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# Report From Counsel

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## ATVs: Accidents Waiting to Happen



Since they were introduced in the early 1970s, ATVs (all-terrain vehicles) have become increasingly popular. With this popularity comes an increasing number of accidents and injuries. According to the Consumer Product Safety Commission, as of 2012 over 100,000 ATV injuries were recorded and an estimated 25% of these injuries were to children younger than 16 years of age. Between 1982 and 2012, over 2,900 children died from ATV-related accidents.

### Design Problems

The reason ATVs are so dangerous has a lot to do with their design. They have no frame protecting the operator in the event of an accident. They ride on large, low-pressure tires that can have difficulty gripping the rough terrain over which they travel. They are stopped by hand-operated brakes, which can lack sufficient power and can cause ATVs to overturn as they stop.

ATVs have relatively large engines for their size and weight, which means they can travel as fast as 70 mph, often across broken, uneven terrain. Although ATVs are not designed for passengers, it is possible (even easy) for people to

jump on—people who will be injured if there is a crash. Earlier three-wheeled ATVs were less stable than the current four-wheeled versions, but even the four-wheeled models

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## Children and ATVs

Children are involved in over 45,000 ATV accidents every year. Amazingly, 95% of children between the ages of 12 and 15 who are injured on ATVs (and 65% of younger children) are injured or killed while riding a full-size ATV intended for an adult. These full-size machines are dangerous for children because they are too big and powerful for kids to control.

Alarmed by the number of injuries and deaths suffered by child ATV riders and passengers, neurologists who conducted a study of ATV accidents involving children issued a call for a number of com-

mon-sense guidelines, including banning children younger than 16 from riding ATVs and requiring all ATV riders to wear a helmet. Such common sense would reduce the profits of ATV manufacturers, who oppose any such regulation and continue to market ever more powerful ATVs to children.

Regulations or not, if parents allow their children to ride ATVs, they should insist that their children safely ride ATVs of an appropriate size while wearing a helmet. This is not a cure-all but should help reduce what is becoming an epidemic of ATV-related injuries.

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# Be Alert for Medication Errors

Rarely a year passes without the announcement of some new wonder drug to treat another disease. While more and better drugs are usually considered a good thing, the increase in the number of drugs available and in the number of drugs the average person takes has led to an explosion in the number of errors made in prescriptions.

unnecessary hospitalizations and hundreds of unnecessary deaths.

Interestingly, many consider the primary reason for the rise in errors to be financial—the doctors who write the prescriptions, the pharmacists who fill them, and the nurses who often administer them are pressured to serve more patients in less time, increasing profits, but also increasing the risk of an error. Others

point to the rise in the marketing of drugs directly to patients. Patients are more likely to go to their doctors and demand a prescription for some drug they saw on television, leading to more prescriptions and more chances for error.

Several solutions to this problem have been suggested. The first

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*Medication errors can occur in hospitals, nursing homes, and the corner drugstore.*

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These errors can take all kinds of forms and can occur in many different ways. Sometimes a drug other than the one prescribed is provided, or the correct drug is provided in the wrong dosage. Sometimes a drug is prescribed that interacts negatively with another drug the person is taking and the patient is not warned of the danger. Sometimes the mistake is made by the doctor prescribing the drug, sometimes by the pharmacist filling the prescription, sometimes by the person administering the prescribed drug. Mistakes can occur in hospitals, nursing homes, and the corner drugstore. Regardless of the many different ways that prescription problems can occur, they all share one thing: They can be serious and potentially deadly.

A recent study concluded that out of 3 billion prescriptions filled each year, *51.5 million of them contain some kind of error*. Although reliable statistics are hard to come by, these errors lead to thousands of

## Employer Responsible for Employee's Driving

A recent case involving the death of a child illustrates how complex even a seemingly straightforward lawsuit can be.

The case arose out of the tragic death of an 11-year-old girl who was waiting for her school bus. She was struck and killed by a truck driver making a turn. Evidence from the scene showed that truck's tire left the road and struck the girl.

She suffered severe head trauma and was declared dead on the scene. It was alleged that the truck driver left the road because he was going too fast in order to get to work on time.

The driver was charged with manslaughter and is awaiting trial. However, a suit was brought against the trucking company that employed him. Trucking is a regulated industry, and the family argued that the employer had not provided the driver with the training required by federal law. The employer responded by claiming that the driver had a valid license allowing him to drive a truck and, therefore, his training was adequate, even if it was incomplete.

The jury rejected this argument. Although it awarded the estate of the girl only a small amount of money for her suffering, it awarded a substantial amount to her parents for the loss of their daughter. The final verdict was over \$6,500,000.

