

IN THE NEWS:

## The Opioid Crisis: Why Are New York Counties Suing Big Pharma?



Meet the new big bad guy in town: The prescription drug industry. Let's just call them "Big Pharma". They are stepping into the shoes of the previous big bad guy: Big Tobacco. In fact, Big Pharma has used the Big Tobacco playbook to rake in billions of dollars in profits off the backs of addicted "customers" they hooked on their products through cunning advertising and lobbying schemes.

The product in question? Opioids. Opioids are the new Tobacco, only worse. Opioids include prescription painkillers like oxycodone, synthetics like fentanyl, and opium derivatives like heroin. Using Big Tobacco's old tricks, plus some new ones of their own, opioid manufacturers have created a nationwide epidemic of opioid addiction.

But let's go back a bit. Once upon a time doctors were reluctant to treat chronic pain with opioids. Opioid prescriptions were for last-stage cancer pain management and short-term pain control, for example, for patients suffering temporary post-operative pain. Prescribing such addictive medicine for chronic, long-term pain was just not done. The risk of creating addicts was simply unacceptable.

That was then and this is now. Between then and now Big Pharma convinced doctors to over-prescribe opioids. How did they do it? Big Pharma's silver-tongued reps wooed the docs, relentlessly flooding their offices with ads and "scientific" reports asserting

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WELCOME TO THE

## Michaels & Smolak Newsletter!

Don't hesitate to send your comments (*the good, the bad and the ugly!*) to Mike Bersani at [bersani@michaels-smolak.com](mailto:bersani@michaels-smolak.com).

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we deeply appreciate the trust our clients have placed in us and we will strive to uphold that trust by working hard and fighting for our clients' rights.

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that long term use of opioids was easily monitored and safe. The smooth talkers underplayed the addiction risks. They often targeted primary care physicians, who had only minimal knowledge of the addictive powers of these drugs. The reps sold an easy solution to chronic pain: "Have a patient with chronic arthritis? No problem. Give her OxyContin." The gullible docs bought in. Patient happy, doctor happy, all was good.

Except it wasn't. When the chronic-pain patients became chronic addicts, and they could no longer get their doctors to satisfy their ever increasing addictive needs, they turned to the black market for "Oxy" (street name for Oxycodone). But the price of Oxy on the street soared as docs got wise to the addiction epidemic and started limiting prescriptions. The laws of supply and demand kicked in. The solution for many addicts then became a plentiful and cheap alternative: heroin, another opioid.

Big Pharma, like Big Tobacco, knew exactly what they were doing. They deliberately created addicts to their dangerous products to line their pockets with record profits. But as the profits piled up, so did the bodies. To the tune of 100 opioid deaths per day in the USA.

So meet the new boss (Pharma), same as the old boss (Tobacco). It's a story of greed, profits and cover-ups on one side of the equation, and sickness, suffering and death on the other.

Ok, now we understand what Big Pharm did wrong. All this explains why addicts and the families of addicts killed by overdoses might want to sue Big Pharma. But why are counties suing Big Pharma?

Glad you asked. They are suing for the same reason they sued Big Tobacco in the 90's: Public health crises like those created by tobacco or opioid addiction burden the counties and county tax payers with huge treatment costs. The cost of treating cancer and emphysema, the by-products of tobacco addiction, are bleeding county Medicaid coffers dry. In the case of opioid addictions, counties are stuck with the increased costs of County health services, drug court proceedings, naloxone training, addiction rehabilitation programs, methadone treatment, police overtime, and jails overflowing with addicts. In sum, counties and municipalities are spending millions of dollars trying to mop up the mess that Big Pharma's greed left in its ugly wake.

So far in New York, Sullivan, Seneca, Broome, Dutchess, Erie and Orange counties have commenced lawsuits against Big Pharma. Counties all over the country are following suit. This is what good ol' civil justice is all about: Making wrongdoers compensate victims for the harm they have caused. New York counties and their taxpayers have all been harmed by Big Pharma greed. The day of reckoning is nigh.

