



# The Law Office of **JASON R. SCHULTZ, P.C.**

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Brought to you by  
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## **"Indemnify and hold harmless"**

More and more consumers are being asked to sign "indemnify and hold harmless" contracts before hiring contractors, giving permission for children to go on school outings, or even joining spas.

To seek liability protection, businesses and other organizations add "hold harmless" language to contracts. This means that if there is a loss or harm resulting from negligence, the signer may have a much harder time seeking and obtaining recompense. In addition, should the negligence somehow harm a third party, the signer may become a party to that lawsuit. For example, if a carpenter's hammer slips and injures a mailman, the hiring home owner might be a lawsuit's first target, since the "indemnify and hold harmless" contract might hold him or her liable for the carpenter's mistake. What should consumers do?



- Read contracts carefully.
- Ask if there are "hold harmless" clauses.
- Cross out clauses, initial the deletions, and sign the contract.
- Ask your insurance agent if your liability policy covers potential harm.
- Seek legal counsel.

## **Mandatory arbitration Nursing homes**

Helping an elderly parent or relative enter a seniors residence or nursing home is a trying time for a family member. Often, when an adult child or relative helps a senior relative enter a residential care facility, he or she may unknowingly sign an admissions contract that includes a mandatory-arbitration clause.

Should conflict or disagreements regarding nutrition, daily care, medications, or medical attention arise, the resident and his or her sponsor may feel powerless in the face of mandatory-arbitration requirements.

### **Foot infection**

When a nursing-home resident lost his legs to pressure-sore infections, his relatives sought an attorney's guidance. At trial, the state's Supreme



Court denied the home's owner, a foreign corporation, the right to enforce an unfairly written arbitration clause.

### **Negligence and death**

A senior resident died after receiving slip-and-fall injuries. The resident's relatives brought a personal injury action against the facility after their lawyer demonstrated to the court that since the sponsors lacked authority to sign the admission contract, a mandatory-arbitration clause could not be enforced.

*Legal news from your safety and security lawyer.*

## HMOs and patient care

To obtain the best care at the lowest cost, HMO members can ascertain their rights and responsibilities from a number of sources.

- At enrollment, members obtain a comprehensive handbook or guide that outlines benefits, treatments, and services the plan covers.
- The HMO plan contract defines benefits, such as deductibles and lifetime limits, with greater specificity.
- The plan's Member Services telephone representatives can advise on what the plan covers, particularly for "out of network" services.
- If HMO coverage is provided through an employer, the company's human resources office can answer questions about plan rules, costs, coverages, appeals, and complaints.
- A state's insurance department can also advise



on HMO patients' rights and responsibilities.

- HMOs customarily pay for services on the basis of specific treatment guidelines, called practice protocols. Members can usually obtain the best medical attention with the highest coverage when participating physicians follow HMO treatment protocols.

### When an HMO plan errs

Most HMOs deliver members' health services as promised in the contracts. When they do not—or deny or delay treatment—members have legal recourse. A diabetic patient with numerous high-risk factors for cardiac disease suffered a myocardial infarction and died. The patient's wife and estate sued the HMO for delaying stress-testing and not prescribing blood-pressure medications. Their lawyer provided evidence that with timely treatment, the patient would have had a near-normal life expectancy. The jury awarded a wrongful-death verdict and damages.

## Manufacturing, employment, and injuries

It's no secret that our nation's manufacturing sector has declined in scope and size over the past decade as productivity has increased and jobs have moved overseas.

Surviving manufacturing companies know that they must continue to make accommodations to remain efficient and competitive. Management may lay off part of its workforce, which means that the fewer remaining employees pick up more of the work. Purchasers increasingly look for suppliers who can provide needed products and services at lower costs. Supervisors may extend or delay maintenance and replacement schedules to get additional months or years of use out of capital equipment. Some companies overhaul and renovate plant equipment rather than replace it.

### Rebuild...with safety

When a maintenance employee crawled beneath a refurbished conveyor system to make an adjustment, the motor's chain drive crushed his wrist and severed part of his pinkie. Since the injury was to his dominant hand, he sued his employer for loss of future wages and inability to do repair work. His attorney argued that the equipment's rebuilder had failed to incorporate an inner chain guard that would have prevented accidental contact with the chain drive. The parties settled.



## Cosmetic surgery



According to the American Society of Plastic Surgeons (ASPS), in 2003 over 8.7 million procedures were performed on patients who wanted to improve their appearance and manage signs of aging—a 32 percent increase over 2002. Invasive surgical procedures grew 5 percent. Minimally invasive procedures, such as Botox® injections, grew 41 percent.

Like all other surgeries, cosmetic surgery involves risk. Reality programs, such as ABC's *Extreme Makeover*, may cause some patients to fail to appreciate the seriousness of cosmetic surgery as well as potential outcome problems and side effects associated with surgery and medications.

ASPS suggests that patients considering cosmetic surgery...

- insist on a physician board-certified by the American Board of Medical Specialties.
- demand safe surgical facilities.
- require a medical examination and evaluation.
- learn all they can about cosmetic surgery.
- seek ASPS-affiliated physicians.
- ask questions.

