

# Report From Counsel

Fall 2012

## Auto Safety Improved by Lawsuits

When a person is hurt in a car accident by some problem or defect in a vehicle, he or she may bring a products liability lawsuit against the manufacturer. If the injured plaintiff can convince the jury that the manufacturer built a car that was unsafe and that a safe design existed, then the plaintiff can recover damages for the injuries he or she has suffered.

But products liability suits do far more than provide compensation for those who have been injured by dangerous or defective products: In the long run, they also make those products safer.

After having lost a lawsuit over some design defect in a car it has built, the manufacturer has two choices: It can ignore the problem and do nothing, or it can figure out how to solve the problem and make sure that it does not happen again. Enough large damages awards attributable to a problem it could have corrected will usually lead even the most stubborn manufacturer to change its designs for the better.

In addition to providing an incentive to manufacturers whose

overriding concern is their bottom line, lawsuits can also goad regulatory authorities into action, leading them to enact new standards that automobile manufacturers must meet with their new cars.

### Safer Gas Tanks

Perhaps the most famous example of litigation increasing vehicle safety involved the Ford Pinto. The gas tank on the Pinto was prone to exploding when the Pinto was hit from the rear. Ford knew this and knew how to fix the problem for just a few dollars per car, but it declined to do so because it calculated the cost of the fix would ex-

ceed the amount it would have to pay in damages to those killed and badly burned. This kind of gross calculation with human life and suffering did not sit well with juries, and, as it turned out, Ford guessed wrong.

So did GM, which did not redesign the “side saddle” gas tanks on some of its pickups, which were likely to burst into flames and even explode when hit from the side. Both companies paid many millions in actual and punitive damages. Even though Ford’s design had followed all applicable regulations at

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## We Appreciate You!

*Thank you for choosing our firm for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.*

*We also appreciate the trust that you have placed in us by referring your friends, family, and associates to us for legal services. Thanks!*

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# What Is My Case Worth?

When deciding whether to sue for an injury caused by another's carelessness, the first question people usually ask is "What is my case worth?" The answer depends on what kind of damages were caused by the other party's negligence.

Some damages that are recoverable are easy to see. If you are injured by someone else's negligence, you can recover the cost of

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repairing or replacing your car and the cost of your medical bills related to the accident. You can also recover any lost wages because of time you missed from work due to your injuries.

Other kinds of damages are harder to see. If you have been hurt, you can usually recover something for the "pain and suffering" caused by the injury. You can also recover for things that are likely to happen in the future because of the injury you have suffered. An example would be any permanent disfigurement or any ongoing impairment caused by the injury that is serious enough to permanently affect your ability to lead your life or earn a living.

If the lingering effects of your injury mean that you cannot perform the same work or play the same recreational sports you did

before being injured, this ongoing loss should be compensable, even though the amount of the loss is often hard to accurately estimate.

Your spouse and family may also be entitled to recover monetary damages because of the injury you suffered. If your injury prevents you from performing the "household services" you would have otherwise done, such as cleaning the house or mowing the lawn, these losses are worth something. So are the emotional dam-

ages to your relationship with your family caused by your injury. These damages are called a "loss of consortium."

In short, the damages that may be recovered in a negligence lawsuit include almost every kind of damage that is caused by the negligence. If you have any questions about whether you can recover for an injury you have suffered, please contact us. Every case is fact-specific, and we would be happy to discuss your situation with you.

## Gastric Bypass Dangers

An increasing number of obese Americans are having gastric bypass surgery. A gastric bypass is intended to reduce the amount of food ingested by the patient, thereby helping him or her lose weight. Unfortunately, with the increase in the number of gastric bypasses performed, there is an increase in people suffering from complications caused by the surgery.

Although commonly called "stomach stapling," gastric bypass operations can take a number of forms, including gastric banding, gastroplasty, and laparoscopic gastric bypass.

Complications range from the common and relatively less serious, such as gallstones, to the less common and far more serious, such as hernias, pneumonia, and blood clots. One potential complication from gastric bypass surgery is when the abdomen is accidentally perforated during the operation, which can cause infections and even death.

Although each case is different, there are some signs that you may have been the victim of malpractice in gastric bypass surgery. Excessive pain while recovering is an indication that the bypass did not go as planned. Serious side effects from a botched procedure include blood clots, embolisms, and kidney problems. If your doctor does not respond to your complaints or does not monitor your recovery, this may also indicate that he knows he made a mistake.

