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Deep Pocket Jurisprudence: Where Tort Law Should Draw the Line

Shook, Hardy & Bacon Partner [Victor Schwartz](#) has authored an article for the Washington Legal Foundation's *Legal Backgrounder* documenting cases in which courts imposed liability on innocent parties that could better afford to pay than those truly at fault. "Some common-law judges may place sympathy over equal justice under the law and stretch legal doctrines to allow a victim to recover from a 'deep pocket' that did not wrongfully cause harm," Schwartz says in "[Deep Pocket Jurisprudence: Where Tort Law Should Draw the Line.](#)"

Schwartz explores four misguided justifications plaintiffs, and some courts, use when applying "deep pocket jurisprudence":

Innovator Liability. Some courts impose liability on the creator of a product despite that the allegations stemmed from the use of another company's version of the innovator's original product, such as a pharmaceutical company held liable for a generic form of its drug.

Public Nuisance. Municipalities have argued that companies should be held liable for the actions customers take after purchasing the products, such as finding a company responsible for the effects of its customers' improper disposal.

Independent Contractor Liability. Some courts have sought to expand liability to those that hire independent contractors, finding them liable for torts committed by the contractors despite established tort law dictating the opposite.

Crashworthiness Doctrine. Automakers may be subject to liability if a court finds a car to be "unreasonably dangerous"

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in a collision that is the fault of a driver, such as if another driver strikes the car at such an extreme speed that the collision causes a gas explosion.

"Those who support a fair and balanced civil justice system can positively use this knowledge to identify other instances of such unprincipled burden-shifting and devise opposition strategies," Schwartz concludes. He recommends that organizations fight encroaching liability by providing *amicus curiae* briefs to courts considering deep pocket jurisprudence issues as well as seeking reform in state legislatures to overrule particularly egregious decisions.

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