



## And The Defense Wins

Published 5-11-11 by DRI

Joseph G. Glass



DRI member [Joseph G. Glass](#), a partner at **Duplass, Zwain, Bourgeois, Pfister & Weinstock** in New Orleans, obtained a defense verdict in favor of American Honda Motor Co., Inc. The claim against Honda was tried before a jury in the United States District Court for the Eastern District of Louisiana located in New Orleans.

Franklin G. Shaw, a trial lawyer, purchased a Honda generator for use at his home following Hurricane Katrina. Three years later during a snow storm, Mr. Shaw lost power at his St. Tammany Parish home. Mr. Shaw positioned the portable generator exhaust within four inches of the cedar wood siding of his garage while attempting to keep the generator out of the elements, in compliance with one of the on-product warnings. Thereafter, a fire destroyed the home and contents (including irreplaceable family heirlooms) and killed a pet cat while Mr. Shaw, his wife and most of his children watched nearby.

At trial, the plaintiffs argued that Honda failed to provide an adequate warning, asserting that it is not obvious that the exhaust gas from a generator can ignite wood in freezing temperatures. Further, the plaintiffs argued that it is not reasonable to expect a consumer to remember every warning in every owner's manual for every product used by the consumer. The plaintiffs argued that the fire hazards posed by the hot exhaust had much more severe consequences than hazards identified by some of the actual on-product warnings. Thus, Honda should have included the owner's manual fire warnings on the generator, along with, or in place of, the other on-product warnings. If Honda had done so, the plaintiffs argued, Mr. Shaw would have altered his behavior on December 11, 2008, and the fire would not have occurred.

Contrarily, Honda established that Mr. Shaw violated many of the on-generator warnings at various times. Honda showed Mr. Shaw violated the on-product warnings within days of reading the owner's manual warnings following Hurricane Katrina. Honda showed that on December 11, 2008, Mr. Shaw again violated many of the on-product warnings. Thus, the addition of another on-product fire warning would not have altered Mr. Shaw's behavior on the date of the fire. Regardless, Honda argued that the hazard was open and obvious, and that the generator was not in a reasonably anticipated use at the time of the fire.

The seven-member jury deliberated less than one hour before returning a unanimous verdict in favor of Honda.

**To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit [www.dri.org](http://www.dri.org).**