SPRING 2007

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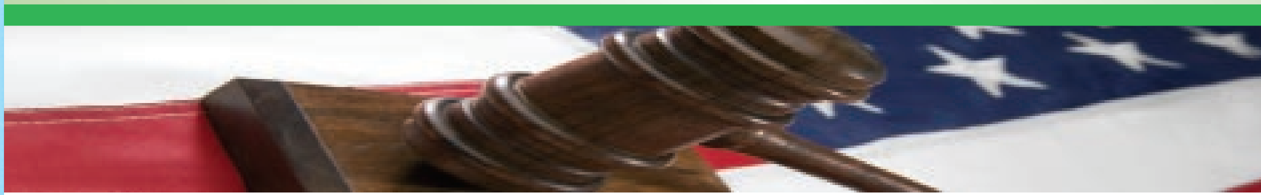

Messing with the wrong guy
Good news for consumers

Senate Republican Whip Trent Lott (R-Miss.), who lost his home as a result of Hurricane Katrina and who is part of a lawsuit against State Farm & Casualty Co., said, "After Hurricane Katrina, we learned a lot of lessons." He continued that he found out "to my absolute horror that the insurance industry is not covered by the antitrust laws."

"This is wrong," Lott concluded, "and the Senate, in a bipartisan way, should, and I believe will, correct it."

Senate Democratic and Republican leaders recently introduced a bipartisan bill that would strip the insurance industry of its limited antitrust exemption.

Patrick Leahy (D-Vt.), Chairman of the Judiciary Committee, introduced the Insurance Industry Competition Act, along with the judiciary panel's ranking members, Senator Arlen Specter (R-Pa.), Senate Majority Leader Harry Reid (D-Nev.), and Senate Republican Whip Trent Lott (R-Miss.).

Companion, bipartisan legislation has also been introduced in the House by Reps. Peter DeFazio (D-Ore.), Gene Taylor (D-Miss.), Bobby Jindal (R-La.), Charlie Melancon (D-La.), Rodney Alexander (R-La.), and Walter Jones (R-N.C.).

For the last six decades, insurance companies have enjoyed limited immunity from federal antitrust investigation and prosecution. The bipartisan bill introduced would give the Department of Justice and the Federal Trade Commission the authority to apply antitrust laws to anticompetitive behavior by insurance companies.

The proposal has drawn the opposition of insurance company and agent trade groups. The industry maintains that the immunity, among other things, allows insurers of all sizes to benefit from collected loss data, which makes insurance pricing more accurate and lowers costs for all insurers.

But the insurance industry and its practices have come under serious scrutiny along the Gulf Coast in the wake of Hurricanes Katrina and Rita, said Leahy. Leahy said there are concerns that insurers have been too often denying claims and delaying payouts to residents along the Gulf Coast.

"Federal oversight would provide confidence that the industry is not engaging in the most egregious forms of anticompetitive conduct—price fixing, agreements not to pay, and market allocations," said Leahy. "Insurers may object to being subject to the same antitrust laws as everyone else, but if they are operating in an honest and appropriate way, they should have nothing to fear. American consumers and American businesses rely on insurance—it is a vital part of our economy—and they have the right to be confident that the cost of their insurance, and the decisions by their insurance carriers about which claims will be paid, reflect competitive market conditions, not collusive behavior."

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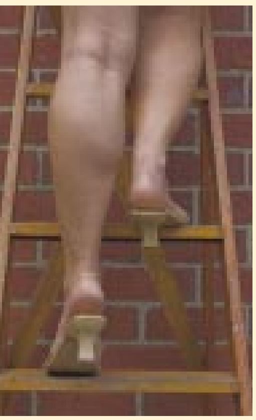
Workers' compensation
When insurers refuse to pay

Workers' compensation regulations are state-based insurance programs that effectively cover claims by workers injured on the job or who suffer work-related diseases or illnesses. Insurers regularly handle claims with understanding and efficiency.

