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Legal Matters®

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The most overlooked injury in the U.S.

Did you know that thousands of people suffer concussions each year, and don't realize it – because the condition can be hard to diagnose, and because the symptoms often don't show up until long after the injury occurs?

As a result, many people don't connect their symptoms to their actual cause. And they fail to get proper medical treatment – or to seek compensation for the accident.

Concussions are traumatic brain injuries caused by a sudden blow to the head. They can result from sports and recreation activities, car and bicycle accidents, work-related injuries, slip-and-falls, and physical assaults.

Common symptoms include confusion, nausea, headaches, balance problems, dizziness, clumsiness, slurred speech, blurred vision, sluggishness, sensitivity to light and noise, ringing in the ears, behavioral or personality changes, concentration difficulties, and memory loss.

Repeated concussions can lead to a disease called “chronic traumatic encephalopathy,” which can result in drug or alcohol addiction, acts of violence, and suicide.

Unfortunately, doctors often misdiagnose concussions, especially if they don't see the patient immediately after an accident has occurred.



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If they don't know about a possible head trauma, they may believe the person's symptoms are the result of a neurological disorder, balance problems, depression, or ADHD.

As a result, if you or a loved one ever experiences a blow to the head, there are three steps you should take – even if you think that “it's nothing” and you feel okay at the time:

► Stop any strenuous activity, such as playing sports, immediately. Your brain needs time to rest.

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Governments can be sued for bad road conditions

Most auto accidents are the result of a careless driver. But sometimes, they're the result of poor road conditions ... and in certain cases, a local government may be financially responsible for the injury if it didn't maintain a safe road.

For instance, a truck in Nebraska spilled wet corn mash – which has the consistency of tapioca pudding



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– all over a highway. County authorities arrived and moved the spill into a ditch, using shovels, brooms and hoses.

But the next day, some of the mash made its way back onto the road. A driver named Kaelynn Kimminau, who was delivering newspapers, slid on the mash and hit a utility pole, seriously hurting herself.

So could Kaelynn sue the county for her injury?

The general rule in Nebraska is that a government isn't responsible for bad road conditions unless it knew about them and had time to fix them. So the county argued that it couldn't be sued, because it had no idea

that some of the corn mash has seeped back onto the highway.

But the Nebraska Supreme Court sided with Kaelynn. It said the county knew about the corn mash spill *the day before* – and if it did a careless job cleaning up the mess, such that the problem recurred, it could be liable for any injuries that resulted.

In another case, Karen Cotty joined other members of a local bicycle club on a 72-mile ride on public roads in upstate New York.

A local construction company had replaced the asphalt in a trench along the edge of one of the roads to make way for a water main conduit. There were supposed to be two layers of asphalt to bring the edge to the same level as the roadway, but only one level had been laid, leaving an unmarked inch-deep lip where the road and the edge met.

The cyclists, who were riding single-file, attempted a “hopping” maneuver to avoid the lip. But when the rider in front of Karen tried to hop the lip, he fell. Karen swerved to avoid him, and she fell too. She slid across the roadway and was hit by an oncoming car.

Karen sued the town. The town argued that the case should be thrown out because Karen had “assumed the risk” of being injured while cycling. It claimed that cycling was a sport with its own inherent dangers, and Karen was in the same position as a recreational baseball player who injured himself sliding into first base, or a skier who simply fell on a trail.

But a New York appeals court said the town could be liable anyway. It said the town might be right about skiers and ballplayers, but cycling on a public road is very different from mountain biking, where rough terrain is part of the fun. Bicyclists on a public road have a right to expect safe conditions, the court said.

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Infections are linked to hard-to-clean medical devices

A year ago, two patients died and several more suffered serious complications as a result of drug-resistant bacterial infections at a Los Angeles hospital. It turned out that an endoscope used at the hospital – a device to look inside a patient's digestive system – was designed in a way that made it difficult to clean properly before reusing. As a result, bacteria cells from one patient were being transferred to others.

It now appears that this is not an isolated problem. Both the Centers for Disease Control and the Food and Drug Administration have issued warnings that patients

may be vulnerable to outbreaks from contaminated medical instruments. And this is true not only for hospital patients, but also for outpatients at doctors' offices and clinics.

