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## Cutting a swath in lawnmower accident suits

By Nora Lockwood Toohar  
Staff writer

In April 2004, 4-year-old Justin Simmons was playing at the southwestern Virginia home of his day care providers, Roberta and Orvil Reedy.

When Roberta stepped inside for a few minutes to change the diaper of his younger brother, Justin wandered behind the rider mower being driven in the yard by Orvil.

The mower rolled backward on a slope, its blades still spinning, and Justin was killed.

Two years later, a Virginia jury awarded \$2 million in damages to Justin's family after determining that the mower's manufacturer, MTD Products, was responsible for his death.

MTD has asked the trial judge to set aside the verdict.

Both sides are still awaiting a ruling.

Each spring and summer, the number of lawnmower accidents spikes, as weekend lawn warriors fuel up their machines and head outside.

An estimated 9,400 children are injured each year. Many of the accidents result in amputations of legs, hands, fingers, feet and toes. Experts say that the most serious accidents occur when operators back up rider mowers with the mower blades engaged and run over small children they can't see.

According to the American Academy of Pediatrics, backover accidents alone account for 560 injuries to children each year.

"The lawnmower industry has known for years - because there have

*Lawnmowers: Backover injuries are particularly lethal.* Continued on page 28

## Local immigration ordinances struck down



# Plaintiffs push for 'no-mow-in-reverse' feature

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been a number of studies -- that there was a real problem with backovers of riding mowers," said P. Brent Brown, a solo personal injury lawyer in Salem, Va., who represented the Simmons family.

"These backover cases are particularly lethal in terms of injury and death for young children," he said.

In 2003, the lawn mower industry adopted a voluntary industry safety standard requiring new rider mowers to have a "no-mow-in-reverse feature" to prevent the mower from backing up with powered blades.

But the safety standard allows manufacturers to install a device that overrides that feature.

David Hodge, a personal injury lawyer with Pittman, Dutton, Kirby & Hellums in Birmingham, Ala., said the override device defeats the purpose of the no-mow-in-reverse system.

**"The rate of injury is really scary. The overall rate of all types of injuries for both adults and children is 2.6 injuries per 1,000 ride-on mowers."**

**— David Hodge**

"The rate of injury is really scary," he said. "The overall rate of all types of injuries for both adults and children is 2.6 injuries per 1,000 ride-on mowers. That's very high for a product used seasonally and usually just twice a month."

Hodge is currently representing the family of a young boy who was severely injured when he came up behind a rider mower being driven by his mother.

#### Safety features 'not adequate'

Backover accidents could easily be avoided, several plaintiffs' lawyers said, if mower manufacturers installed more effective no-mow-in-reverse devices and made it more difficult for operators to override the devices.

In the Simmons case, the mower was equipped with a no-mow-in-reverse device, but it was not effective on hilly ground, according to Brown.

"The problem in this case is that the operator was going uphill, and there was a little bit of gear slippage, so he [Orvil Reedy] decided to back it down the hill," Brown said.

To do this, Reedy disengaged the clutch, bypassing the no-mow-in-reverse safety feature.

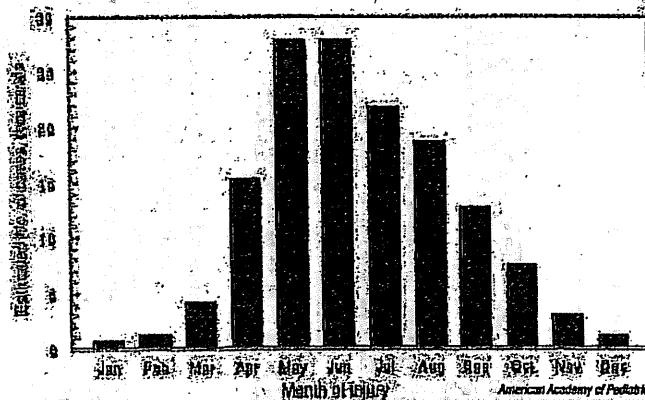
"What we maintained, and the jury agreed with, is that the no-mow-in-reverse [feature] that was effective on flat ground should be effective on hilly ground also," Brown said. "It's not a safe mower in the Roanoke Valley or any of the hilly areas near here, and that's where they sold it."

