



THE LEGAL INSIDER

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ARE YOU REALLY "FULLY COVERED"?

You and your family need full auto insurance protection, but what an insurance company may call "full coverage" is not always full protection. If you don't have "full tort coverage", along with "uninsured motorist" and "underinsured motorist" coverage, you and your family are *not* fully protected. Full tort and uninsured/underinsured motorist coverage work *together* to give you complete protection under your automobile insurance policy.



For example, if you only have "limited tort" coverage, and are injured in a motor vehicle accident, you may not be able to recover *any* compensation for your injuries, because the injuries must result in a "serious impairment of a bodily function".

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AUTO SAFETY VASTLY IMPROVED BY LAWSUITS

When a person is hurt in a car accident by some problem or defect in a vehicle, he or she may bring a product liability lawsuit against the manufacturer. If the injured plaintiff can convince the jury that the manufacturer built a car that was unsafe and that a safe design existed, then the plaintiff can recover damages for the injuries he or she has suffered.



But products liability suits brought by injured consumers do far more than provide compensation for those who have been injured by dangerous or defective products: In the long run, they also make those products safer.

After having lost a lawsuit over a design defect in a car it has built, the manufacturer has two choices: It can ignore

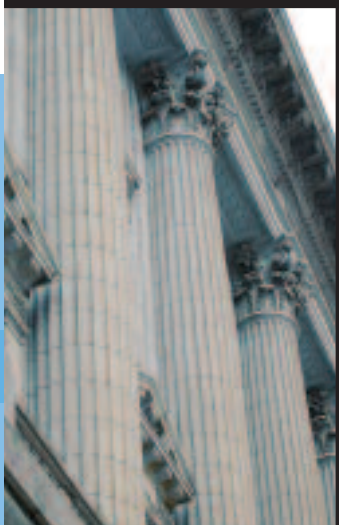
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"JERK AND JOLT" ON A BUS

A woman who boarded a bus, walked down the aisle toward a seat, and fell when the bus suddenly accelerated claimed that she was entitled to the benefit of the "jerk-and-jolt doctrine" and that she should be compensated by the bus company for her back and neck injuries. On appeal, the Pennsylvania Commonwealth Court disagreed.

Passengers injured in public transit must prove *negligence* in order to recover damages for any injuries they suffer. The "jerk-and-jolt doctrine" is an exception to the requirement that a passenger prove negligence. That doctrine provides that a bus passenger can recover damages by simply proving that a jerk or a jolt of the bus occurred that was so "unusual or extraordinary as to be beyond a passenger's reasonable anticipation" or that the jerk or jolt "had an extraordinarily disturbing effect on other passengers".

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GASTRIC BYPASS DANGERS

An increasing number of obese Americans are having gastric bypass surgery. A gastric bypass is intended to reduce the amount of food ingested by the patient, thereby helping him or her lose weight. Unfortunately, with the increase in the number of gastric bypasses performed, there has been an increase in people suffering from complications caused by the surgery.

Although commonly called "stomach stapling", gastric bypass operations can take a number of forms, including gastric banding, gastroplasty, and laparoscopic gastric bypass.

Potential complications range from the common and relatively less serious, such as gallstones, to the less common and far more serious, such as hernias, pneumonia, and blood clots. One potential complication from gastric bypass

surgery is when the abdomen is accidentally perforated during the operation, which can cause infections and even death.

Although each case is different, there are some signs that you may have been the victim of malpractice in gastric bypass surgery. Excessive pain while recovering is an indication that the bypass did not go as planned. Serious side effects from a botched procedure may include blood clots, embolisms, and kidney problems. If your doctor does not respond to your complaints or does not monitor your recovery, this may also indicate that he knows he made a mistake.



If you or someone you know has undergone an unsuccessful gastric bypass operation, please contact us.

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- Toxic Torts

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Are You Really "Fully Covered"?

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Therefore, no matter what your injuries are, unless you sustain what the law considers a "serious" injury, you may not be able to recover anything from the at-fault driver if you do not have full tort coverage. Bear in mind that even if you have full tort coverage, you do not have uninsured/underinsured motorist protection unless you specifically request it.

Did you know that more than 1 in 6 vehicles that you encounter on the highway are uninsured? In fact, in the City of Philadelphia, it is estimated that as many as 50%, or 1 out of every 2 drivers, is uninsured. That is why "uninsured" and "underinsured" motorist coverage is so very important for you and your loved ones. If you are

hit by an uninsured driver, and you do not have uninsured motorist coverage, you will likely not be able to recover any compensation for your injuries.

Remember - only full tort coverage, plus uninsured/underinsured motorist protection, equals full protection!

