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Legal Matters®

Loved ones deserve compensation for injuries, too

Sometimes, injured people don't pursue compensation because they're afraid of the stress of a lawsuit. But it's important to remember that when someone is hurt, it's not just that person who suffers. Family members, such as spouses, parents, and children, may have suffered as well. And they may deserve compensation for their own emotional pain – which is another reason why injured people should always discuss their situation with an attorney, so they can understand the rights of everyone involved.

The legal system recognizes the loss that family members experience when a loved one is hurt. It often allows family members to bring claims for their own “loss of consortium” with the injured person.

As with so many things, the law varies from state to state and from situation to situation. For instance, sometimes compensation for “loss of consortium” can be awarded as part of

the injured person's lawsuit. And sometimes the family members themselves can bring their own separate claims.

In some cases, a spouse can bring a claim and be compensated for the damage to the couple's intimate relationship. In other cases,

children can also be compensated, and the compensation is for the broader loss of the family member's companionship, support, love and affection.

Sometimes, parents can recover for their own loss when a child is injured.

These types of cases can raise a number of issues. For instance, in a recent case in

California, two men died of mesothelioma, a deadly form of cancer caused by asbestos exposure. Their wives asked to be compensated for their own loss of companionship, love and support from their husbands.

The asbestos manufacturers argued that the

Our legal system recognizes the loss that family members suffer when a person is hurt in an accident.



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Lab tests can make a huge difference in a person's medical treatment, job prospects, or criminal record. Labs have a legal duty not to be careless.

Laboratory can be held liable for testing errors

There are many situations in which you might be required to undergo some type of lab testing. In addition to medical tests ordered by your doctor, you might have to pass a drug screening in order to be



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hired, or take a medical test to show you're qualified for certain jobs or benefits.

But did you know that if a lab makes a careless error and produces a wrong result, it could be held responsible for any harm that follows?

Take the case of a mother in Oklahoma who – in order to collect child support – sought to establish the paternity of the man she believed was the father of her child.

The state arranged for a lab to conduct a DNA test, and the lab reported that the man was not the father. It conducted a second test that produced a similar result.

The mother then submitted a DNA sample to a different lab on her own.

After the second lab determined the man was indeed the father, the woman sued the first lab, claiming that it produced the wrong result because of carelessness in handling and identifying the DNA sample. She claimed that as a result of the mistake, she had to pay much greater legal and court fees.

The lab argued that it couldn't be sued because it was conducting the test in connection with a court proceeding, but the Oklahoma Supreme Court said that didn't make any difference and the lab could be sued for its errors.



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Birth control could increase the risk of blood clots

Consumer safety advocates have believed for quite some time that the popular birth-control pills Yaz and Yasmin, which contain the synthetic hormone drospirenone, can cause heart attacks, strokes and gallbladder failure.

Recently, the manufacturer of the pills settled about 70 lawsuits that raised such claims – out of more than 11,000 that have been filed.

Now, the U.S. Food and Drug Administration has announced another potentially hazardous side effect: blood clots.

According to the FDA, some recent studies have indicated that taking Yaz or Yasmin triples a patient's risk of developing blood clots. The FDA is now requiring all makers of birth-control pills containing drospirenone to include information about these studies on their warning labels.

Meanwhile, other methods of birth control have also been associated with blood clots, according to a study in the British Medical Journal.

Some hearing implants may be badly designed and fail

Many hearing-impaired people have sung the praises of Cochlear hearing implants. The device is surgically implanted into a patient's head and – in combination with an external behind-the-ear device – sends electrical energy to a patient's nerves in order to produce sound.

But the implants may have caused severe problems for some patients, resulting in a global recall.

These patients claim that due to a defect in the design, cracks can develop in the implants' seal and allow bodily fluid to seep in, causing them to fail. This can require risky surgery to remove the implant.

Illinois resident Wyle Wade's two-year-old daughter had a Cochlear device implanted behind each ear at an out-of-pocket cost of \$75,000. According to Wade, his daughter was able to hear for the first time and was delighted. But afterward, the devices suddenly went dead, causing his daughter nightmares and emotional trauma. Wade has filed a class-action lawsuit against the device maker.

