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Product LIABILITY

Have you or a loved one been injured as a result of a dangerous or defective product? Injury caused by a dangerous or defective product can be traumatic. Whether the injury suffered was caused by a design defect, a defect occurring during the product's manufacture, or improper instructions or warnings for product use, consumers have the right to take legal action against a company responsible for the product.

THE LAW

In general terms, the law requires that a product be reasonably safe. Product liability refers



to a product manufacturer's or seller's liability for placing a defective product on the market for consumer use or consumption. When a defective product causes injury, the injured person can recover compensation for these injuries if the product had been sold for use.

WHO IS RESPONSIBLE?

Liability for a defective product primarily lies with the company that represents itself as the manufacturer and may also lie with the manufacturer of component parts. Marketing of the product for improper uses or the failure to warn of foreseeable damages may also create product liability. Since many products are manufactured overseas, the chain of liability can be complicated. If the product is misused by the injured person and this misuse caused the injury, then the manufacturer is not liable. Also, if someone has changed the product in some substantial way and this change caused the injury, then the manufacturer is not liable.

TYPES OF PRODUCT LIABILITY DEFECTS

A product defect can occur in three ways: 1) designing, 2) manufacturing, and 3) marketing.

- Design defects are designed into a product before the product is manufactured, causing the product's design to be unsafe. An injured person can present evidence of cost-effective measures that could have prevented risk of injury.
- Manufacturing defects occur in the course of a product's assembly when the assembly does not conform to the designer's or the manufacturer's specifications. In other words, the product was not correctly put together or one of the component parts does not perform as expected or designed. Usually, the defective product must be available for inspection and testing to prove this defect.
- Marketing defects occur with improper labeling of products, insufficient instructions for use of the product, failure to warn the consumer of a product's hidden dangers, and overpromotions of the product's effectiveness. For instance, if the product manufacturer knows of risks of injury that cannot be designed out of the product, then the manufacturer is under a duty to warn of this risk.

Filing a product liability claim can be complex. Establishing legal fault requires the assistance of an attorney with knowledge in this area. Each state has its own laws that control the outcome of a product liability claim. **Brooks Law Office** is experienced in handling a wide range of product liability claims, including defective drugs such as Fen-Phen, Vioxx, and Prempro; defective medical devices such as ASR hip replacements; defectively marketed products such as those containing toxic properties; and defective machinery. **Gene Brooks** will research, gather, and analyze the facts of each case so he can determine and advise on the best course of action to protect the rights of the person injured by a defective product.



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Cyclists should look out...for other cyclists

Whether you are a casual bike rider or an avid cyclist, you are probably aware of the dangers presented by other vehicles and even pedestrians, but you should also be aware of other cyclists. Injuries sustained in a bike-on-bike collision can be very serious and even fatal.

In summer 2013, such a collision killed a 20-year-old Pasadena man. He was hit by another cyclist who was riding against the flow of traffic, or riding salmon, as it is called among cyclists. The victim sustained a serious head injury when his head hit the pavement. He was not wearing a helmet. Even so, the rider riding against traffic, which is illegal, could be held liable for the man's death.

Ride well with other cyclists

- Follow the rules of the road; bike with traffic.
- Pass on the left and not the right.
- Slow traffic should stay to the right.
- Ride single file for safety.
- Maintain a safe distance between you and other bikes.
- Wear a helmet.



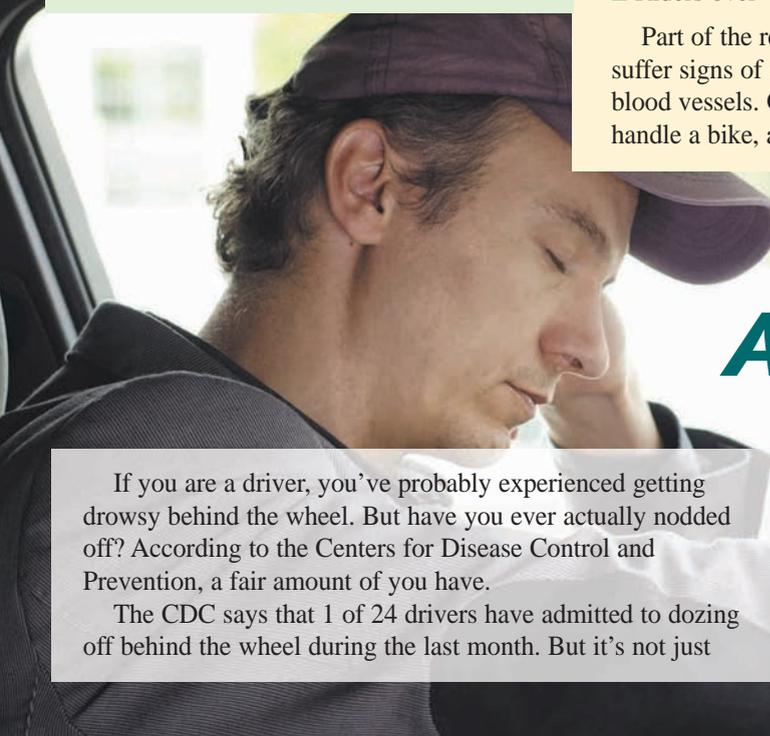
MOTORCYCLISTS OVER 40 at higher injury risk

Riding a motorcycle is risky. The freedom and the connection to the environment that the rider experiences comes at the price of increased risk of injury or death in an accident. Those over the age of 40 are at higher risk.