On occasion, an insurer may deny claims benefits, as the following case illustrates. Workers should consult an attorney experienced in workers' compensation law for counsel.



Fall from a ladder

When a retail store employee fell from a ladder and severely injured her back, her physician recommended surgery. When she filed a workers' compensation claim, the insurer denied her petitions and an independent Industrial Commission's confirming orders for several years. The employee's attorney sued the insurer, demonstrating it had not acted in good faith. A jury held for the plaintiff, stipulating a significant award, and held the insurer liable for lifetime medical care and disability benefits for the underlying injury under the state's Workers' Compensation Act.

Drunk-driver accident victims

U.S. transportation authorities claim that motor vehicle accidents involving alcohol kill one victim every 30 minutes. Alcohol-related accidents also seriously injure other victims every two minutes. Annually, more than a million Americans and their families suffer at the hands of drivers who are impaired by alcohol.

Anyone injured in an alcohol-related auto accident should seek the counsel of an experienced attorney to obtain compensation for medical treatment, lost income, emotional distress, and other damages.

Third-party responsibility

In addition to seeking recompense from negligent drivers and their insurance providers, personal injury attorneys may also uncover liability of third parties, such as restaurants and other establishments that serve or sell alcohol.

A drunk driver ran a stop sign, collided with another vehicle, and killed its driver. When the victim's wife and estate sued for wrongful death and emotional distress, the plaintiff's attorney also made a claim against a nightclub that served the drunk driver alcohol immediately before the accident. The parties settled before trial.

Pharmaceutical marketing

U.S. drug manufacturers spend 2.5 times more money on marketing drugs to consumers and doctors than they invest in pharmaceutical research.

To make windfall profits on prescription drug sales, pharmaceutical companies spend billions influencing physicians and other health-care providers to prescribe and utilize their medications.

In one case, former Medtronic employees blew the whistle on the company's marketing generosity, which included giving doctors financial kickbacks. Their case settled in federal court in August 2006 for $40 million.

In other lesser instances, medical-school professors claim that drug representatives often provide many doctors' offices free lunches, some costing as much as $250, to buy access for sales.

Access costs American consumers millions and adds billions to drug companies' marketing annually. In 2004, Merck alone spent $7 billion in marketing, compared with $4.01 billion in research. Public Citizen, a consumer advocacy group, reported that in 2005, the pharmaceutical industry committed more than $60 billion to marketing efforts.

FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

✔ **Target Stores** is voluntarily recalling 185,000 Firestreet Scooters. The handlebars, wheels, and brakes can break and detach, causing rider injuries.

✔ **Acuity Specialty Products Group, Inc.,** asks consumers to return 6,800 five-gallon pails of "Zep Industrial Purple Cleaner & Degreaser" and "Zep Heavy-Duty Floor Stripper" cleaning products, which can crack, leak corrosive products, and harm users.

✔ **Atico International USA, Inc.,** has recalled 209,000 folding picnic tables with legs that can unexpectedly buckle, break, fold, or collapse, injuring users.

✔ **Fun Express, Inc.,** has called back 340,000 bendable toys given away at libraries. The toys are decorated with paint containing excessive levels of lead, which is banned under federal law. Lead is toxic and, when ingested by children, can cause adverse health effects.

✔ **Black & Decker** has requested buyers to return 160,000 cordless electric mowers. An electrical component in the lawn mower can overheat, catch fire, and burn users.

Legal dictionary

Many clients find legal terms mystifying. From time to time, we'll provide easy-to-understand definitions to help clear things up. This time, you'll learn the meanings of several important terms used in courts to help you better understand our legal responsibility concepts.

Liability

A person's, group's, or business entity's legal responsibility for an injury or loss for which they are responsible.

Negligence

The failure to exercise the kind of sufficient care that a reasonably prudent and careful person would use under specific circumstances. If an injury results from another's negligence, that person or entity may be liable to pay damages for any injury they caused.

Statute of limitations

Another arbitrary time limit—in years—that cuts off a plaintiff's ability to file an injury case after a certain period of time from the date of the injury, even if the injury is not detected until much later.