#### NEWS YOU CAN USE:

### New Law Extends Statute of Limitations on Cancer-Diagnosis Malpractice Cases in New York



*RIP Lavern Wilkinson*

Nearly three years after Kings County Hospital sent Lavern Wilkinson, a Brooklyn mom, to an early grave because of medical negligence, New York State legislators have finally revised a cruel New York State law that robbed her of her right to seek legal redress for the deadly medical malpractice that killed her.

Lavern was not the only victim of this cruel law. Thousands of victims of malpractice have been denied their right to compensation by this arcane New York State law.

But for now let's just talk about Lavern Wilkinson. She was a former home health aide and devoted single mom. Her life was not easy. Nor was her death. At only 41 years of age, she died in March 2013 from a curable form of lung cancer. She was walking around for years with this curable cancer, as it grew and took over her body, because doctors at a City hospital emergency room failed to tell her a chest X-ray they took in 2010 showed a small, suspicious mass on her right lung. Instead, they sent her home coughing with just Motrin. By the time she was diagnosed with cancer years later, the cancer was ravaging her body.

And her Statute of Limitations for suing the doctors had expired. That's because the statute of limitations — under the cruel statute — started to run when the malpractice occurred, not when she discovered it had occurred.

Lawyers for Wilkinson nevertheless attempted to sue those responsible for this gross error (the hospital was owned by the City of New York) so that she could provide for the autistic child

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#### COMMUNITY SPOTLIGHT Kosta's Bar and Grill

We're Auburn's homegrown personal injury law firm. And although we're from a small town, we get big city results. Our clients come from all over, including Syracuse and Rochester, because of our reputation. But we are not the only bigtime homegrown business in this small town. Kosta's Bar and Grill is another. So M&S attorney David Kalabanka stopped in for a visit and talked with owner John "Flop" Gotsis:

DAVE: First, Flop, we have to clear up your nickname, "Flop". How did you get that nickname?

FLOP: It comes from about 25 years ago, when I was playing a game of cards with some buddies called "Cards on the Table". You deal four cards, then you flip one. Whenever I did that, I would yell, "flip, flop"! So the guys started calling me "flop". It just stuck.

DAVE: Well, your restaurant, Kosta's Bar and Grill, sure isn't a "flop". It's one of Auburn's treasured eateries. How did Kosta's get started?

FLOP: Well, when I came from Greece in 1976, I started working at restaurants. Started at the bottom: dishwasher, bus boy, counterman, making sandwiches, making pizzas. Then in 1985 I moved to Auburn. I started working at a restaurant on Grant Avenue, where Denny's is now, called Anthony Peter's Restaurant. I worked there for two years. I had a little disagreement with the

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owner and I took over a place in Port Byron called the Port Byron Diner. About ten years ago I turned that place over to my brother Tommy, and it is still going strong. In 1995, I bought a restaurant building on Grant Ave called “Websters” and turned it into my “Kosta’s Bar and Grill”, named for my brother, who passed away as a child, his name was Kosta. The rest is history.

DAVE: Well Kosta’s certainly have been successful. What’s your secret?

FLOP: If it were a secret, I wouldn’t tell you. Ha ha ha. But it’s not a secret: Hard work, long hours, and loads of energy. This business is not for sissies! You also have to love people and love the food business.

DAVE: You make it sound easy, but I know it’s not. Most restaurants fail within the first year.

FLOP: Look, in my opinion, most of the failed restaurants are because the owner either did not understand people or did not understand business. You have to know how to manage people. You have to know how to get, and keep, honest and loyal employees. You need friendly people upfront and great cooks in the back. People all have their strengths and weaknesses. You have to know how to harness their strengths.

DAVE: How would you describe your menu?

FLOP: A little Greek, a little Italian, Southern Style, BBQ, pastas, parmesans. And we added pizza and wings about three years ago. Believe it or not, the wings and pizza are now dominating. We have the best Stromboli’s and Calzones in Auburn.

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she would leave behind. But her access to Court was blocked. The lawsuit was filed “too late” even though it was filed right after she discovered she had cancer and that the Hospital and misdiagnosed it years earlier.

The statute of limitations ran out on poor Lavern Wilkinson before she even knew she had been harmed.