A recent study by the American Academy of Pediatrics found that the rate of lawn-mower related injuries to children remained constant from 1990 through 2004, and concluded: "[C]urrent safety features on these products are not adequate to prevent lawn mower-related injuries."

Most override switches are located on the front control of the mower. The academy recommended that manufacturers locate the override switches on either the



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Estimated number of children with lawn mower-related injuries according to month of occurrence: United States, 1990-2004.

posterior wheel well or behind the seat, which would force the operator to look behind the mower before disengaging the no-mow-in-reverse feature.

#### Mixed results

Several product liability cases in state court alleging defective design of rider mow-

ers have produced verdicts in favor of plaintiffs. But they have been less successful in federal courts.

A U.S. District Court in Maryland ruled last month that Deere & Co. was not liable for a rider-mower accident that resulted in the amputation of a child's foot.

A 4-year-old boy's left leg was mangled

by a lawn tractor when his mother did not see him and backed over him with the cutting blades engaged.

The mother sued Deere & Co., claiming that the tractor contained a design defect because it did not include a "no-mow-in-reverse" safety feature. She also claimed the warnings in the user manual and on the tractor were inadequate.

But the court disagreed.

"The strong warnings given by the manufacturer to keep small children out of the area entirely during the tractor's use no doubt contemplates the unfortunate reality that some children are so small, and that some small set of operators will possibly overlook them, that the risk of injury from permitting them to remain near the tractor will be realized. A 'prudent operator' warning would add little, if anything to the store of information provided to the consumer." (*Clayton v. Deere & Co.*, No. AMD 05-3377. See "Tractor manufacturer not liable for child's injury," *Lawyers USA*, July 30, 2007. Search words for *Lawyers USA Archives*: Clayton and Deere.)

A U.S. District Court in Oklahoma issued a similar ruling in 2006 (*Britton v. Electrolux Home Products*, No. CIV-05-1322-F). The court cited a decision from the 10th Circuit, which affirmed a grant of summary judgment to Sears, Roebuck and Co. on a defective design claim based on the absence of a no-mow-in-reverse system (*Brown v. Sears, Roebuck & Co.*, 328 F.3d 1274 (2003)).

#### Still a danger

Despite the mixed results in courts, several plaintiffs' lawyers said they will continue to press rider mower product liability claims in the hopes of forcing the industry to improve safety features.

Richard Ruohonen, a personal injury lawyer with Pritzker Ruohonen and Associates in Minneapolis, Minn., is representing a family whose 8-year-old daughter was severely injured in a backover accident on a farm two years ago. The girl's father was using the farm owner's utility tractor to mow around the trailer where he lived with his family. The girl came up behind him and was caught in the mower blades.

One of her legs had to be amputated.

"The guy just didn't hear his daughter come up behind him, and he backs up and runs her over," Ruohonen said.

The tractor was only slightly larger than a residential riding mower, but because it was considered a "utility tractor" the voluntary safety standard didn't apply.

Ruohonen said the manufacturer contends that the tractor was intended only for commercial uses. But this kind of mower is routinely used to mow "school yards and parks and everywhere you'd expect to see kids," he said.

The case is expected to go to trial sometime next year.

Rick Maney, a personal injury lawyer with Maney and Gordon in Tampa who settled a mower backover case several years ago, said backover accidents remain a major safety issue.

"The no-mow-in-reverse feature "is really something that shouldn't be overridden," he said.

Bill Harley, president of the Outdoor Power Equipment Institute, a trade group in Alexandria, Va., did not return phone calls seeking comment.

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