Grandma’s Boy
One of the most intriguing questions posed in class, in my opinion, has been: who pays damages when the party mainly liable is not a party to the lawsuit? The question arises from a discussion of unintentional torts, specifically the tort of negligence. 

Negligence is a fairly common occurrence in the study of business or law. In this paper, I will discuss another incident involving claims of negligence. The article “MI Court of Appeals rules partially at-fault pharmacy liable for entire damage award,” from the Michigan Lawyers Weekly magazine (accessed online), covers the story of a pharmacist who gives a customer a much stronger prescription than the doctor prescribed. As a result, the patient, a young boy, ended up with major burns on his legs. The boy’s legal guardians sued the pharmacy and the pharmacist, but not the grandmother. The defendants were found to be 20% at-fault and named a non-party (the grandmother) to be 80% at-fault. The questions were then: who pays for the boy’s damages? Does the boy only receive 20 percent compensation, or should the pharmacy pay all the damages?

First, the facts must be analyzed in the case. The child, who was living with his grandmother at the time, had a skin disease called Psoriasis. The doctor prescribed a .1% ointment to rub on the affected areas; then the boy was to sit under ultraviolet light for a set amount of time. When the grandmother went to pick up the prescription, the pharmacist found her insurance would not cover the .1% solution. The pharmacist phoned the doctor’s office, an employee told him it would be alright to give the woman a 1% solution instead; she could then come to the doctor’s office where he would dilute the solution to a proper strength for use. The court named a non-party to the lawsuit mostly at fault for the damages. The grandmother was the non-party at fault. She failed to take the medication back to the doctor to have it diluted, and allowed the 10 year old boy to apply the medicine himself, and allegedly he remained underneath the UV light for too long. He received severe burns on both of his legs and was in the hospital for some time.

The boy’s legal guardians brought suit upon the pharmacist. The case went to the Michigan Court of Appeals. First, there is the unintentional tort of negligence on behalf of the pharmacist. As a professional, he should be held to a higher standard duty of care.
than most people. He is supposed to have a certain level of knowledge and expertise in
the field of medicines, thus one can conclude that he must have known that a 1% solution
could be dangerous for the boy. There are three major things the pharmacist could have
done to act in a more reasonable manner of care. Some sort of positive knowledge that
the grandmother would, in fact, follow his instructions and take the medicine to the
doctor to be diluted would have been a good way for the pharmacist to be sure. He also
could have even diluted the solution himself, assuming he was qualified to do so. To
ensure customer safety and comply with insurance policies, the pharmacy should require
the grandmother be supplied with the original .1% solution and make her pay full price.
By providing the grandmother with the dangerous medicine without taking one or more
of these precautionary measures, the pharmacist broke this duty of reasonable care to his
customer, creating a case for malpractice. A tort was committed, because the article states
the boy “suffered serious burns to his legs”, entitling him to some sort of compensation.

The “fuzzy” or gray area in this case is the causation part of the tort. According to
“The Legal and E-Commerce Environment Today,” negligence or malpractice must be
the actual cause of the injury to feas a tort. To analyze this element, we look to
causation-in-fact and proximate cause. Causation-in-fact requires use of the “but for” test.
So we say, “except for the pharmacist giving the stronger ointment, the burns on the
boy’s legs never would have happened.” This may very well be true, but the next item is
proximate cause. To determine if proximate cause exists, the decision needs to be made
could the pharmacist have foreseen the risk of the grandmother not following his
instructions to dilute the medicine.

I have a hard time deciding if the pharmacist acted reasonably or unreasonably in
providing the stronger medication. From a conservative point of view, I could easily say
that no reasonable person would foresee, or expect, a grandmother to allow unsupervised
use, by a 10 year old boy, of a medicine that is far too potent. Nevertheless, the
pharmacist should not have been switching prescriptions at his own discretion to sneak
through loopholes in health insurance plans. From a more liberal point of view, I can
understand that the pharmacist was only trying to help the grandmother by giving her a
medication supported by her insurance plan. I still believe he should have made a more
extensive effort to ensure the safety of the patient (for example: dilute the mixture...
himself or verify for sure that the medicine would be taken to the doctor). One can see why the 'reasonable person standard' can sometimes be hard to decipher!

