

FOR MORE INFORMATION ON
U.S. PRODUCT LIABILITY LAW,
PLEASE CONTACT:

REMY ZIMMERMANN

+1 203.498.4316
jzimmermann@wiggin.com

SHAUN SULLIVAN

+1 203.498.4315
ssullivan@wiggin.com

ALAN SCHWARTZ

+1 203.498.4332
aschwartz@wiggin.com

The Wiggin and Dana U.S. Product Liability Law E-Newsletter is a periodic newsletter designed to inform clients and others about recent developments in the field of product liability law. Nothing in the E-Newsletter constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

If you have any requests for topics or other suggestions, please contact Remy Zimmermann 203.498.4316 or jzimmermann@wiggin.com.

© Wiggin and Dana LLP 2006

No Duty to Warn of Danger of Ingesting Hair Care Product

In a decision notable for its clarity and common sense, Michigan's Supreme Court in *Greene v. A.P. Products, Ltd. and Revlon Consumer Products Corp.* recently sustained a trial court's grant of summary judgment to the manufacturer and retail seller of a hair and body beauty oil which was swallowed by an 11-month old resulting in death.

The infant had been left unattended with a bottle of the beauty oil within reach. Somehow he opened it and both swallowed and inhaled the oil. The oil clogged his lungs causing inflammatory respiratory failure. He died one month later.

The infant's mother's suit claimed that the defendants' failure to warn of the possibility that ingestion could cause severe injury or death was a product defect. The only warning on the product concerned not using the product near sparks or an open flame. A Michigan intermediate appellate court reversed the trial court outcome and remanded the case for trial by holding that it could not conclude that "as a matter of law, the risk of death from the ingestion of Wonder 8 Hair Oil would be obvious to a reasonably prudent product user and be a matter of common knowledge, especially considering the lack of any relevant warning."

The Supreme Court reversed and stated, "Under the law ... defendants owed no duty to warn of specific injuries and

losses, no matter how severe, if it is or should have been obvious to a reasonably prudent user that ingesting or inhaling Wonder 8 Hair Oil involved a material risk. We conclude that it is obvious ... that a material risk is involved with ingesting and inhaling Wonder 8 Hair Oil."

To buttress its conclusion the Court noted that the ingredients listed on the product label included paraffin oil and that "It should be obvious to a reasonably prudent user that ingesting paraffin oil poses a material risk since paraffin is commonly associated with such things as wax." The Court also noted the listing of such other ingredients as "isopropyl myristate, fragrance, and azulene.... Given such unfamiliar ingredients, a reasonably prudent product user would be, or should be, loath to ingest it."

An observation: this is another example of a state supreme court "getting it right" when a lower court has bent too far away from the path of common sense in ruling in favor of a grievously injured consumer. Albeit the scenario here is somewhat unusual since the trial court did "the right thing" and the intermediate appellate court went astray, it's still heartening to see the Michigan Supreme Court join other supreme courts such as those in Mississippi, Alabama and Texas in applying the law appropriately.

I hope this is helpful. As always, please let me know if you have questions or comments.