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# Legal Matters®

## Slip-and-falls can cause serious consequences for the elderly

As the U.S. population ages, slip-and-falls among the elderly have become a major issue. More than 2.4 million people a year over the age of 65 suffer injuries in falls that are serious enough to require a visit to an emergency room, according to the Centers for Disease Control. That's double the number from just 10 years ago.

And during the past 10 years, more than 200,000 senior citizens died after falls. In fact, falls are now the leading cause of death among Americans over 65.

If you're a senior who has experienced a fall (or if you have an older family member who has fallen), it's wise to seek medical attention, and also to talk with an attorney – even if it initially seems like everything is okay.

When older people fall, the consequences aren't always immediately obvious. Sometimes it takes a while before the full effect of an injury is felt. Unless you've taken steps to document the circumstances of the fall, your



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ability to obtain legal compensation for the harm may disappear.

For instance, many falls result in a concussion or traumatic brain injury. You might be surprised to learn that more than 40% of all such injuries are caused by falls – that's more than are caused by auto accidents, sports inju-

ries, and criminal assaults put together.

But unless you see a doctor, a mild traumatic brain injury could go undiagnosed.

What's worse, the typical symptoms of a traumatic brain injury include memory problems, impaired thinking and movement,

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## CONSUMER SAFETY BRIEFS

### School may have been at fault for locker-room injury

A public school could be held responsible in court after a student who was horsing around in a locker room was pushed into a damaged locker with a rusty, jagged edge and was severely injured.

The school had known about the damaged locker for months, and also was well aware that students regularly engaged in horseplay in the locker room.



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Many governments have tried to protect themselves over the years from lawsuits like this one, by passing laws that say they can't be held responsible for the decisions their employees make about issues such as repairs and maintenance.

But in this case, the Connecticut Supreme Court said the school could be sued anyway. It said that while the school may have considerable leeway about making maintenance decisions in general, the danger posed by the broken locker may have been so great and so obvious that the school had no real choice in the matter, and it may have had a legal duty to fix it immediately.

### Family sues for sports accident in spite of signed 'release'

If you've ever entered a road race or played in a recreational sports league, you've probably signed a "release." This is a form in which you promise not to sue the league or event organizer for injuries you might suffer while participating.

While such releases are generally valid, you should know that they don't always prevent victims from being compensated for their injuries.

For instance, Richard Angelo was a 53-year-old athlete from the Boston area who registered for a triathlon in Burlington, Vermont. He signed a release promising not to sue if he were hurt.

The day of the race, Lake Champlain – the site of the swimming component – was unusually rough. The organizers decided to hold the race as scheduled anyway. Less than an hour into the race, Angelo, a physically fit father of two, had to be fished from the rolling waves by a rescue

boat. He was pronounced dead at a nearby hospital shortly afterward.

Angelo's widow sued the event organizer for negligently deciding to continue the race even though it knew about the dangerous water conditions.

The organizer argued that it couldn't be sued because of the release. But a Massachusetts court ruled that while Angelo had promised not to sue over any harm during the event, the lawsuit in this case was brought by Angelo's widow and his estate – and neither of them had signed a release or promised not to sue anyone.

### Health care providers can't divulge private information

A federal law called HIPAA requires anyone who has access to your medical records to keep them confidential – including doctors, nurses, hospitals, insurance companies, and pharmacies. People who violate the law can face penalties from the government.

Recently, though, some courts have also allowed the victims – people whose information was improperly disclosed – to sue for damages.

For instance, a Walgreens pharmacist named Audra Withers improperly accessed a patient's records and allegedly disclosed them to her husband. The patient, Abigail Hinchy, was the husband's ex-girlfriend, with whom he had a child. Withers apparently found information about whether Hinchy had a sexually transmitted disease and whether she stopped taking birth control pills shortly before becoming pregnant.

According to Hinchy, the husband threatened to reveal the information to her family unless she dropped her paternity suit, and eventually did tell several people, with the result that her father found out.

The Indiana Court of Appeals approved a jury award of more than \$1 million against Walgreens for the incident.

In another case, Emily Byrne specifically asked her gynecologist not to provide her personal medical information to a man she was involved with. But when the man's lawyers served the gynecology practice with a subpoena during a paternity suit, the practice handed over the records – without telling Byrne or informing the judge in the case.

