

Injury Law Alert

Fall 2011

Children's Toys: Play It Safe!

Childhood is supposed to be a time of joy and play, but the sad fact of the matter is that the toys children play with can often be dangerous. The Consumer Product Safety Commission (CPSC) handles toy recalls and in 2007 ordered 45 million toys to be recalled. More than

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200,000 children had toy-related visits to the emergency room in 2008, a 54% increase from 1999. Nineteen children died due to dangerous or defective toys in 2008.

So why are toys becoming more dangerous? The answer to this question lies in large part in the sophistication of the toys, many of which are composed of smaller parts and thus contain hidden dangers. Also, many toys are now manufactured outside

the United States, free from effective safety oversight.

Finally, while most parents know the common dangers that toys present (such as the danger that small children will choke on small parts), many dangers are hidden, such as the presence of asbestos and other carcinogens. Even small magnets commonly found in toys today are hazardous—when swallowed, they can attract each other through the intestinal walls, causing serious internal injuries and even death.

As toy fads change, so do the dangers. In recent years, accidents on scooters, which have recently become very popular, have accounted for the largest number of toy-related injuries. Recalls for lead have also spiked in recent years, because lead is a cheap filler used to produce jewelry and charms in a less expensive way. For example, while CPSC guidelines limit the lead content of toys to 0.06%, in 2006 a small charm

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Check Out That Toy

Worried that a toy you have might be defective or dangerous? Check it out!

- Consumer Product Safety Commission Toy Information
www.cpsc.gov/cpsc/pub/pubs/toy_sfy.html
- Centers for Disease Control Lead Recalls
www.cdc.gov/nceh/lead/recalls/toys.htm
- American Academy of Pediatrics: Toy Safety Information
www.aap.org/new/toysafety-part1.pdf and
www.aap.org/new/toysafety-part2.pdf

Injuries from Toxic Substances

Over the past century, the world has seen a number of industrial advances that have improved both the length of our lives and our standard of living. Unfortunately, an unintended byproduct of these industrial advances has been the increasing number of dangerous and toxic substances polluting the environment.

Although many people recognize the names of some of the most famous (or infamous) disasters, such as Love Canal or Three Mile Island, there are hundreds, if not thousands, of sites all over the United States that are too contaminated with toxins to be used and that await cleanup by the Environmental Protection Agency. Perhaps you unknowingly live near one of these contaminated sites.

Dangerous substances are everywhere. Many older buildings still have lead-based paint, which can cause brain damage, especially in children. For years, workers were regularly exposed to asbestos, which is now known to be a leading cause of lung problems and cancer. Dry-cleaning chemicals and other solvents can cause brain damage and organ failure; pesticides used on crops can cause birth defects; waste that seeps out of a landfill can cause such varied problems as groundwater contamination and leukemia—the list goes on and on.

With the rise in the number of these toxins, there has been a similar rise in so-called “toxic tort” cases. A toxic tort case is nothing more than a lawsuit to recover for an injury or a death that is caused by exposure to some toxic substance.

Toxic tort cases can be difficult and expensive to win. Often, people become ill without knowing why, and it may take years to trace their problems back to the specific toxin

causing the illness. Because corporate polluters are hardly eager to advertise their involvement with poisoning the environment, tracking down the party responsible for the toxins can also take years.

Finally, the connection between the toxin in the environment and the injury must be shown, and expert scientific, medical, and engineering testimony is usually required to connect the dots. People who bring toxic tort suits against polluters often have to prove that they have, in fact, been injured and that they are

not hypochondriacs who are merely imagining some problem that does not actually exist.

If you have been injured from toxic substance exposure and are considering legal action, please contact us for advice and guidance. Given the complexity of such cases, having good legal counsel is vitally important to help you file a legitimate claim, to make sure that you do not miss some deadline for filing your claim, to prepare the necessary legal paperwork, and to help you present your case to the jury.

RV Accidents: Preparing for the Worst

RVs of all sizes are becoming more and more popular, and, with their increased popularity, they are becoming more and more likely to be involved in accidents on the highways and byways of the country. However, with a little advance planning, you will be able to travel with confidence.

Before you go on a trip in your RV, get together the same kind of basic emergency kit that you would take in your car. The large size of an RV makes warning devices such as flares and deflectors especially important, but also be sure to keep a roadside emergency kit and check the spare tire. Take along a pad of paper to take down information and perhaps a camera to record damage. Don't forget to keep the RV insured!

Remember, prevention is the best remedy. Make sure you know how to drive the RV, and practice getting a feel for how it handles. Even though you are on vacation, driving an RV is a full-time job that requires all of your concentration: Avoid distractions and keep your eyes on the road.

If the worst happens, keep your cool. First, move the RV to a safe place and check for injuries. Call for emergency help if necessary. Remember: If you are traveling outside of the United States, the emergency number may not be 911. Get information from the other driver(s) involved, and take pictures.

