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## How COVID Boosted Tricky Case To a \$2.3M Verdict in Midstate Pa.

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**T**he lawsuit brought by a man injured in a roll-over lawn mower accident against the company that sold him the machine had some liability problems.

To begin with there was the fact that he'd been riding on his own severely sloped yard when the accident happened. Also, the mower he had been sold was significantly smaller than the one he'd used previously, and, to top things off, there was a label on the mower that indicated the device became unstable on severely hilly terrain.

Plaintiffs lawyer James Waldenberger of Kline & Specter said he had concerns about bringing a lawn mower liability case before a central Pennsylvania jury, thinking comparative negligence could be a major hurdle. But, after Waldenberger stressed the theme of accepting responsibility—and leveraged some events that transpired during the trial as a result of the COVID-19 pandemic—a



**WALDENBERGER**

Lycoming County jury Sept. 4 awarded his clients, Harold and Veronica Getting, \$2.3 million, finding them only 15% liable for the injuries.

“We went in there accepting responsibility and the defense, having people that weren't truthful and making ridiculous arguments and then leaving—and frankly not accepting any responsibility during the trial ... I think it definitely influenced the jury,” Waldenberger said.

The case stems from allegations that Williamsport home goods leasing store Mark Sales and Leasing was negligent for repeatedly recommending Harold Getting rent a mower that was smaller than the one he previously owned and also did not use stabilizing weights.

*Verdict continues on 11*

## Verdict

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According to court documents, Getting, a 74-year-old retired veteran, asked a salesman several times if the mower would be appropriate for his yard given that it is sloped, and the salesman repeatedly said it would be. The salesman also dropped off the machine and saw the Gettings' yard for himself, but continued recommending the smaller mower. The plaintiffs also alleged that the defendants never gave Getting a manual that would have notified him the mower is unstable at slopes greater than 12 degrees.

A few days after the mower was delivered, Getting began mowing his lawn, and the device eventually tipped over, causing the blade to sever Getting's big toe and a portion of his foot. As a result of the amputation, Getting contended that he suffered from chronic pain in his

foot and has limited ability to walk or negotiate stairs.

In court proceedings, the defendants argued that Getting was liable for the injuries, as he was aware of the size of the mower and that a label on the side of the mower said it was unsafe on steeper slopes. However, according to Waldenberger, he started out the trial telling jurors his client was somewhat responsible, but that Mark Sales and Leasing and the salesman bore the lion's share of fault.

Those arguments, however, were bolstered midway through trial when, according to Waldenberger, a juror notified the court that someone the juror lived with had spent a significant amount of time with someone who had tested positive for COVID-19. After consulting with the attorneys, the judge presiding over the case dismissed the juror and notified the parties and the rest of the jury.

Although the remaining jurors stayed on, Waldenberger said that the owner of the defendant company decided not to continue attending the trial, citing health concerns.

According to Waldenberger, the defendant's decision came soon after he had taken the stand, where, Waldenberger said, he had not performed well.

Waldenberger said he took the position that the owner had not decided to stop attending the trial over health concerns, but rather had done so because he was continuing to refuse to take responsibility for the incident underlying the case. Waldenberger said the judge gave him leave to tell the jury as much during his closing argument.

“He lied and then he left,” Waldenberger said he told the eight-member jury during his closings. “My view of it was that he cut and run and didn't care about the case and the trial.”

Waldenberger said he did not speak with the jury afterward to get a sense of whether that particular line of argument swayed their decisions, but he said that, in addition to raising other credibility issues—such as raising the criminal history of the salesman and poking holes in a story from the owner that

the Gettings had come into the store briefly the day before and he had been recommended a larger mower—the jury ended up largely siding with the plaintiffs.

After five days of trial and 90 minutes of deliberation, the jury awarded Harold Getting \$1.5 million in pain and suffering and \$300,000 in disfigurement, as well as \$500,000 to Veronica Getting for loss of consortium. The jury also found the defendants 85% at fault.

“When you're going into court and asking to award people money, you've got to be straight with all aspects of the case, and particularly whether your guy has any responsibility,” Waldenberger said.

Lycoming County Court of Common Pleas Judge Eric Linhardt presided over the trial.

Wilkes-Barre attorney Richard Polachek represented the defendants. Polachek did not return a call for comment Monday.

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