Even a case that looks simple can have twists and turns. Many people would not assume that the trucker's employer could be liable for the trucker's bad driving. Don't try to navigate these issues by yourself. Get the help of a qualified lawyer.

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# Balance Your Checkbook

Although no one would argue that balancing your checkbook is a fun way to pass an evening, balancing it every month is important for several reasons.

## Bouncing Checks Is Expensive

Banks make much of their profit on bounced check charges and overdraft fees, and these charges and fees keep going up. They can also have a negative effect on your credit rating, making borrowing for everything from a house to a car to a vacation more expensive. Balancing your checkbook every month (and keeping good records of ATM withdrawals, fund transfers, etc.) helps make sure you don't write checks you can't cover, saving money.

## Mistakes Happen

Although not common, banks sometimes make mistakes on your statement. If you balance your checkbook every month, you can find these mistakes early, when they are easier to correct.

## Stop the Bad Guys

Finally, as much as we hate to think about it, fraud and identity theft are on the rise. While rare, it is possible for others to siphon off funds from your bank account without your knowledge. If you go over your records every month, you can discover this kind of problem before you lose too much of your hard-earned money.

## 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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# Insurance Company Hits

Insurance companies take in billions of dollars of premiums. But when the tables get turned and it's time for an insurance company to pay you a settlement because you were injured in an auto accident, the insurance company sings a different tune. An insurer will use any excuse to avoid paying a fair settlement, but some of the more common ones are listed below.

1. You were speeding and therefore could not avoid the accident (sung to the tune of *Hot Rod Lincoln* by Commander Cody).
2. Your car had defective equipment that caused the accident (sung to the tune of *Manic Mechanic* by ZZ Top).

3. You failed to use a turn signal (sung to the tune of *Turn! Turn! Turn!* by The Byrds).
4. You were not paying attention before the accident (sung to the tune of *Carefree Highway* by Gordon Lightfoot).
5. There were no witnesses to the accident except for the passengers in your car . . . and they don't count. (sung to the tune of *Can I Get a Witness?* by Marvin Gaye).

Don't let an insurance company give you the old song and dance routine and avoid paying you what you deserve. Call us today and we'll make the insurance company sing sweet music to your ears.

## Medication Errors

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is also the easiest: Slow down and make sure the prescription is correct. The second is to install more safeguards, such as having another person check the prescription. Another solution is to make sure that different drugs or different dosages don't look similar, reducing the chance that the wrong bottle will be used. Yet another suggested solution is to make sure that pills are always available in many dosages, which will prevent people from having to break their pills into halves or quarters, possibly exceeding the intended dosage.

Cases involving prescription errors, which can involve claims of negligence, medical malpractice, and products liability, and which require a great deal of expert testimony, can be very complicated to pursue. If you or someone you know has been injured due to a prescription error, call us.

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## ATV Accidents

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can be top-heavy and prone to serious rollover accidents. Even on roads and flat surfaces, ATVs can be unstable.

## Consent Decree

As the result of safety concerns expressed by the federal government, ATV manufacturers entered into a consent decree in 1988. In this decree, they agreed to halt production of three-wheeled ATVs, to provide safety training for new owners, to place warning labels on their products, and to make recommendations about what size of ATV is appropriate for different age groups.

Although this consent decree expired in 1998, ATV manufacturers have pledged to continue to follow most of its provisions. However, the government can no longer

force them to do so.

Despite these improvements, the number of injuries and deaths per year attributable to ATV accidents continues to rise. To some degree, this is because ATVs continue to become more popular, and more people ride them. However, another reason for the increase in injuries and deaths is that ATV makers are building more powerful ATVs and marketing them to younger and younger children.

The latest marketing gimmick is the so-called “transitional” ATV, one that is sized between the smaller ATVs intended for children and a full-sized adult ATV. ATV makers claim that these ATVs are more appropriate for the 14- to 15-year-old age group, but critics note that bigger ATVs with bigger engines undercut the messages conveyed by safety training and other warnings, increasing the likelihood of injuries.

In addition to making more powerful ATVs, ATV makers have fought any attempt to impose regulations on ATV ownership or use (such as age limits and mandatory helmet laws). With the expiration of the 1988 consent decree, it will take either new laws passed by Congress or new action by federal agencies (such as the Consumer Product Safety Commission) to force ATV manufacturers to pay more attention to safety. Neither of these outcomes appears likely to happen.

Sad to say, the only kind of regulation available to many is the “private” regulation that comes with lawsuits. Enough successful suits may convince ATV manufacturers that the cost of not planning for safety is just too high.

If you or someone you know has been injured or killed while riding an ATV, contact us so that we can help protect your legal rights.

*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.*