



# Bottaro, Morefield & Kubin, L.C.

A t t o r n e y s   A t   L a w

SUMMER 2004

Brought to you by  
Bottaro, Morefield &  
Kubin, L.C.  
Attorneys At Law

#### OUR LAWYERS

Patrick F. Bottaro  
Richard W. Morefield  
Kip A. Kubin  
Thomas G. Munsell  
Jackie L. Morant  
Christopher C. Thompson

4700 Belleview, Suite 404  
Kansas City, MO 64112  
816-531-8188  
FAX: 816-531-8588  
e-mail:  
info@kc-lawyers.com  
Web site:  
www.kc-lawyers.com

#### AREAS OF PRACTICE

- Personal Injury
- Wrongful Death
- Defective or Dangerous Products
- Business Disputes
- Workplace Injuries
- Nursing-Home Neglect and Abuse

## FOR YOUR SAFETY Recalled product roundup



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

- ✓ **Family Dollar Services** has recalled 60,000 Durex Procraft Outdoor Extension Cords, which can shock or electrocute users.
- ✓ **Crate & Barrel** is asking consumers to return about 800 "Hanukkah Menorahs" whose plastic bases can catch fire and injure users if candles burn down completely.
- ✓ **Hill-Rom** recalled 2,900 rocking chairs with faulty support assemblies, which can collapse, injuring users.
- ✓ **Lang Candles** has voluntarily called back 92,000 Thematic Candles. Resin in the candleholder can ignite, posing a serious burn and fire hazard to consumers.
- ✓ **The Learning Journey International, L.L.C.**, and **Avon** recalled 56,000 Jack-in-the-Box toys. A spring mechanism attached to the lid can break, detach from the toy, and choke children.

## Medical-injury caps

Lawmakers who want to cap medical malpractice compensation say too many patients are suing over trivialities. Each of the sufferers in the following cases would receive only \$250,000 if medical malpractice reformers have their way. While most proposals would allow for reimbursement of out-of-pocket expenses, such as medical bills and lost wages, they would limit compensation for permanent, life-altering injuries.

Shortly after oral surgery at a hospital, a 17-year-old patient died when nurses negligently removed a breathing tube too soon, failed to monitor her distress, and mishandled her revival. A jury awarded damages.

A mother suffered a hypertensive stroke, cognitive problems, and right-side paralysis after being prematurely discharged from a hospital, despite doctors' knowledge of her high blood pressure and headache symptoms. The parties settled.

Although a five-year-old child was admitted to a hospital for an ear infection, radiologists failed to diagnose and report a sinus-cavity blood clot before he suffered permanent vision loss from swelling and optic nerve damage. A court awarded damages.

Only juries can assess fair compensation for patients' medical payments, lifelong suffering, loss of earning power, consortium with loved ones, and particularly their deaths.

Attorneys helping people.

# FRAUDULENT health insurance

Wrongdoers selling phony insurance plans are popping up everywhere. Their less-expensive coverage may look very appealing to Americans who lose coverage at work, experience rapidly escalating premiums, or cannot get coverage elsewhere.

Not only do scammers often lack licenses to sell insurance, they also

don't have sufficient reserves to cover payments. Their game is to pay smaller initial claims to solicit greater premiums from future policyholders. A study found that more than 100,000 scam-insurance-plan buyers have been

stuck with \$85 million in unpaid medical bills since 2001.

Experts offer the following warning signs to look for in potentially counterfeit health-coverage solicitations:

- Unbelievably low rates.
- No health prescreening requirement.
- Automatic preexisting-condition coverage.
- Promoted and endorsed by individuals allegedly representing labor unions or professional associations.
- Sales pitches that replace "insurance" with "benefits."

To check a plan's legitimacy, call our state's insurance commissioner's office for licensing, know the agent who will pay claims, and contact an attorney for counsel.

## Housing discrimination... ...and the elderly

As our nation grays, greater numbers of aging people may find themselves denied equal opportunity in obtaining housing.

