



Dessausure Law Firm, P.A.

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# Injury Law Alert

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## Hiding the Truth About Defective Products

General Motors (GM) recently recalled millions of its cars to fix a faulty ignition switch that caused a number of crashes. The evidence shows that GM had known about the problem for years but had hidden it to avoid having just such a recall, just as a decade ago Firestone hid knowledge that the tires it put on certain vehicles were dangerous. Although the GM and Firestone cases may be particularly outrageous, they are far from the only companies that have hidden evidence of dangerous products.

Designers and manufacturers who design and build defective products can be liable for any injuries or damages that their defective products caused. The lawsuit is called a products liability suit, and it can be based on the claim that the product was negligently designed, produced, or marketed. Of course, designers and manufacturers wish to avoid such suits, as they can be expensive and can damage a company's reputation and bottom line. Sometimes the possibility of such an outcome leads the company to

go to great lengths to hide evidence that its products are defective and dangerous.

There are examples involving all different kinds of products. Remember the Dalkon Shield, a contraceptive device sold in the 1970s. Despite receiving reports that the device caused infections, stillbirths, and even death, A.H. Robbins (the manufacturer) refused to stop its sale. When the FDA stopped its sale in the United States, the company continued to sell it overseas for another 10 years.

Thousands of women lost their children, and some women died.

More recently, Guidant, a maker of medical devices, hid the fact that one of its implanted defibrillators could short-circuit and fail to operate. Instead, Guidant decided to sell its existing stock of devices, and over the course of three years, it sold 37,000 defibrillators without warning doctors or their patients of the dangers. Again, many died, and others were de-

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### Thanks for the Referrals

*Despite this modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm.*

*Unfortunately, when people need a good lawyer, they often do not know where to turn. If you or someone you know has been injured and needs legal help, call us.*

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# Debit, Credit, and Prepaid Cards: Not All the Same

Most of us do it—pay for a purchase with the swipe of a card. But credit cards, debit cards, and prepaid cards are all different, and it pays to understand what those differences are.

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*Debit cards draw from your bank account, and prepaid cards, on the amount you put on the card when you bought it.*

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The first difference is the source of the money. A credit card is a loan: You borrow the amount of the charge from the credit card company, paying interest if you do not repay the loan by the end of the month. With debit and prepaid cards, you are spending your own money. Debit cards draw from your bank account, and prepaid cards, on the amount you put on the card when you bought it.

Liability for fraudulent charges also differs. Under federal law, your liability for fraudulent charges on a credit or debit card is limited to \$50, but with a debit card you have to notify the bank within two business days of learning that your card has been lost or stolen. If you do not, your losses may be much greater. Because prepaid cards are newer, liability for bad charges is less clear. The federal government treats them as debit cards, but there is no limit on your potential losses, although regula-

tions are being considered. Also, many issuers of credit, debit, and prepaid cards have their own programs to limit liability.

Finally, watch out for fees! Most cards charge fees, but what they charge for can differ. Credit cards charge interest on unpaid balances, a fee for late payments, and a fee for exceeding your credit limit. Because debit cards are tied to your bank account, if you try to

spend more than you have, you may incur an overdraft fee, just as if you bounced a check. Prepaid cards are often the worst, charging fees for adding money to the card or for spending money on the card, and even charging a monthly fee for just owning the card. The good news is that every card issuer charges different fees, so smart consumers can shop around for the best deal.

## Government Conceals Hospital Safety Information

Since 2005, the Centers for Medicare and Medicaid Services (CMS), a federal agency involved with overseeing hospitals and nursing homes, has posted quality ratings on its website, allowing patients to make important decisions about where to seek treatment. In 2011, the CMS also posted information about eight different “hospital acquired conditions” (HACs), injuries to patients likely caused by the care they received. Examples of HACs include injuries from falls, from being given the wrong kind of blood, and from objects left in the body after surgery.

Recently, the CMS removed this HAC information from the website. Hospitals had complained that it was unreliable, despite the fact it is used by the government to fine and otherwise punish hospitals guilty of providing substandard care. The CMS claims that it was directed to come up with new standards to measure the incidence of the most common HACs and that the HACs that are no longer available to the public concern rare events that shouldn’t ever occur in hospitals.

Consumer advocate groups counter that injuries caused by substandard medical care are a big problem, that patients ought to have ready access to this information to allow them to make informed decisions about health care, and that the CMS’s decision to hide information allowing patients to be informed consumers of medical care is a bad one.

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# Governmental Liability for Car Accidents

It happens every day: A driver runs a stop sign, changes lanes without looking, or fails to brake in time, and causes a collision. In most cases, the negligent driver is insured, and his or her insurance will pay for any injuries or damage caused. But what if the car belongs to the federal, state, or local government? The answer may be very different.