The over-40 crowd is the fastest-growing age group of motorcyclists. People over 40 tend to have more time and more money. For some, this translates into a bike. The journal *Injury Prevention* found that in comparison to younger age groups, those over 40 are three times more likely to suffer from serious injuries in an accident. A 2010 study by the University of Rochester Medical Center found that hospital stays were longer and chance of death higher for riders over 40. Other findings from the study include:

- Fractures are twice as common in riders over age 40 than younger bikers.
- 32 percent of injured riders over 40 are treated in the intensive care unit, compared with just 27 percent of riders under 40.
- Riders over 40 are more likely to experience complications, such as pneumonia, blood clots, and infections.
- Riders over 40 are up to twice as likely to die from less severe injuries.

Part of the reason for higher injury risk may be that older bikers may start to suffer signs of aging, such as delayed reaction time, declining vision, and thinner blood vessels. Other factors include overconfidence in the ability to ride and handle a bike, and riding larger bikes that are more prone to flip.



ASLEEP at the wheel

If you are a driver, you've probably experienced getting drowsy behind the wheel. But have you ever actually nodded off? According to the Centers for Disease Control and Prevention, a fair amount of you have.

The CDC says that 1 of 24 drivers have admitted to dozing off behind the wheel during the last month. But it's not just

falling asleep that can be deadly; the organization reports that driving drowsy is comparable to driving drunk. Next time you find yourself sleepy at the wheel, pull over and take a break.

If you or a loved one has been injured in an accident involving a drowsy driver or someone who has fallen asleep at the wheel, call our office to discuss your rights.

When animals **BITE**

A little girl's dream turned into a nightmare when she was bit during an encounter with an overeager dolphin in late 2012. The girl's injuries weren't serious, but it got many thinking: What responsibilities do zoos, aquariums, and other theme parks and facilities featuring animals have in protecting guests, and what are the responsibilities assumed by the guest when entering the facility or participating in an animal encounter?

Parks and zoos do have a duty to keep their guests safe, despite the inherent danger of the attractions. For example, guests at the dolphin encounter at SeaWorld are repeatedly told to keep trays of food hidden on the sloped edge of the dolphin pool. The 8-year-old in this example innocently held up her empty container—to show her mom that she was done—near the edge and a dolphin jumped for it, biting the girl.

The family said it had no plans to file suit, but if they would and could were topics of debate.

Here are some questions that a lawyer will explore when considering such a case:

Did the park demonstrate negligence by not providing reasonable care that contributed to or caused an injury? It could be argued that SeaWorld failed its duty to protect guests by not explaining why the food trays should be hidden from the dolphins. It's plausible that the girl may not have been as likely to forget to keep her tray on the ledge had she been told that she could get bitten. This would be weighed against the assumed risk taken by the guest. It's reasonable to assume that by participating in an up-close feeding encounter with an animal, one could be bitten.

PROVING emotional distress

Emotional distress is a tough concept to grasp. It affects everyone differently and it is hard to measure. You can't document it with an X-ray or other test. In fact, sometimes emotional distress is more prominent and longer-lasting than physical injuries. Here is how attorneys are able to show emotional distress:

Medical documentation: Sometimes people suffer from stress-related injuries such as ulcers or headaches. Medical records can be used to show such injuries. In addition, or in the absence of physical injuries, a letter from a physician or psychiatrist commenting on emotional well-being can go a long way toward supporting a claim of emotional distress.

Cause: When distress is caused by an extreme or unusual event—being mauled by a zoo animal or surviving a bombing, for example—it is easier to prove than an event like a car accident. Also, when you are physically harmed, proving emotional damage is easier than if you don't have a physical injury. In fact, in many cases mental distress awards are only allowed if physical harm is caused. Although in some cases, libel for example, emotional damages can be won if the distress caused is severe.

Intensity: It's easier to show emotional distress when it's extremely evident and intense.



Scooters, skates & skateboards

Seeing kids out enjoying the warmer weather is one of the best parts of the spring. Of course when you combine kids and wheels, accidents are bound to happen. Bikes aren't the only things on wheels that send kids to the ER when the weather gets warm.



The United States Consumer Product Safety Commission estimates that about 15,000 people each year suffer head injuries on kick scooters

and about 18,500 suffer head injuries from skateboards. Most of those injured weren't wearing helmets. Thanks to public-service campaigns and state/local laws, many kids habitually wear a helmet when they get on a bike. They are much less likely to use a helmet when on a scooter or skateboard, or while inline or roller skating.

According to the Insurance Institute for Highway Safety, 95 percent of fatalities attributed to bicycles, skates, skateboards, and scooters happen to people who aren't wearing a helmet.

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WHIPLASH: What is it?

Whiplash is almost a stereotype in accident claims. Many old TV shows and movies portrayed someone faking a neck injury who was ultimately tricked into revealing the truth when a lawyer purposely dropped a heavy object to prod them to suddenly turn their head. But in reality, whiplash can be serious.

Whiplash is caused by an abrupt, whip-like jerking of the head back and forth. According to WebMD, "In whiplash, the intervertebral joints (located between vertebrae), discs, ligaments, cervical muscles, and nerve roots may become

damaged." Because damage to soft tissue is hard to diagnose, those with whiplash may need a CT scan or MRI for diagnosis.

If you experience neck pain or stiffness, dizziness, headaches, or back pain after an accident, see a physician right away. Sometimes symptoms occur days after an accident and can seem to go away and reappear. These days, whiplash is treated with physical therapy, not immobility and neck braces.