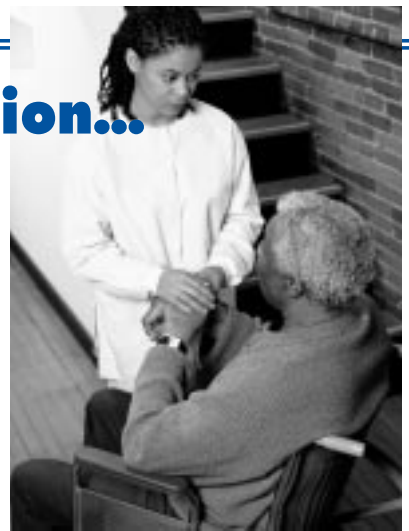
Housing discrimination against the elderly usually involves two factors. First is a perceived inability of an elderly person to live independently and to care for him- or herself and a property. The second consists of past, actual, or perceived disabilities that might make someone incapable of independent living.

If real-estate agents, rental agents, condominium associations, landlords, or even family members unlawfully deny the elderly equal opportunity to obtain housing in single-family homes, condominium communities, or rental communities, those harmed have recourse. Elderly people who have suffered discrimination are increasingly turning to the Fair Housing Act (FHA) of 1968 and the Americans with Disabilities Act (ADA) to obtain their fair rights to housing.

When a Texas couple was refused admission to a subsidized apartment complex on the basis of the husband's blindness and partial paralysis, the U.S. Department of Housing and Urban Development's FHA division determined that discrimination had occurred and took the apartment's owners to federal court. The court ruled that the FHA had the authority to bar discrimination against seniors with disabilities.

In a Florida case, an administrative law judge ruled on another FHA complaint. Here, the court agreed that a condominium association was required to make reasonable disability accommodations for a longtime resident who experienced a stroke that made him unable to walk.

Courts have also ruled that older residents are entitled to maintain service- or emotional-support animals as long as tenants reasonably comply with general tenancy obligations.



A reasonable housing accommodation for a senior can sometimes make the difference between living independently in a community or entering a care facility or nursing home. Seniors, or their children, who believe housing discrimination has occurred should consult legal counsel.



## SEAT BELTS SAVE LIVES

No one ever plans on having an automobile accident. But everyone can plan to drive more safely and buckle seat belts.

Here are some statistics on how seat belts can save lives:

- Seat belts save nearly 10,000 drivers' and passengers' lives annually.
- Only seven in ten auto occupants in accidents are buckled up.
- Young males—age 16 to 25—are the least likely to buckle up and are the most likely to be involved in life-endangering accidents.
- Hospital costs for unbelted auto-crash victims are 50 percent higher than for those who buckle up.
- If 90 percent of passengers use their seat belts by 2005, the nation will likely see a 25 percent reduction in child fatalities in accidents.

**PLEASE DRIVE SAFELY.**

## Workplace injuries... ...and equipment design

Thousands and thousands of American workers are injured on the job every day. In fact, according to the Bureau of Labor Statistics, 4.7 million nonfatal workplace injuries and illnesses were reported during 2002.

Many workplace injuries could be prevented if manufacturers designed machinery and other equipment with high safety standards in mind, and businesses required all machinery to be operated as instructed.

### Worker fatality

When workers are injured by defectively designed equipment, our civil justice system offers recourse. Family members of a woman who suffered fatal injuries when a grinding wheel she was working on exploded brought suit. Their attorney alleged that the equipment's manufacturer failed to warn of design dangers and was further negligent in failing to include a protective guard on the equipment that would have prevented serious injury. The parties settled out of court.



*Thousands of American workers are injured on the job every day. When workers are injured by defectively designed equipment, our civil justice system offers recourse.*

## LEGAL DICTIONARY

Many clients find legal terms puzzling. From time to time, we offer some easy-to-understand definitions to help clear things up. This time, we'll look at legal terms associated with civil wrongs.

### Tort

This is behavior or an act that one person negligently or intentionally performs which harms another person physically, monetarily, or in some other way. Torts commonly involve assaults, auto accidents, defamation, fraud, malpractice, and premises liability. The injured person has the right to sue for damages.

