Legal Matters®

Consumer Safety
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Don't give up just because the insurance company says no

If you or someone you know is injured in an accident and the insurance company refuses coverage – or agrees to make only a small payment – don't just assume that decision is final. You should always talk with an attorney about your options. Only when a qualified attorney has fully investigated the situation can you be certain of what your rights are.

For instance, consider the recent case of 65-year-old Julie Keyes, who was injured while driving to work.

When Keyes swerved to avoid an oncoming car, her vehicle slid into an embankment and rolled over. The impact severely bruised her neck and spinal cord. Today, she is unable to walk and uses a wheelchair.

Keyes filed a claim with her insurance company, but the company refused payment. The company obtained the data recorder inside Keyes' car, which suggested that she was driving well above the speed limit at the time of the crash. The company also refused to believe there was an oncoming vehicle, because the other driver didn't leave his name or contact information. So according to the insurance company, Keyes was lying and simply crashed her car because she was speeding.

Many people might have given up, but Keyes decided to fight for her rights.

Here's what a thorough investigation turned up:

- A neighbor had spoken with the other driver just after the crash, before he took off.
- The data recorder in the car wasn't measuring the speed of the vehicle; it was merely measuring how fast the front wheels were turning. Because the front axle broke during the crash, the front wheels began spinning out of control and much faster than they would have if the wheels had been touching the ground.
- Keyes was unlikely to have been speeding,

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Contraceptive linked to gallbladder problems

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Hundreds of lawsuits have been filed, alleging that Bayer, which manufactures the contraceptive, failed to warn about increased risks caused by the drug's progestin component, drospirenone.

So far, the suits have focused on injuries that involve blot clots, such as deep vein thrombosis, pulmonary embolisms, heart attacks and strokes.

But many women now claim they have suffered gallbladder problems as well.

In Bayer's early clinical trials, out of 432 women who tried the contraceptives, four had to have their gallbladders removed.

Father sues maker of baby hammocks

An Oregon man whose 5-month-old son died last summer has filed a $5 million lawsuit against a manufacturer of hammock-like baby beds.

Jonathan Kuzma of Gresham, Oregon contends that the bed, made by Amby Baby USA of Minneapolis, was defective and dangerous and led to the suffocation death of his son Matteo last August.

The death of the infant – and a four-month-old in Georgia – led to a recall in December of about 24,000 Amby Baby Motion Beds.

The Consumer Product Safety Commission said the side-to-side shifting or tilting of the hammock could cause an infant to roll and become trapped or wedged against the hammock's fabric or mattress pad, posing a suffocation risk.

Weight-loss supplement linked to liver damage

A class action lawsuit has been filed in federal court in California against the makers of the weight-loss dietary supplement Hydroxycut.

The case is one of many brought by users of the supplement following a recall earlier this year after a study linked it to liver problems. The lawsuits claim that the manufacturer misrepresented the product as safe and effective in its advertising.

The parents of Dennis Lopez filed a lawsuit after he died of severe liver failure in 2007, two months after he started taking MuscleTech Hydroxycut Hardcore.

More than nine million people nationwide have used Hydroxycut products for weight loss or as an energy supplement.

The Food and Drug Administration says it has received complaints about severe liver problems such as jaundice and liver damage from Hydroxycut users. There have also been complaints throughout the U.S. and Canada linking the supplement to heart problems and elevated blood pressure.

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Lawsuits put a new wrinkle in Botox

Botox is the most popular cosmetic procedure in the U.S. But several patients and their families are suing Allergan, the maker of Botox, for serious injuries and deaths allegedly caused by the drug.

Botox is used to reduce wrinkles and for some other purposes, including the treatment of involuntary eye blinking and contraction of the neck muscles, excessive sweating, and crossed eyes. It has never been approved for use by children under 12.

However, some patients, including children, are receiving the drug for "off-label" uses that have not been approved by the Food and Drug Administration, including limb spasticity in cerebral palsy patients, migraines, and excessive salivation.

Recently, after evaluating reports of numerous adverse reactions from both approved and unapproved uses of Botox, the FDA issued a warning about these uses. It said greater care should be taken because of "the possibility of experiencing [a] potentially life-threatening distant spread of toxin…from the injection site after local injection."

