



BY C. Gibson Vance

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# Why We Do What We Do

**O**n a hot and humid summer day in south Alabama, Durwood Spivey, a 64-year-old retired farmer, died alone in a field. The tractor he was driving had rolled over as he moved up a slight incline, and Spivey lay pinned underneath, lying on a deadly anthill.

It was 1993. The tractor wasn't equipped with a roll bar or seat belt, although they had been available for decades. Spivey's family sued the manufacturer, Kubota Tractor Co., for wrongful death. Two talented attorneys who later became my law partners, Jere Beasley and Greg Allen, represented the Spivey family.

Discovery revealed that Kubota knew the tractor was unsafe in rollovers and had calculated that it was less costly to risk a jury's award of punitive damages than to improve the product's safety. Early in the trial, the defendant made a substantial offer to settle the case, as long as the family would agree to complete confidentiality. That meant a sealed record and return of all damaging company documents, as well as total silence from the family.

Dixie Merle Spivey, Durwood's widow, rejected the offer because of the confidentiality demands. This brave woman, who had lost her husband and the father of her children because Kubota had put profits over safety, was willing to refuse the company's offer of compensation. She believed it was more important to tell the public about the company's harmful actions. Her children agreed.

The defendant eventually waived

the confidentiality requirement. Today, Kubota tells the world that it has been the leader in providing rollover protection on tractors. In my opinion, that is a direct result of the courage of the Spivey family in taking on a corporate giant and holding the company fully responsible for its actions.

## Profiles in Courage

Like the Spiveys, countless families have endured unnecessary suffering because corporations chose to put harmful products on the market. But because of people like Dixie who stand up to powerful corporate interests, many others have been spared her husband's fate.

We, as plaintiff lawyers, are privileged to represent these folks—our files are filled with their names. These are just a few:

**David Larsen.** David's landmark case in the 1960s, *Larsen v. General Motors Corp.*, led to court rulings that today hold automakers to a higher crashworthiness standard. He suffered a severe head injury in a head-on collision because of a design defect in his Chevrolet Corvair's steering wheel mechanism.

**Diana Levine.** Diana, a professional musician, lost her hand and half her forearm to amputation due to the improper administration of Wyeth's antinausea drug Phenergan. Wyeth had failed to warn medical providers about the dangers of giving the drug through a push IV.

When Diana filed suit, Wyeth claimed her lawsuit was preempted because the FDA had approved the drug's label. Diana's case, *Wyeth v. Levine*, went to

the Supreme Court, which issued a landmark decision holding that federal regulatory approval of a drug's label does not shield the drug's manufacturer from state law personal injury claims.

**Jean Bookout.** Jean was driving her friend Barbara Schwarz in a 2005 Toyota Camry when she tried to exit an Oklahoma highway and suddenly realized the car wouldn't stop. Jean grabbed the parking brake, leaving skid marks as her car shot down the ramp, crossed a road at the bottom, and slammed into an embankment.

Barbara died of her injuries. Jean spent two months in the hospital with severe neck and back injuries.

Last fall, Toyota announced the largest automobile recall in history in response to similar reports of sudden unintended acceleration. Documents discovered by plaintiffs in products liability lawsuits, like the one Jean has filed, are already revealing that the company knew of the problem long before it took any action. (For more on the Toyota litigation, see *Taking on Toyota* on page 18.)

I'm proud to represent people like Dixie, David, Diana, and Jean. The courage they show in standing up to companies that choose profits over the health and safety of consumers is awe-inspiring. It is why we do what we do.

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