Most jurisdictions recognize a legal concept called “sovereign” or “governmental immunity.” Sovereign immunity is just what it sounds like—the government is immune from claims against it, even if the claim is based on the negligent acts of a government employee. This is true even if the government would be liable if it were a private individual. This immunity exists to prevent suing the government for some loss that would be satisfied with taxpayer dollars.

The government may choose to give someone who has been injured by one of its employees permission to sue, waiving the immunity it would otherwise enjoy. Rather than force every victim of a collision to petition Congress or the state legislature, most jurisdictions have passed what are called Tort Claims Acts, giving people injured in certain ways advance permission to sue the government for their losses.

Because car accidents happen so often, a common provision of most Tort Claims Acts is a condition allowing people hurt in collisions to sue. However, even if the lawsuit is allowed, it works differently from the run-of-the-mill collision case, as Tort Claims Acts generally have strict and specific notice requirements that must be

met and that involve different statutes. This is especially true where the vehicle involved belongs to the federal government, which has passed the Federal Tort Claims Act but which determines whether its driver is liable under state law.

Tort Claims Acts also often differentiate between a “regular” collision, involving a vehicle owned by the government, and one that involves an emergency vehicle, such as a police car chasing a suspect, a fire truck speeding to put out a fire, or an ambulance taking an injured person to the hospital. Although a collision with an emergency vehicle causes no less damage than a regular collision does, the government does not want to prevent people responding to emergencies from doing so, and so the Tort Claims Acts often make it

more difficult to sue for injuries suffered in such a collision.

Finally, Tort Claims Acts sometimes allow drivers to sue for injuries caused by dangerous conditions on the road, such as improperly marked hazards, intersections with obstructed views, and the like. Even more than the laws do for cases involving collisions, those governing claims based on the condition of the roadway vary considerably from jurisdiction to jurisdiction.

No matter what the details, if your claim is a negligence claim against someone working for the government, it is wise to discuss the matter with a lawyer. A capable lawyer can help you navigate the particular laws and deadlines that will apply to your claim and can make sure you receive your proper due.

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## Document Your Injuries!

No one wants to be hurt in an accident, but if you are injured, take the time to document your injuries. Doing so will greatly strengthen your claim.

If you have been hurt, seek medical attention immediately. This will allow the doctor to see your injuries while they are fresh and to accurately document what happened to you. Create a file where you keep all of the medical records and bills that you receive.

If possible, document your injuries with photos. The old saying is that a picture is worth a thousand words. It is one thing to try to ex-

plain to the jury how bruised you were; it is another thing entirely to have a picture showing your bruises.

Finally, keep track of how your injuries affect your daily life. A log or diary showing that you could not walk for a month or play your favorite sport for six months after you were injured is very valuable in showing how severely you were injured.

The more evidence you have about your injuries, the more likely you will be to receive a settlement or judgment that will compensate you for your losses.

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## Defective Products

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prived of the chance to choose another product.

The profits made from the sale of drugs also encourage companies to bury evidence of problems. Johnson & Johnson continued for years to market Propulsid to treat heartburn, all the time knowing it caused serious heart problems, especially in children. Bayer marketed Trasylol, a drug used to control bleeding, knowing it could cause kidney failure. GlaxoSmithKlein's Avandia (a diabetes drug that caused heart problems), Eli Lilly's Zyprexa (a psychotropic drug that caused diabetes), and the serotonin reuptake inhibitors (SSRIs) that many makers sold to treat depression but that caused an increased risk of suicide are still other examples.

Nor is our food safe from corporations that put profits ahead of

safety. Nine people died and hundreds were sickened by salmonella-contaminated peanut butter, despite the fact that the Peanut Corporation of America had known of the problem for at least three years, going so far as to hire a different testing lab to try to improve the results of tests for contamination.

In 2002, Pilgrim's Pride continued to distribute chicken processed at a plant that it knew was contaminated with Listeria, killing eight and causing others to become sickened or to miscarry. Just a few years before that, people across the upper Midwest were killed or sickened by beef contaminated with E. coli bacteria. The plant that processed the meat would be closed due to contamination, would immediately reopen, and then would close again, the company never solving the underlying problem.

Even products aimed at children are sold with knowledge of their dangers. Magnetix toys,

building blocks containing small magnets, were marketed for years despite the company's receiving reports that small children could swallow the magnets, which would then attach to each other in the intestines and cause infections and bowel obstructions. Even when the government specifically asked, the company denied any knowledge of these injuries, and the product continued to be sold.

The fact of the matter is that for many companies, profits come before people, and the companies are willing to knowingly sell products that carry a danger of unnecessary death for those who use them. Although some complain about so-called "frivolous lawsuits," these cases illustrate the need for a civil justice system that allows those who have been harmed by dangerous products to bring damages claims against those responsible for their damage.

*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.*