After an intense lobbying by New York personal injury lawyers and many other public health advocates, a legislative agreement was reached several weeks ago to amend the law. The amended version of the law will start the statute of limitations running not from the date of the malpractice, but rather FROM THE DATE THE VICTIM DISCOVERED OR SHOULD HAVE DISCOVERED THE MALPRACTICE. A malpractice victim will generally have two and a half years from the “DATE OF DISCOVERY” to sue.

The outside time limit to sue, though, is seven years from the malpractice. So those unfortunate enough to discover their cancer – and the mistake in failing to diagnose it – more than seven years after the malpractice are still out of luck.

Also unfortunate is that the new law applies only to cancer victims, because other types of medical malpractice are not discovered until much later, too.

Still, this new law is great news for those who believe in civil justice. It is a step in the right direction. Bravo to our New York State legislators and governor.

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#### NEW LAWS:

### **New York’s Driver and Family Protection Act**

New York State lawmakers and Governor Cuomo delivered New Yorkers a Christmas present in December: They passed and signed into law the Supplementary Uninsured/Underinsured Motorist (SUM) bill, also known as the “Driver and Family Protection Act.” This important piece of legislation will protect New York auto accident victims.

Here was the problem this new law fixes: The minimal auto bodily injury insurance in New York pays out a maximum of only \$25,000 per injured person and \$50,000 collectively for all persons injured through the negligence of the at-fault vehicle owner/driver. And this ridiculously low limit applied against you and your innocent passengers no matter how much bodily injury insurance you

purchased on your own vehicle. For example, let's say you had \$500,000 in bodily injury coverage. This bodily injury insurance you purchased would payout a maximum of \$500,000 to people *you* might have negligently injured with *your* vehicle, but would not pay you or your passengers a dime for injuries you or they suffer from the negligent driving of others. This insurance practice left many car-accident victims teetering on bankruptcy after an accident.

There was always a little known, cheap way to protect yourself and your passengers (usually family members) from the "underinsured" situation described above. You could purchase maximum Supplemental Underinsured Motorist (SUM) coverage for your vehicle. Maximum SUM brings the coverage for you and your family up to the same level as your own bodily injury insurance, even if the driver who caused the injury is "underinsured", that is, his coverage is less than your coverage.

It works like this: Say you have \$500,000 of "bodily injury" coverage in your auto insurance. Now purchase the same amount in SUM coverage. If you do, and the negligent driver who injures you or your passengers has only \$50,000 in bodily injury coverage, then your SUM insurance will kick in the additional \$450,000 to make the total amount of insurance available to you and your passengers (usually family members) \$500,000. So you end up with \$500,000 in coverage rather than just \$50,000. Big difference.

But can you afford that? Actually, you can't afford NOT to purchase it! Buying SUM is cheap! Only a few extra dollars per premium period. And the protection it provides is enormous.

So why didn't everyone have maximum SUM? Why did we need to pass a new law? Good questions. The insurance companies never made much money selling SUM insurance, so they didn't push it. The insurance industry generally had a "don't ask, don't sell" policy, meaning that if the customer did not specifically request maximum SUM coverage, none was offered. The new law corrects this injustice. This new law requires insurance carriers in New York to automatically provide maximum SUM coverage on all auto policies issued in New York unless the customer affirmatively states he does not want it.

So from now on you and your family will be protected by maximum SUM coverage unless you affirmatively tell your insurance agent you don't want it. And that would be foolish. You will save a few dollars to expose yourself and your family to huge risk. Trust us, it is not worth it.

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malpractice cases such as:

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- Catastrophic Injuries
- Construction Accidents
- Slip/Trip and Falls
- Wrongful Death
- Medical and Legal Malpractice
- Defective Products
- Almost any Accident or  
Malpractice Case of Any Kind

*attention attorneys*

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### SAFETY CORNER:

## How to Avoid Exploding E-Cigarettes



Remember those old cartoons with exploding cigars? Pretty funny in a cartoon. Not so funny in real life.

Today's real-life exploding "smokes" are not the old-fashioned trick cigars, but rather the "millennial" generation electronic cigarettes (a/k/a vaping devices). They may be "cool", but when they explode in your face they are a little too hot for comfort.

And that's why e-cigarette manufacturers are facing dozens of personal injury lawsuits around the country from people who were injured by their exploding lithium-ion batteries.