If you don't have full tort coverage, and uninsured/underinsured motorist coverage, you should contact your insurance company *as soon as possible* and request those coverages. If you have specific questions about your auto insurance coverage, please give us a call and we will be happy to discuss your situation with you.

Auto Safety Vastly Improved By Lawsuits

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the problem and do nothing, or it can figure out how to solve the problem and make sure that it does not happen again. Enough large damages awards attributable to a problem it could have corrected will usually lead even the most stubborn manufacturer to change its designs for the better.

In addition to providing an incentive to manufacturers whose overriding concern is their bottom line, lawsuits can also goad regulatory authorities into action, leading them to enact new standards that automobile manufacturers must meet with their new cars.

Safer Gas Tanks: Perhaps the most famous example of litigation resulting in increased vehicle safety involved the Ford Pinto. The gas tank on the Pinto was prone to exploding when the Pinto was hit from the rear. Ford knew this and knew how to fix the problem for just a few dollars per car, but it declined to do so because it calculated the cost of the fix would exceed the amount it would have to pay in damages to those killed or badly burned. This kind of gross calculation with human life and suffering did not sit well with juries, and, as it turned out, Ford guessed wrong.

So did GM, which did not redesign the “side saddle” gas tanks on some of its pickups, which could burst into flames and even explode when hit from the side. Both companies paid many millions in actual and punitive damages. Even though Ford’s design had followed all applicable regulations at the time, the lawsuits led to an industry wide change in how gas tanks are designed.

Unibody Construction: There are many other examples of litigation leading to safer automobile design. A case in point is the 1974 crash by a police officer who lost control of his vehicle and slid into a pole at 25 miles per hour. The noncontinuous frame of his car was insufficient to withstand even this relatively low-speed side impact, the force of which caused the car to literally wrap itself around the pole, which ripped through the body of the car and crushed the officer, leaving him a quadriplegic.

Now cars have strong, unibody construction and continuous frames. Seat belts have been in cars for years, but lawsuits led to

improved seat belts that did not have protruding buttons (which could be accidentally unlatched) and to three-point belts in back seats.

Roof Support Pillars: Manufacturers’ knowledge that roof support pillars were inadequate to support the roofs of vehicles involved in rollover collisions did not lead to the reinforcing of pillars and roofs; rather, lawsuits brought by people injured when their roofs were crushed led manufacturers to act.

Airbags: The very manufacturers whose ads now brag about the number of airbags in their vehicles fought tooth and nail to prevent airbags from being made mandatory, despite their own data showing that airbags greatly decreased the chance of car occupants’ being killed in certain accidents. Again, the lawsuits arguing that a car with airbags was a safer and feasible design led to a change in both attitudes and regulations.

Safer Tires: Nor are the cars themselves the only beneficiaries of increased safety attributable to litigation. A series of lawsuits led to large recalls of Firestone tires (mostly on Ford vehicles), the treads of which were prone to separate, causing the cars to crash. The problems causing the tread separation have now been addressed.

Power Window Switches: When power windows became common, most had rocker-type switches that the user pushed down on to close the window. The problem with this type of switch was that it was possible to lean on the switch by accident, thus raising the window.

In one three-month period in 2004, seven children died when they accidentally closed the window and were strangled. Manufacturers knew of the problem and knew it could be solved with switches the user had to pull up on to close the window, but it took a spate of lawsuits to “encourage” them to use the safer switches.

Many people see a lawsuit only as a way of getting back what has been taken from them, and this is certainly one of its important purposes. However, the effects of a lawsuit may echo far outside the courtroom in which it is decided and may save hundreds or thousands of lives.

“Jerk and Jolt” on a Bus

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In the case involving the woman who had fallen in the bus aisle, the appellate court noted that she had failed to prove negligence and also failed to qualify under the jerk-and-jolt doctrine. No other passengers testified at trial, and no evidence was introduced that any passengers other than the injured woman had been affected at all by the acceleration of the bus. The mere fact that the woman lost her balance and fell, without any other evidence, was insufficient to meet the requirements of

the “jerk-and-jolt doctrine”.

Bus passengers can’t simultaneously observe the driver, the traffic, and all the circumstances that can cause sudden movements of a bus. An injured bus passenger who is not able to prove negligence has a limited opportunity to recover damages unless he or she can show that other passengers were “extraordinarily” disturbed by a jerk or jolt of the bus or that the movement was “beyond reasonable expectation”.

Disclaimer

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 general legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Dorian, Goldstein, Wisniewski & Orchinik, P.C.
2410 Bristol Road
Bensalem, PA 19020
(near Hulmeville and Bristol Roads)

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2410 Bristol Road • Neshaminy Valley Commons • Bensalem, PA 19020 • (Near Hulmeville Road)

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