The Connecticut Supreme Court said that Byrne could sue the medical practice for money damages for the breach of confidentiality.

## Restaurant responsible for auto accident on nearby road

Here's yet another case that shows that you should always have an attorney investigate any auto accident, and never just assume that the other driver is the only person who is at fault.

Joe Annocki was driving his motorcycle on the Pacific Coast Highway in Malibu, California, when he crashed into a car driven by Terry Turner. Turner was pulling out of the parking lot of a restaurant.

The highway had temporary dividers at that point, so patrons could only make a right turn out of the restaurant. Turner attempted to make a left turn, encountered the dividers (which weren't very visible from the restaurant driveway), and tried to back up, at which point Annocki was unable to avoid crashing into him.

Annocki's family members sued the restaurant. They claimed that the restaurant could easily have installed a "Right Turn Only" sign at the driveway, and that it was irresponsible not to do so because the restaurant owners knew the dividers were hard to see and

could have foreseen the danger of customers trying to make a left turn.

The California Court of Appeal sided with Annocki's family. It said the restaurant had a legal duty to take reasonable, inexpensive steps to protect its patrons and others where it could see they would be encountering a danger.

It didn't matter that the crash occurred on the highway and not on the restaurant's property.

Most people in the Annocki family's position wouldn't have realized that they might be able to collect additional compensation for their loss from the restaurant's insurance company. That's why it's always wise to talk to a lawyer about any injury.



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## Slip-and-falls can cause serious consequences for the elderly

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trouble with vision or hearing, and personality changes or depression. Many people attribute these problems in seniors to Alzheimer's disease, dementia, or simply "getting older."

And yet the real cause of the condition could be a brain injury that resulted from a slip-and-fall.

Another problem with falls is that they can cause subtle injuries or weaknesses that make a senior more likely to fall again in the future. Falls can lead to fractures of the spine, hip, forearm, leg, ankle, pelvis or hand, which can be highly debilitating and lead to a stint in a nursing home. Many older people never quite recover from a series of problems that begin with a fall.

And while most young people who recover physically from a fall are not left with any emotional scars, the same is not always true of seniors. Seniors who have a bad fall often develop a profound fear of falling again, which leads them to curtail a lot of

their activities. This can lead to depression as well as declining physical health.

So when an elderly person falls, it's wise to speak to an attorney and document the circumstances, so that if the person is injured or develops symptoms

later, it may be possible to obtain compensation.

In general, property owners have a legal duty to take reasonable steps to prevent circumstances that can lead to slip-and-falls, such as ice and snow accumulation, broken pavement, slippery floors, and the like.

In addition, businesses that cater to older people may need to take special steps to protect them – such as nursing homes, assisted living facilities, senior centers, medical supply stores, medical office buildings, pharmacies and hospitals. These businesses may need to take extra care to make sure stairways have handrails on each side, steps have safety treads, walkways are free of tripping hazards, and entrances and exits are unobstructed and easily accessible.



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## Millions of cars are being recalled for unsafe airbags

Millions of cars are being recalled due to the danger of unsafe airbags manufactured by Takata Corp.

The problem is that the airbags may explode with too much force in a crash, and shoot metal fragments into vehicle occupants. This type of malfunction has been responsible for more than 100 deaths and serious injuries.

The recall affects almost all major auto makers, including GM, Ford, Chrysler, Honda, Toyota, Mazda, Nissan, Subaru, Mitsubishi and BMW.

The New York Times has reported that Takata knew about the defect years before it notified federal regulators (although the company disputes this).

The problem seems to be more likely to occur with driver's-side airbags than with passenger airbags, and is

more likely to happen in areas with a lot of heat and humidity.

Initially, the National Highway Traffic Safety Administration called for airbag recalls only in Southern states, but it recently changed its mind and is asking for nationwide recalls.

So far, the agency is asking for recalls only of driver's-side airbags, but some manufacturers have been recalling passenger airbags as well.

A shortage of replacement airbags has meant frequent long delays in getting the problem fixed. Most manufacturers have been putting a priority on replacing driver's-side airbags in cars in warmer areas.

A list of affected car models can be found at <http://goo.gl/8PxAxP>. You can also see if your car is subject to a recall by entering its VIN number at <http://www.safercar.gov/Vehicle+Owners/vin-lookup-sites>.



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