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Taking aim at Taser: Lawsuits target stun gun maker

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High on marijuana and LSD, Patrick Lee, 21, was kicked out of a Nashville, Tenn. nightclub in September 2005 after he began acting strangely and tried to get on stage.

Police who were called to the scene pepper-sprayed Lee and shocked him repeatedly with Tasers in a parking lot outside the nightclub.

He died two days later.

"The allegations are that my client got Tased up to 19 times, and we feel that was excessive and contributed to his death," said Tommy Overton, a Nashville solo attorney who is representing Lee's family in a civil lawsuit.

The case, which is expected to go to trial in a Tennessee state court early next year, is one of 37 claims pending against Taser International, the Scottsdale, Ariz. stun gun manufacturer.

In June, a California jury delivered the first product liability verdict ever against the company, awarding \$6.2 million to the family of Robert Heston, a methamphetamine user who died after being repeatedly Tased by police. (See "Taser to pay \$6.2M in police stun gun death," Lawyers USA, July 14, 2008. Search terms for Lawyers USA website: Rebello and Heston.)

Jurors cleared police of liability, but found that Taser International knew or should have known that its M26 model "electronic control device" was dangerous because prolonged exposure to the shocks poses a substantial risk of cardiac arrest.

The jury also found that the company failed to warn police of the risk, particularly when the device is used on individuals under the influence of drugs.

"They claim the thing doesn't kill," said John Burton, a solo attorney in Pasadena, Calif. and co-plaintiff's counsel in the case. "The problem with Taser [International] is they've mixed up their sales – which are very aggressive – with their safety and training.

"They've exaggerated the safety [of the device]," he said.

Taser has "consistently provided various marketing and advertising materials to police departments which present this position that their device is non-lethal," added Peter Williamson, Burton's co-counsel and a partner

at Williamson & Krauss in Tarzana, Calif. "[But] a jury has decided that it is lethal under certain circumstances."

Michael Brave, national litigation specialist for Taser International, said the company plans to appeal. And he defended the safety of the company's products.

"People have this bad phobia because they're afraid of electricity for whatever reason," Brave said. "The biggest thing is to do an 'ignoranceectomy' on as many people as possible. First, they have to be open-minded enough to listen. Secondly, [we need] to point out to them the facts, the medicine, the science."

Warning needed?

David Prince, a professor at William Mitchell College of Law in St. Paul, Minn., said a significant reason Taser was found liable was its failure to warn police departments that death might result from prolonged use of the device on a person.

"I think that Taser would be wise to start warning about this risk," Prince said. "There's a good argument, I think, that there is nothing wrong with this product's design. It does what it's supposed to do and a [usually] non-lethal weapon seems to have a lot of value to offset the risks it presents."

He added, however, "Those risks must be warned about if they are reasonably apparent to the manufacturer or the product is defective due to a failure to warn."

"People are getting killed, and I think the public needs to be aware that these products are not safe," Overton commented. "They potentially can be safe. They potentially save lives if the proper research and training is done. But at this time, we just feel like it's not, especially when it comes to extended applications of the gun more than one or two times."

Williamson agreed.

"I think there should be a blanket warning saying it's potentially lethal if it's over-used," he said.

The company's most recent model, the X26, is an electronic immobilization device powered by two three-volt batteries that fires two darts attached to wires. When the darts strike a person, a five-second charge delivers a peak shock of about 1,200 volts. The company's literature states that the maximum current output from a wall outlet is about 4,000 times higher in current potential than a Taser.

Brave dismissed suggestions that the company should issue warnings about multiple firings of its devices.

"Do baton manufacturers put out how many times someone should be batoned? Do pepper-spray manufacturers put out how many times you should pepper spray someone? Do firearms manufacturers tell you how many shots to fire?" he asked. "It's ludicrous to do this."

But concerns are growing about the widespread use of Tasers, particularly repeated use while restraining individuals under the influence of drugs or alcohol.

In the past five years, stun guns have become the non-lethal weapon of choice for police departments throughout the country. An interim report released in late June by the Justice Department indicated that 11,500

law enforcement agencies have stun guns.

Amnesty International USA claims that more than 275 people hit by stun guns had died over a six-year period as of September 2007.

The Justice Department study found no conclusive medical evidence indicating a high risk of serious injury or death from Tasers. But the report also noted that many of the deaths were associated with continuous or repeated stun-gun discharges. The panel advised police to exercise caution in firing extended electric shocks.

"Definitely, extended applications are very unsafe," Overton said. "And I feel that more research needs to be done, because at the present time the product is not a safe product, and people are getting killed."

Police departments dispute that stun guns are the problem. Instead, they cite a condition called "excited delirium" as the cause of death in Taser cases. The Justice Department report describes "excited delirium" as a syndrome characterized by psychosis and agitation that may be caused by several underlying conditions. It is frequently associated with combativeness and elevated body temperature, and in some cases has a high risk of mortality.

While several plaintiffs' lawyers suggested that "excited delirium" is not a real medical condition, Brave said it has been recognized in medical literature for centuries. ([Click here](#) for a related story,)

Aggressive defense

Taser International takes a scorched-earth approach to litigation, vowing to defend itself against all personal injury and wrongful death suits.

Its press releases boast that 70 wrongful death or injury lawsuits have been dismissed or resulted in judgments in the company's favor.

But Burton said the company is exaggerating its record by including confidential settlements reached with police officers injured during training.

"What Taser has done is create a whole bunch of propaganda about their court successes," he claimed.

So far, the company has won one jury verdict involving an in-custody death. In 2006, a California jury found Taser International not liable for the death of Eduardo Alvarado, a Los Angeles man who died in custody after being hit with a Taser.

Brave said the company lists the outcome of all litigation in its Securities and Exchange Commission filings.

Regardless of its scorecard, there's no question the company takes an aggressive approach in court, both defensively and offensively.

In a suit filed in 2006, Taser International obtained a court order directing a medical examiner in Ohio to remove any reference to a Taser device as a factor in three deaths. "They're now bringing lawsuits against localities to have causes of death changed after violent altercations with arrestees in which Tasers were used," said Eric Balaban, Washington, D.C.-based senior staff counsel with ACLU's National Prison Project.

But buoyed by the success of the *Heston* verdict, plaintiffs' lawyers are mounting their own aggressive litigation front against Taser.

Since the verdict, Burton, a solo attorney in Pasadena, Calif., has been receiving calls on a daily basis from potential clients and attorneys in other parts of the country who are considering filing similar suits.

Burton and Williamson are already involved in another case, filed by the family of Michael Rosa, a Seaside, Calif. man who died in August 2004 after being Tasered by police on a hillside near his home.

"We're hoping the culture is going to shift to where police departments are going to take a more careful look at this device, and certainly prevent the kind of situation in the *Heston* case, where Mr. Heston was subjected to 25 different charges," Williamson said.

Staff writer Dick Dahl contributed to this article.

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 **Email Charly at: c-d-miller@neb.rr.com**

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