We don't recommend smoking in any form, but we believe that those who do choose to smoke or vape have a right to expect a maximum of safety from the manufacturer of the product they choose to use.

Here are a few examples of recent e-cigarette explosion cases: A 21 year-old Florida man had to be placed in a medically-induced coma to undergo surgery after an e-cigarette exploded while he was "smoking". The explosion caused severe burns to his face, neck, and lungs. In 2015, a California jury awarded \$1.9 million to a woman who was severely burned by an exploding e-cigarette. The plaintiff plugged her VapCig e-cigarette into the car charger whereupon it immediately exploded, causing her to suffer severe burns on her legs, buttocks, and hands.

If you are a victim of an exploding e-cigarette in New York, you may have a New York product liability claim against the manufacturer, designer and merchant who sold you the device. Your lawyer (hopefully us!) will research the brand, its history of explosions, and will likely consult with an engineer to discern the cause of the explosion and whether it was at least in part related to the design or a specific defect in the device. Make sure you save the device and don't tamper with it before you bring it to your lawyer!

Avoiding the injury is better than getting injured and suing. Here are our tips on how to avoid vaping injuries:

- Avoid "vape pens" (the type of e-cig that most closely resembles traditional cigarettes in appearance) or any device where the battery is not removable, such as "twists". Explosions are more

likely to happen with these types rather than with other types of e-cigarettes. The problem they have is that the battery is not removable and thus they must be charged in close proximity to their “atomizer” (the heating unit) and “vape tank” (where the liquid nicotine is stored). By contrast, with a “MOD” or “Personal Vaporizer” style e-cigarettes, the battery completely disconnects from the device, allowing it to charge separately, away from the vape tank and atomizer, and thus more safely.

- Before you buy an e-cigarette, go on line and research which ones have a more explosion-free record. Just google “exploding e-cigarettes” and you will come up with many good websites for that. Don’t buy unknown brands, especially from places like China that don’t have the same safety standards as the United States or Canada. Buy only time-proven brands that have a good explosion-free track record.
- Be sure to read the instructions for your e-cigarette. Yes, there is a right way and a wrong way to charge the battery and care for the product, which will keep it safer. Read up!
- Never hold the “atomizer” button down for longer than five seconds. Although explosions are usually caused by defective or damaged batteries, they can also be caused by holding the atomizer too long, and thus overheating the device. The atomizer is what produces the heat to create the smoke. But where there is heat, there is always a danger of fire and explosion.
- Always use the correct charger, that is, the charger that came with your e-cigarette. Many exploding e-cigarette cases come from using the wrong charger with the wrong voltage for your e-cigarette. Don’t “mix and match” chargers and e-cigs!
- Handle e-cigarette batteries smartly. Don’t carry them in your pocket. If the battery comes into contact with your loose change or keys it could cause an explosion, especially if the battery is damaged.
- Always throw out batteries if they have visible damage because the damage could cause a short circuit, which could in turn cause an explosion.

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DAVE: Flop, as you know, I’m a big fan. I chow down at your place regularly. You guys are so generous with your portions, I never leave hungry. But you are also very generous in the community. What kind of community things do you do?

FLOP: A lot of things. Donations, school, sports programs. We try to help people. When someone asks us for something reasonable, “no” is not in our vocabulary.

DAVE: What else do you want to tell our readers about your restaurant?

FLOP: Well, we’re at 105 Grant Ave. We serve breakfast, lunch and dinner. We’re open for breakfast at 7 and serve it through 4 o’clock pm along with lunch, dinner, whatever. Great food, great service and friendly atmosphere all day long. Family owed. I serve the same food to my family I serve to you. No one walks out hungry or dissatisfied. We also cater and deliver. And we’re open every day of the week.

DAVE: Anything else?

FLOP: Oh, I forgot to mention we have been in business for 23 years. Our sportsbar features many flat screen TV’s. We get nice, enthusiastic crowds hanging out and watching sporting events. And our live entertainment makes our “Thirsty Thursday’s” a great time.

DAVE: Gotcha, Thanks for your time, Flop.

FLOP: Don’t mention it. Now sit down and order some food. For Pizza, Seafood, Steak and Pasta, come on down to Kosta’s.

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