Statute of repose

An arbitrary time limit—in years—that terminates a corporation's responsibility for marketing faulty or dangerous products.

Damages limitations

Can lawsuit damages caps harm those injured? Damages-cap legislation restricts amounts a jury can award for injuries, no matter what case facts may be. Some state legislatures have enacted caps in civil cases, while others have not. Some caps apply to specific kinds of cases, such as medical malpractice. Other caps limit only noneconomic damages, and some limit punitive damages.

In states that cap damages, a jury's or judge's award is automatically reduced to the amount of the cap—even though the jury or judge may believe the plaintiff should be awarded more than the cap as compensation, or even if the circumstances of the case show that a negligent or malicious defendant should be punished with a significant punitive-damages award. There is generally no way to raise a damages award beyond the cap once it is written into law.

Here is an example of how a cap of $250,000 on noneconomic damages may be incredibly unfair to some victims.

Who is harmed	The victim's injuries or losses	The amount the jury originally believed should be awarded	The amount the victim is awarded based on the legislature's cap
VICTIM A	After being hit by a drunk driver, the victim's car caught fire. Her husband (a passenger) was killed, she was burned and left disfigured, and lost the use of her right arm. She was a homemaker and can no longer work.	$1.2 million noneconomic damages	$250,000 noneconomic damages
VICTIM B	After being hit by a drunk driver, this victim suffered two broken legs, had to have surgery to repair them, and was forced to wear a full body cast for two months.	$250,000 noneconomic damages	$250,000 noneconomic damages

VICTIM A, who suffered worse injuries than VICTIM B, nonetheless takes home the same compensation for her losses as VICTIM B. Even though the jury thought VICTIM A deserved far more compensation, the jury's judgment was overruled by a cap put in place by the legislature long before VICTIM A's case ever arose.

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Our *Martindale-Hubbell* rating

Jason R. Schultz, P.C., has earned an AV rating in the *Martindale-Hubbell® Law Directory* for our legal capabilities and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

Jason R. Schultz

In 2007, **Jason R. Schultz** was named a Georgia Super Lawyer. This honor distinguishes him as being one of the top attorneys in the state, as chosen by his peers and through the independent research of *Law & Politics*. The 2007 Georgia Super Lawyers is based on a survey of more than 23,000 attorneys throughout the state. The goal is to select as Super Lawyers the top 5 percent of Georgia attorneys in more than 60 practice areas.

Super Lawyers®

While Jason R. Schultz exclusively handles personal injury and wrongful-death cases of all types in state and federal courts throughout the Southeast, he regularly refers potential clients to attorneys whom he trusts to handle other legal matters outside of his expertise.

Messing with the wrong guy

(continued from front page)

Pennsylvania's Specter praised the legislation as a way to bring more competition into the industry.

"It is my hope that this legislation will bring the benefits of competition to the insurance industry and to consumers. Too many consumers are paying too much for insurance due to the collusive atmosphere that exists in the insurance industry. This has become a particular problem along the Gulf Coast, where insurers have shared hurricane loss projections, which may result in double-digit premium increases for Gulf Coast homeowners," stated Specter. "I strongly urge members who are concerned about industry exemption from the antitrust laws and collusive insurance industry practices to support this important piece of legislation."

Slips and falls

When someone slips, falls, and is injured because of a property owner's negligence, an attorney familiar with premises-liability accidents can help a victim obtain compensation for medical bills, lost wages, pain and suffering, and other damages.

An experienced personal injury lawyer can assess an incident, communicate with property owners, negotiate with insurers, locate experts to testify on a plaintiff's behalf, if necessary, and present the case at trial.

A shampooed carpet

When a woman stepped from a freshly shampooed carpet onto a marble floor at an office, she slipped and fell. She suffered severe disk protrusions and back injuries, requiring surgery involving a spinal-cord-stimulator implant. When her attorney sued for failure to warn of danger, the parties settled for a substantial amount.