According to the Centers for Disease Control, a recent inspection of clinics in Washington state showed “inconsistencies and potential inadequacies” in the disinfection of reusable devices. And a community health center in Arizona recently had to warn patients to get tested for possible infections after discovering that some equipment hadn't been properly sterilized.

Manufacturer is sued for confusing safety instructions

You should always follow a manufacturer's safety instructions. If you get hurt because you didn't follow the instructions, you might not be able to be compensated for your injuries.

But you should always talk to a lawyer before you decide that you made a mistake and an accident was your fault. For instance, it might turn out that the instructions weren't clear enough to protect you.

In one recent Tennessee case, a man named King Bradley bought two new ratchet straps to secure his hunting treestand. He set up the stand, but waited several months to use it for hunting. When he did, he was injured when the straps broke.

Bradley sued the manufacturer of the straps.

The manufacturer had provided a warning that the straps should not be left out "in sunlight or

other weather when not in use," and "must be stored inside when not in use."

But a federal appeals court said Bradley could sue anyway, because this warning was vague and confusing. For instance, it wasn't clear whether "use" meant simply having the straps outside to support to stand, or actually using the stand for hunting.

In addition, the manufacturer didn't say anything about how quickly the straps could deteriorate if they were left outside, or what Bradley should do to check them for wear and tear.



Concussions are the most overlooked injury in the U.S.

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► Seek medical treatment right away. Find out if a concussion occurred, and if so, what you should do to begin healing.

► Make note of the time and circumstances of the accident. If you're going to seek compensation later, you'll need this information.

In one recent case, a high school student named Amy Dugan was struck by a ball during a field hockey game. The coach allegedly made no attempt to determine whether Amy had suffered a concussion, and kept Amy in the game – despite state regulations requiring that student athletes be removed from play right away in these circumstances, and prohibiting them from returning until they are cleared by a licensed trainer or medical professional.

Five days later, in another game, Amy hit her head in a collision, and again wasn't evaluated or removed from play.

Amy's parents sued the school, claiming that Amy's head trauma caused significant behavioral symptoms that "changed her life forever." And a Massachusetts court allowed the lawsuit to go forward.

There have been many similar lawsuits over football injuries, often based on the fact that a school used outdated safety equipment or didn't have enough trainers at practice.

In another case, an Illinois businessman named James Hausman won significant compensation after

he was struck by an automatic sliding door on a cruise ship. It turned out the cruise line knew about the malfunctioning door, and hadn't taken adequate steps to fix it. Hausman suffered severe post-concussive symptoms including fatigue, dizziness and social withdrawal, which seriously damaged his family and work life.

You should note that small children can suffer concussions, and these can be even harder to spot because very young children often can't fully communicate what they're feeling. After a serious fall or other blow to the head, it's critical to monitor a young child's behavior for any changes.

Senior citizens are also at significant risk of a concussion, because they can be prone to falls. Even worse, these injuries can be overlooked

because many people assume that the common symptoms of a concussion – such as memory problems, impaired thinking or movement, or trouble with vision or hearing – are simply signs of growing older. But the real cause could be a brain injury that resulted from a fall.



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Female contraceptive may have caused thousands of injuries

Essure is a contraceptive device that is inserted into a woman's fallopian tubes to create a physical barrier preventing conception.

Since it was introduced, thousands of women have come forward complaining that the device didn't work, resulting in unwanted pregnancies.



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In some cases, women have experienced ectopic pregnancies, where the egg fertilizes in the fallopian tube rather than moving to the uterus, putting the mother's life in danger.

Other women have reported having the device move to their abdomen, pain in their pelvic region, rashes, and perforation of their fallopian tubes.

The Food and Drug Administration has attributed five fetal deaths and four adult deaths to the use of Essure. Some users claim Essure's manufacturer knew of the side effects but didn't disclose them.

The FDA hasn't ordered a recall, but angry users are pressuring the authorities to act. Users who've suffered complications have created a Facebook group with nearly 25,000 members, and a bill is pending in Congress to remove Essure from the market.

Lawsuits against Essure's manufacturer are difficult, because Essure is a "Class III device." That means it went through a high level of scrutiny during the FDA approval process, and can't generally be the subject of a lawsuit. But a number of women are now going to court and claiming that the manufacturer committed fraud during the approval process, which could invalidate its "class III" status.