### Outcome problems

Cosmetic-surgery patients can seek justice in the courts when physicians make preventable mistakes. Following surgery to lengthen his chin, a patient suffered restricted lip movement. The plaintiff's attorney showed that the patient was not warned of the procedure's risk. A jury awarded a judgment, which a judge reduced. The case will be retried.

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## HOME WARRANTIES

Builders who construct new homes usually provide a one-year written warranty through which they agree to correct construction or cosmetic workmanship deficiencies.

In most cases, contractors want to satisfy customers. Many construction companies conduct a premortgage settlement walk-through of a new property, which enables owners to identify contractual omissions or substitutions and final-finish blemishes that builders should repair.

Sometime near the end of the first year, the builder may ask owners for a "punch list" of additional problems to be fixed. This is usually the home buyer's last opportunity to point out serious plumbing, HVAC, electrical, and other concerns. It may take 12 months to discover squeaky floors or steps, drywall screws that have popped up, gutters and downspouts that don't work properly, or more serious issues.

After the first year, some builders will continue to repair problems that they reasonably acknowledge as their responsibility. However, others may feel that the warranty's liability has run its course, noting that defective construction or deficient finish issues have become the owner's maintenance responsibility.

### PERSISTENT PROBLEMS

When problems persist, home owners may find assistance from consumer-protection guidelines or even state liability laws. When these don't solve the problem, home owners have recourse to legal remedies through the justice system. One home owner requested that his builder correct a drainage problem that repeatedly caused flooding and damage to his property. When the contractor refused, the home owner's attorney sued for negligence, breach of warranty, fraud, and nuisance. A jury awarded punitive damages.

## Medical technology and premature babies

Neonatal Intensive Care Units (NICUs) are high-technology hospital departments.

Neonatologists have 24-hour access to computerized physiological data on a high-risk or premature infant's health status. Electronic monitors continually assess and report basics, such as temperature, blood pressure, and respiration. Doctors may request specialized high-tech testing to evaluate a baby's blood oxygenation, cardiac functions, and even vision and hearing capabilities.

Equally important is the time and care that skilled and experienced physicians and compassionate staff give to each infant. Newborns' parents recognize the balance between the masses of high-tech NICU equipment and the quality time caregivers spend touching, talking to, and smiling at babies.

### When errors occur

Although NICUs help many newborns survive, parents have recourse when caregivers make preventable mistakes. A baby was born prematurely at 27 weeks of gestation. The hospital's pharmacy erred in mixing a nutritional glucose solution, which caused the baby to suffer hypoglycemia, seizures, and brain injury. The parents sued for negligence and reached a structured settlement for lifelong care.



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## Medical malpractice UPDATE

### Caps don't reduce doctors' rates

Despite medical injury caps passed by the Florida and Texas legislatures in 2003, physicians' insurance rates continue to rise in those two states. The much-touted cap solution to rising medical malpractice insurance rates didn't keep Florida and Texas insurers from asking for and receiving policy rate increases for 2004.

In Florida, which put a \$500,000 ceiling on noneconomic damages in malpractice cases, the state's Office of Insurance Regulation announced a "presumed factor" rate increase of 7.8 percent for 19 different insurers.

Two months after a \$750,000 cap on noneconomic damages (\$250,000 limit on an individual physician's liability) was incorporated into Texas' constitution, its insurance commissioner announced that a physician-owned insurer that covered a third of all Texas doctors asked for a 35.2 percent insurance rate increase for doctors and a 67.9 percent increase for hospitals and other institutional health-care providers. Although a second large insurer decreased rates 12 percent, reductions in coverages and increases in deductibles effectively neutralized its effect.

### Family awarded

The four children of a Western Pennsylvania woman struck and killed by an Allegheny County Port Authority bus were awarded \$664,000, but state law says they can collect only \$250,000.

A jury Friday awarded the children of ~~Elizabeth~~ \$664,000. She was struck by a bus on Dec. 30, 2002.

~~Elizabeth~~, 64, a registered nurse, had retired shortly before her death. She raised her four children alone after her husband died. The attorney for the children said the \$250,000 cap takes away what the jury felt was needed to make the family whole.

## Justice denied

This clipping from a March 2004 Pennsylvania Sunday newspaper tells the sad story of what happens when legislators place caps on jury awards.

As reported, honest jurors rendered a fair-minded monetary verdict for four children who were orphaned when their retired, widowed mother was killed in an auto accident. The state's cap unfairly reduced the fair reward by more than 60 percent.

## VINYL CHLORIDE

Vinyl chloride is a 20th-century wonder that chemical firms use to fabricate polyvinyl chloride (PVC), a plastic in widespread use. However, vinyl chloride is also a notorious cancer-causing agent.

For decades, dozens of chemical manufacturers who knew of vinyl chloride's potential to endanger health conspired to conceal this information from their workers in PVC plants. As a result, many employees who suffer from cancer and other diseases linked to vinyl chloride have asked lawyers for legal representation in occupational-disease claims. Suits have been filed on the basis of product liability, occupational exposure, and environmental exposure to vinyl chloride.

Those who have worked in a PVC plant or who believe they may have been harmed by vinyl chloride should first talk with their physicians and then obtain legal counsel.

In addition to vinyl chloride, other workplace chemicals known to cause disease include metal-working fluids, coolants, and solvents, as well as heavy metals, such as copper, aluminum, lead, mercury, and arsenic.