Loved ones deserve compensation for injuries, too

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wives shouldn't be able to recover because at the time the men were exposed to the asbestos – many years earlier – they were not yet married.

But the California Court of Appeal said the wives were entitled to compensation anyway. Even though they weren't married at the time the manufacturers did something wrong, they were married at the time their husbands suffered the consequences, the court pointed out.

In Arizona, a 31-year-old man was tragically killed when his car collided with an overturned tractor-trailer on a highway. The trucking company was determined to be at fault.

A federal court allowed the trucking company to be sued by the man's parents, to recover for their own experience of loss from the death.

Interestingly, the parents had divorced when their son was a small child. While the mother and the son were close, the father had a rocky relationship with his son; in fact, they hadn't seen each other in the year before the accident. Nonetheless, the jury awarded damages to both parents, compensating the

mother for her loss and the father for the fact that he had now lost all opportunity to repair his relationship with his son.

In some cases, a family member is injured not just by the loss of companionship with the injured person, but by the emotional trauma they experience as a result of witnessing the accident themselves.

Once again, the rules vary from state to state and from case to case. For instance, the outcome may depend on whether the family member experienced some physical impact from the accident, or saw it happen at the time, or rushed to the scene immediately afterward.

In one recent case, the Idaho Supreme Court approved a substantial award by a jury to benefit an 18-month-old girl who was in a car crash that killed her mother and injured her father. Even though the child suffered no physical injuries and couldn't talk about her emotional distress, a caretaker described her personality before and after the accident, and the jury was convinced that she had suffered severe mental trauma.

We invite you to consult with us to see what your rights, or those of someone you care about, might be.

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!

City might be held responsible for poor road design

Almost every city or town has a poorly laid out intersection, traffic circle, light cycle or road shoulder that seems like an accident waiting to happen. And in some cases, the city might be responsible when an accident does happen.

One recent case involved a gravel strip that ran alongside a road next to a public park. A woman parked her car there to watch a baseball game. When she returned to her car, she was struck by a motorist who was using the gravel lane to avoid stalled traffic on the roadway.

The California Court of Appeal ruled that the city had created an unnecessarily dangerous condition, because it should have been obvious that the strip would be used both by park visitors and by drivers seeking to bypass traffic. As a result, it allowed the injured woman to sue the city.

In another case, a New Jersey driver was injured when he slid on a downhill curve on an icy day and struck an electric utility pole located just a few feet from the roadway.

The driver sued the utility company, noting that several similar accidents had occurred at the same location. According to the driver, the utility company knew that placing the pole there had created a dangerous problem, and it was responsible because it could easily have moved the pole to a safer spot.

The New Jersey Supreme Court agreed with the driver and allowed a lawsuit.



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Makers of bad generic drugs may be held accountable

If you're taking a prescription medicine and there's a generic version of the drug on the market, there's a good chance your insurance policy will only cover the generic version.

But what if there's something wrong with the drug, and you want to hold the drug company accountable?

Back in 2011, the Supreme Court made this more difficult. It ruled that you can't sue a generic drug maker under state law for not providing proper warnings about the drug.

According to the court, companies that make generic drugs are required by federal law to provide the exact same warnings as those accompanying name-brand drugs. The court said it wouldn't be fair to allow generic drug makers to be sued for their warnings when they have no choice as to what warnings to issue.

A lot of injured people who had brought lawsuits against drug companies suffered as a result of that decision.

However, there might still be hope for the victims of bad drugs. Just recently, a federal appeals court in

Boston said that while you can't sue a generic drug maker for bad warnings, it might be possible in some cases to be compensated anyway.

In that case, Karen Bartlett was prescribed the generic drug sulindac for her shoulder pain. The drug apparently caused a toxic sensitivity condition in which most of her skin burned off. She spent 70 days in the hospital, and suffered permanent injuries including near-blindness.

According to the appeals court, Karen couldn't sue the manufacturer over the inadequate warnings accompanying the drug. And she couldn't sue over the way the company formulated the drug, because it was required to formulate it the same way as the brand-name version.

On the other hand, Karen could sue the company simply for making the drug in the first place. Karen's argument was that sulindac was so dangerous, and the potential side effects were so severe and terrible, that the drug was inherently badly designed and should never have been marketed to patients at all.



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