Clearly, the grandmother is mostly at fault for this mishap. She has a reasonable duty of care to her grandson. By giving him the concentrated medicine and allowing the boy to self-medicate, she breeched that duty of care. The burns were clearly a result of this negligence. However obvious this tort may be, the grandmother is not the defendant in this case; the pharmacist is. The Michigan Court of Appeals ruled that even though a non-party was responsible for a majority of the damages, the defendant had to pay the full amount of damages sought by the plaintiffs. Joint and several liability clause in Michigan leaves the question "who pays when a non-party is at fault" open ended. This time, the courts chose to award the plaintiffs all of the damages they were seeking. The main reason the court decided this way is fairness. The boy's injuries make apparent that a tort was committed by both the defendant and the named non-party (grandma), but it would be completely unfair for the boy to receive only 20% compensation for such awful damages.

In conclusion, I agree with the court's decision to award all damages sought to the plaintiffs, but I do think it is important to note the distribution of fault. In addition to the parents bringing suit against the pharmacy, I believe the grandmother deserves to have some criminal charges filed against her. Even though the family may not want to go through litigation with their grandmother, she still needs punishment for endangering the child.
Product Liability in Aviation Accidents

Since the late 1970's, small aircraft companies have been the target of many product liability cases. Due to the inherent dangers of aviation, little room exists for error in manufacture or operation of aircraft. The Federal Aviation Administration (FAA) classifies the majority of small general aviation accidents as pilot error, which emphasizes the fact that today's aircraft are becoming increasingly more complex and more reliable, while the operation of these aircraft becomes more sophisticated. However, reliable aircraft are, many lawsuits have targeted the manufacturers rather than the pilots who may have caused the accidents, leading to extremely high costs of general aviation aircraft and a decrease in flight schools to train professional pilots.

In 1993, lawmakers in Kansas began working on a bill to address the increasing product liability claims against aircraft manufacturers. According to an article in the Congressional Quarterly Weekly Report, “The legislation would limit the ability of pilots and passengers involved in small-plane crashes to claim that their injuries were caused by design or manufacturing defects.” Opponents of the bill believe that the states should maintain control of the majority of product liability cases; however, supporters point out the differences in the nature of aviation versus other consumer products. It is also mentioned in the article that several business groups are pushing for broad based limits on product liability. These business groups cite that “the success of the airplane liability bill indicates that Congress sees the impact that liability costs have on an industry and
American competitiveness.” This bill would ultimately eliminate the liability of aircraft companies on aircraft that they produced after the aircraft reached a certain age.

Because of the longevity of successful aircraft designs, changes in brand new models are very minimal. A particular aircraft model can run for over 50 years, yet the brand new aircraft sell for four times the price of the exact same model that is 15 years old. To the layperson, this may seem reasonable when compared to car manufacturers; however, in the case of aircraft with minimal changes in models, it is entirely different. Aircraft are regulated by the FAA, a federal administration, that dictates how they are operated, inspected and maintained. These strict regulations promote the longevity of aircraft on the market. In the early 1980’s aircraft companies such as Cessna, which manufactures many training aircraft, were the target of several lawsuits. Many of the aircraft in question were 10-20 years old and the accidents were the result of training accidents. As a result, Cessna and other companies were held liable for the damages incurred. This liability sparked a jump in aircraft prices, cancellation of training aircraft production, and increased insurance premiums for rental aircraft at flight schools. Since most general aviation accidents are a result of pilot error, I believe the liability of aircraft manufacturers should be limited to airframe failures and other immediately critical flight situations.

Since the FAA regulates the inspection and maintenance of aircraft, I believe the maintenance personnel and inspectors should hold sole liability after an aircraft reaches a certain age. This would ultimately lower the cost of brand new aircraft and re-stimulate the growth of the flight training industry. This bill (S687) takes the first step in
protecting manufacturers when they no longer have direct contact with the maintenance or inspections of aircraft.