### Tortfeasor

A tortfeasor is a person who commits the act that harms another person.

### Tort of Another Doctrine

This generally accepted convention permits a plaintiff to obtain reasonable compensation for attorney's fees they have paid to sue a tortfeasor or third party.



## SECRET settlements

Secrecy and gag orders in our state and federal courts undermine every American's right to know. Since the mid 1970s, defendants in civil litigation, as a condition of settlement, have sought to keep out of the public's eye important information that should emerge from litigation.

For instance, over the past 20 years, secret settlements have been reached to conceal very important information about sexual abuse of children by clergy, injuries from medical malpractice, automobiles that flip over or explode in accidents, and medical procedures and products that endanger health.

This insidious practice also affects Americans' perceptions of their courts and our justice system. "Protective Orders" close off the nation's courts, which are supposed to be institutions open to public scrutiny and review. "Sealed Court Files" deny a presumption of openness and honesty to court proceedings. "Confidentiality Agreements" undermine the public's respect for the courts and justice. And "Secret Agreements" increase the likelihood of additional litigation to find the truth.

## How many lobbyists?

On a single "tort" reform measure, more than 450 registered lobbyists, hired by corporations, continually pressured Washington, D.C., legislators to eliminate or reduce the rights of those whom businesses harm.

© Copyright 2004. Newsletters, Ink. Corp. All rights reserved. Printed in the U.S.A. [www.newslettersink.com](http://www.newslettersink.com)

The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

## Examining physicians

On occasion, our practice may request that a client involved in an automobile accident or a workplace injury obtain a medical examination from a physician whom we recommend.

Although we always will respect a client's relationship with his or her primary physician, our second medical expert's opinion may be more appropriate for the client's particular case.

Our experience has shown that some doctors may not be helpful to personal injury cases. General practitioners do not often appear in court as witnesses. On occasion, because of medical malpractice issues or conflicts of interest, physicians have declined to testify. Other physicians may appear nervous to jurors or become defensive when attorneys question their diagnoses or even their credibility.

Our recommended plaintiff medical expert can also serve as a backup for a family physician who is called to an emergency and cannot be in court, offer a second opinion to the family physician, or even counter the family physician if his or her diagnosis was incomplete or incorrect.

## Register to vote

To register to vote in our state, you must be:

- ★ a U.S. citizen.
- ★ a state resident
- ★ 18 years old on or before election day.

### How to register

In some cases, registration can take up to a month.

- ★ **By mail**—Obtain a registration form at an election office, town hall, post office, or elsewhere; fill it in; and mail it to the local election office.
- ★ **In person**—Go to your local election commission and complete an affidavit of registration.
- ★ **Motor vehicle registry**—Fill in a "Motor Voter" form.
- ★ **Online**—Surf to the Federal Election Commission at <http://www.fec.gov/votereg/vr.htm> to download a National Mail Voter Registration Form to fill in and mail to the local election office, or go to the Working Assets Web site at [www.workingforchange.com/vote](http://www.workingforchange.com/vote) to register.

## BOOK REVIEW

### An Air That Kills

by David McCumber and Andrew Schneider

America's tragic asbestos story has been told in bits and pieces by many observers over many years. Now, for the first time, *An Air That Kills*, a new book written by veteran investigative journalists David McCumber and Andrew Schneider, puts it all together in frightening detail. Schneider is a two-time investigative-reporting Pulitzer Prize winner.

*An Air That Kills* is about Libby, Montana, site of a vermiculite mine owned and operated until 1990 by W. R. Grace.

Company executives knew that the vermiculite from this mine was contaminated with poisonous asbestos fibers, but concealed how dangerous exposure could be to their own mine employees. Some entire families were poisoned.

McCumber and Schneider explain how Grace further failed to warn the town's citizens that simply living in Libby was dangerous. Executives also never told the thousands of companies nationwide which purchased the contaminated vermiculite that it was extremely toxic.

Libby's residents used our legal system to hold W. R. Grace accountable for its actions. Hundreds of thousands of other asbestos victims have achieved the same goal.