Chrysler announces safety recall

Chrysler Group is recalling 24,177 vehicles due to a potential defect in a brake system that could result in sudden brake failure.

In a filing with the National Highway Traffic Safety Administration, the automaker said the recall applies to the 2010 Chrysler Sebring, Dodge Avenger and Nitro. It also applies to 2010 Jeep Liberty, Commander and Grand Cherokee SUVs, as well as 2009-2010 Dodge Ram trucks.

In some of the vehicles, the clip retention tab on the brake pedal pin was improperly formed during the manufacturing process, or was simply not installed, Chrysler said.

That could result in brake failure without warning and could cause a crash, according to an announcement from the company.

FDA requires warning on nausea drug

The Food and Drug Administration is requiring a new warning for the injectable form of the drug promethazine, which is used as a sedative and to treat nausea and vomiting.

The warning will highlight the risk of serious tissue injury when the drug is administered incorrectly.

"Promethazine should neither be administered into an artery nor administered under the skin because of the risk of severe tissue injury, including gangrene," the warning says. According to the FDA, the preferred route of administration is injecting the drug deep into a muscle.

Promethazine was previously sold under the brand name Phenergan, but that product was discontinued by Wyeth Pharmaceuticals. A number of companies currently market generic versions of the promethazine hydrochloride injection.

Who let the dog out?

A homeowner who allows a friend with a dog to stay in her house temporarily could be liable if the dog bites someone – at least that's what happened recently in a case in Wisconsin.

There, a homeowner allowed her daughter's friend and his two dogs to move in for a few months, even though she knew that one of the dogs, Boo, had once "nipped" a six-year-old girl.

One day, the daughter's friend let the dogs out unleashed and Boo bit a neighbor.

The neighbor sued the homeowner (presumably because the homeowner was covered by insurance). The homeowner argued that she shouldn't be sued because she didn't own Boo and wasn't the one who let Boo go outside.

But the Wisconsin Supreme Court sided with the neighbor. Under state law, a person who "harbors" or "keeps" a dangerous dog is responsible for any injuries – and by allowing the daughter's friend to move in for a few months with the dogs, the homeowner had become Boo's "keeper."

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since she wasn't running late for work, she had just turned onto the road a quarter of a mile back, and according to her cell phone records, she wasn't on the phone.

- The data recorder showed that Keyes had made a very sharp swerve – more consistent with trying to avoid an oncoming car than with losing control while going too fast.

After seeing all this evidence, a jury ordered the insurance company to pay Keyes $4 million, including $3.3 million for her medical care and lost wages.

The moral of the story is that if you or someone you know is seriously injured, you should never just assume that you can't receive fair compensation – even if your friends say so, and even if the insurance company says so. Don't just sign off on a minimal offer from the insurance company – talk to a lawyer first to find out what you're really entitled to receive.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Stop-smoking drug blamed for suicide attempts

Three lawsuits have now been filed claiming that the smoking-cessation drug Chantix has caused people to become so depressed that they attempted suicide.

The lawsuits, filed in Manhattan, claim that the manufacturer (Pfizer) didn't tell doctors and patients about the drug's dangers.

Although Pfizer later added warnings to its package insert, the lawsuits claim the drug's label is still inadequate.

Since its introduction in 2006, Chantix has become hugely popular in the war against nicotine addiction. More than 4 million people have been prescribed Chantix, but sales of the drug have fallen off recently because of concerns about side effects.

In February 2008, the Food and Drug Administration issued an alert that "serious neuropsychiatric symptoms have occurred in patients taking Chantix." These include "changes in behavior, agitation, depressed mood, suicidal ideation, and attempted and completed suicides."

"It appears increasingly likely that there is an association between Chantix and serious neuropsychiatric symptoms," the agency stated.

In May 2008, the FDA revised the warning again, advising doctors to discontinue Chantix immediately if patients become agitated, depressed or suicidal.

In addition to psychiatric problems, there have been reports of accidents and injuries, vision disturbances, heart rhythm disturbances, seizures, muscle spasms and severe allergic reactions.

The Federal Aviation Administration has prohibited use of the drug by pilots and air traffic controllers.