If you or someone you know has undergone an unsuccessful gastric bypass operation, contact us. We will look into the circumstances and help you determine if any malpractice has occurred.

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## Auto Safety

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the time, the lawsuits led to an industrywide change in how gas tanks are designed.

### Unibody Construction

There are many other examples of litigation leading to safer automobile design. A case in point is the 1974 crash by a police officer who lost control of his vehicle and slid into a pole at 25 miles per hour. The noncontinuous frame in his car was insufficient to withstand even this relatively low-speed side impact, the force of which caused the car to literally wrap itself around the pole, which ripped through the body of the car and crushed the officer, leaving him a quadriplegic.

Now cars have strong, unibody construction and continuous frames. Seat belts have been in cars for years, but lawsuits led to improved seat belts that did not have protruding buttons (which could be accidentally unlatched) and to three-point belts in back seats.

### Roof Support Pillars

Manufacturers' knowledge that roof support pillars were inadequate to support the roofs of vehicles involved in rollover collisions did not lead to the reinforcing of pillars and roofs; rather, lawsuits brought by people injured when their roofs were crushed led manufacturers to act.

### Airbags

The very manufacturers whose ads now brag about the number of airbags in their vehicles fought tooth and nail to prevent airbags from being made mandatory, despite their own data showing that airbags greatly decreased the

chance of car occupants' being killed in certain accidents. Again, lawsuits arguing that a car with airbags was a safer and a feasible design led to a change in both attitudes and regulations.

### Safer Tires

Nor are the cars themselves the only beneficiaries of increased safety attributable to litigation. A series of lawsuits led to large recalls of Firestone tires (mostly on Ford vehicles), the treads of which were prone to separate, causing the cars to crash. The problems causing the tread separation have now been addressed.

### Power Window Switches

When power windows became common, most had rocker-type switches that the user pushed down

on to close the window. The problem with this type of switch was that it was possible to lean on the switch by accident, thus raising the window.

In one three-month period in 2004, seven children died when they accidentally closed the window and were strangled. Manufacturers knew of the problem and knew it could be solved with switches the user had to pull up on to close the window, but it took a spate of lawsuits to "encourage" them to use the safer switches.

It is tempting to see a lawsuit as a way of getting back what has been taken from you, and this is certainly one of its important purposes. However, the effects of a lawsuit may echo far outside the courtroom in which it is decided and may save hundreds or thousands of lives.

## Home Repair Rip-Offs

As the weather gets warmer, many people hire contractors to work on their homes. While most contractors are reputable, some are not. Here are some clues that you are being subject to a home repair rip-off:

- The contractor pressures you to sign the contract or suggests that you not get other bids.
- The contractor's card and paperwork have only a post office box and no street address.
- The contractor stalls when you ask him or her for information about insurance, licenses, or bonding.
- The contractor's bid is much lower than any other bids.
- The contractor pressures you for a large down payment or to pay in cash.

The best plan to prevent being ripped off is to get multiple bids and ask around to find a reputable contractor who has worked in your area for a long time.

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# “Natural” Products May Not Be Natural

Without a doubt, “natural” is in. Many consumers, concerned about artificial additives and chemicals in things they and their children use, are seeking out food and household products that claim to be natural. The assumption on the part of consumers is that natural products are healthier or safer to use. Of course, with the strong demand for natural products, many companies are caught making claims that their products are natural when, in fact, they are not.

For example, Kraft, maker of a popular “all natural” juice drink, agreed to label changes after having been sued because the drink contained high-fructose corn syrup, a man-made ingredient. Another suit was filed against Kashi, which advertises itself as a maker of healthy, natural products, asserting that its foods contain ingredi-

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ents such as bromelain, sodium acid pyrophosphate, and various chemical extracts, things most people probably do not see as natural.

Other suits challenge advertising claims based on the supposedly natural qualities of certain foods coupled with assertions that they are good for the heart or support the immune system. These claims, which are almost never backed by science, misleadingly tout supposed benefits that the product may not actually provide and seek to capitalize on consumer beliefs that things that are natural are better for you.

A big part of the problem is the disconnect between consumer expectations about what a natural food or product is and what the law says it is. Neither the Food and Drug Administration nor the Federal Trade Commission, which regulate the advertising of various products, has defined the term “natural.” The fact that there is no legal definition that a food or product has to meet to be considered natural means that companies are able to take an expansive view of what “natural” means.

As long as consumer demand for natural products remains strong, these suits are likely to continue—at least until the government comes up with a workable definition for “natural” (as it did a few years ago for “organic”).

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*