors and information supportive to your claims and case, which Colossus may not value highly.

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# OBSTETRICS

## A problem delivery

After ten hours of induced labor, an expectant mother's attending physician applied a vacuum extractor to deliver her infant. When the doctor applied pressure, the baby suffered shoulder dystocia, an emergency situation in which a baby's shoulder gets caught behind the mother's pelvic bone in delivery. Shoulder dystocia can result in nerve damage, breathing stoppage, and bone breakage.

## The case

The child suffered injuries that required two surgeries before his second birthday. The parents sued the obstetrician and hospital for negligence in failing to assess the situation, obtain informed consent, properly use the vacuum device, and offer cesarean section as an option. Although the plaintiffs settled with the hospital, their attorney convinced a jury to award them significant damages.

## Malpractice

*Five percent of doctors are responsible for 55 percent of all medical malpractice payouts.*

## “Vioxx Dodgeball”

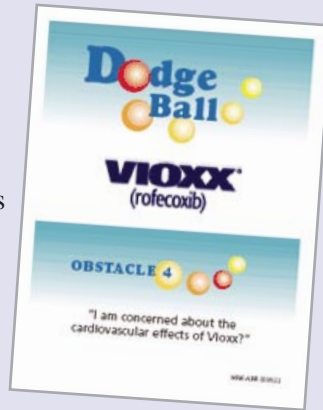
In August, a dozen Texas jurors found that Merck’s aggressive marketing of its Vioxx® painkiller caused a patient’s death. The victim’s attorney claimed the drug manufacturer knowingly promoted the dangerous and deadly arthritis-pain-relieving drug and deceived physicians about Vioxx’s risks. Merck’s attorneys claimed the company had been truthful.

However, on the trial’s first day, Merck witnesses struggled to defend a training “game” for marketing executives called “Vioxx Dodgeball,” which seemed to encourage pharmaceutical sales representatives to evade physicians’ potential concerns about Vioxx’s safety.

Printed among cartoon dodgeballs, objections included comments such as, “I am concerned with the cardiovascular effects of Vioxx” and “I’m concerned about the safety profile of Vioxx.”

Jurors understood that these observations treated serious physician unease as playful “obstacles.” Following each question were a number of pages with the word “DODGE” plastered across the middle.

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## Anesthesiologists

### Reduce malpractice incidents

According to the *Wall Street Journal*, the nation’s anesthesiologists have reduced malpractice cases and insurance costs by improving patient safety instead of lobbying for legislation to insulate themselves from patient lawsuits.

They studied why patients were being injured and killed as a result of anesthesiologist negligence and decided to fix the problems and minimize injuries. They demonstrated conclusively that the way to reduce medical malpractice lawsuits is to reduce medical malpractice and negligence. Anesthesiologists’ long-term practice improvement strategy included three essentials: medical equipment to alert surgeons to operating-room problems, realistic simulation of patient treatments, and support of procedures to protect patients from carbon-monoxide poisoning.

The anesthesiologists’ strategies worked well, as shown by many key measures:

- Anesthesia-related patient deaths declined from 1 death per 5,000 cases to 1 per 200,000–300,000 cases in the past 20 years.
- In 2005, medical malpractice premiums averaged \$20,572, down 37 percent from 1995.
- Anesthesia-related malpractice lawsuits went down from 7.9 percent of all medical malpractice cases in 1979 to 3.8 percent between 1985 and 2001.
- Malpractice lawsuit payouts fell 46 percent, to \$179,040, between the 1970s and 1990s.

## Cancer survival

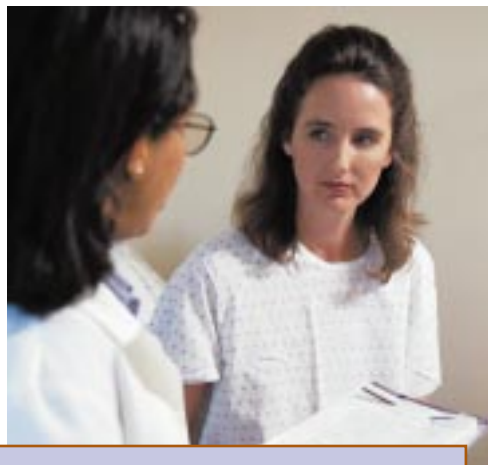
Cancer is the second-leading cause of death in our nation, responsible for one in four deaths, according to the American Cancer Society.

The cancer-survival rate between 1995 and 2000 was 64 percent, up from 50 percent between 1974 and 1976. Improvement is related to greater awareness, earlier detection, and improved medical therapies.

Today’s treatments combine medical, nutritional, physical, psychological, and spiritual therapies. While traditional therapies include surgery, chemotherapy, and radiation, alternative approaches may feature nutrition, pain management, physical therapy, and other disease-management tools.

### Misdiagnosis

When medical systems err or fail to diagnose or treat cancer victims properly, our justice system provides recourse. A patient died after a pathologist misdiagnosed a tumorous mass, an oncologist started chemotherapy before results of follow-up tests were received, and a hospital nurse failed to monitor vital signs. A jury awarded significant damages to the patient’s estate due to her being subjected to unnecessary chemotherapy.



### To learn more

To learn more about cancer, visit the American Cancer Society at [www.cancer.org](http://www.cancer.org).

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We want you to think of us as your law firm.

If you have legal matters that need attention, please let us know. If we cannot handle the matter, we will refer you to a competent firm that can.

Please feel free to refer us to your family, friends, and neighbors for their legal needs. We welcome the opportunity to help.

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### Our Martindale-Hubbell rating

Watson, Jimmerson, Martin, McKinney, Graffeo & Helms, P.C., has earned an AV rating in the *Martindale-Hubbell® Law Directory* for our legal capabilities and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

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### *Mission Statement*

**Watson, Jimmerson, Martin, McKinney,  
Graffeo & Helms, P.C.**

**W**atson, Jimmerson, Martin, McKinney, Graffeo & Helms is dedicated to providing high-quality, dependable legal counsel to individuals and businesses in the diverse areas of personal injury and wrongful-death actions, medical malpractice, motor vehicle accidents, complex civil litigation, and general trial and appellate practice. Our firm combines experience, knowledge, and professionalism with a desire to protect our clients' rights and interests without compromise.

## Joint and several liability

Many clients have asked about the legal term "joint and several liability." It's one of the more challenging concepts to understand in personal injury law.

Here's its definition: If a jury finds two or more defendants liable in a personal injury action, *each may be held accountable for the total amount of damages*. The last person who should bear the costs of an injury is the person injured through no fault of his or her own.

*The following hypothetical example explains what this means:*

A woman sits in a parked car. Her car's defective gas-tank design may cause it to explode. When an uninsured drunken driver hits her car, the tank ruptures and spews gas into the passenger compartment. The resulting fire burns and disfigures the woman. She would not have been burned if her car had not been struck by the drunk driver, and her injuries might have been minor if the fuel tank had been correctly designed. The drunk driver cannot cover her huge medical costs, but the car's manufacturer, however, can.

Under joint and several liability, the woman's injuries will all be compensated for by the manufacturer.