Don't Fall for Fake Check Scams

Most people are sophisticated enough not to fall for e-mail scams written in halting English and promising the recipient enormous riches if only he will help the sender get his money out of Nigeria (or the Balkans, or Iraq, or wherever). Knowing that people are wary of such an obvious scam, many scammers have moved on to a new scheme—the fake check scam.

At its most basic, a fake check scam involves sending a check to an individual and asking the individual to send some money back to the person sending the check. Sometimes, the scammer asks you to cash the check as a “favor” and to keep a percentage of the money for your trouble.

Other scammers pretend to be interested in buying something that you are selling. A check for more than the sales price will be sent to you, along with a request that you send the difference back to the scammer. All fake check scams are the same in that they ask you to send the scammer cash, and because the check you have received will eventually bounce, you will be out the money that you sent to the scammer.

Fake check scams are tied to all kinds of different situations: foreign business offers, offers to become a “mystery shopper,” overpayment schemes, work-at-home ploys, etc. All of the scams play on the victim's greed—the idea that you can get something for nothing, or a large payment for minimal work. All of them take advantage of the fact that banks give credit for deposited checks very quickly (usually within five days) but it can be weeks or months before a counterfeit check is discovered. Aver-



age losses are \$3,000 to \$4,000 per victim, but losses in any given case may be much higher.

Protect yourself. Understand that there is rarely, if ever, a legitimate reason for a person to send you a check or money order and ask you to send cash back. The fact that

the check is credited to your account in the first instance does not mean that it will not eventually bounce, leaving you stuck with the bill.

Don't respond to such scammers, don't cash checks for people you don't know, and don't send cash to anyone you don't know well enough to trust. If you have been victimized, file a police report. Most importantly, remember: There is no such thing as a free lunch.

Underfilled Pool Leads to Big Jury Verdict

Earlier this year, a jury returned a large verdict in favor of a local musician who became paralyzed from diving into an underfilled swimming pool at an apartment complex.

The musician was attending a party with friends at the complex. The partygoers were drinking, and they began to roughhouse around the complex's pool. The musician dove into a part of the pool that was supposed to be 4 to 4-1/2 feet deep, but the pool was underfilled, and the water was only 2-1/2 to 3 feet deep. Because of the lack of sufficient water, the musician hit the bottom of the pool and was rendered quadriplegic.

At trial, the jury heard evidence that the apartment complex had been negligent. Management at the complex knew that the water level in the pool had dropped but, despite this knowledge, it did not obey a law requiring that the pool be closed. The jury also heard evidence that the management allowed alcohol to be consumed at the pool but did nothing to plan for the risks of drinking and swimming. Other evidence was presented that the musician was drunk when he was injured and that the pool had “no diving” signs posted.

Taking into account the musician's responsibility for his own injuries, the jury found that the apartment complex was 51% responsible and the musician was 49% responsible. Based on evidence of the devastating effect that the injuries had on the musician, he was awarded \$6.2 million.

Play It Safe!

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that was being given away with the purchase of children's shoes was found to contain 99.1% lead, and the ingestion of the charm killed a child.

Other kinds of injuries caused by toys are more foreseeable but still occur. Long cords on a toy can lead to strangulation or suffocation. Choking injuries are also common, often occurring when a younger sibling swallows a toy that might be safe in the hands of an older child.

Latex balloons present a well-known choking danger, as do toys with parts that can be pulled off through rough play. Many toys (especially those aimed at boys) shoot projectiles, which can cause injuries to the head or eyes. Even projectiles too soft or too small to cause impact injuries can be dangerous. In 2007, a nine-year-old in Chicago choked to death on a two-

inch-long soft dart.

Unfortunately, as toys become more dangerous, regulation is becoming less effective at preventing injuries. The CPSC has a small staff and budget and cannot inspect even a small percentage of the toys sold in the United States. Accordingly, the CPSC is often forced to play "catch up," warning of dangers or ordering a recall only after children have been hurt or killed.

Most toys are made overseas in countries such as China. As ineffective as domestic regulation is, regulation in these foreign countries is often nonexistent. Because of the lack of regulation, dangerous ingredients may be found, such as lead in toys or cadmium (a carcinogen) in jewelry and in batteries that may overheat and catch fire.

Some toy companies have even discovered that Chinese manufacturers substitute less expensive but more dangerous chemicals for more

expensive but less dangerous ones without telling the toy company. An example of this that received a lot of press was the substitution of one kind of glue for another in a child's toy. Children who then ate the toy became very sick, which would not have happened if the proper glue had been used.

Given the lack of effective oversight, parents are the first line of defense for their children. Make sure that the toys you purchase are age-appropriate, and keep toys with small parts away from younger siblings. Teach your children to not put toys in their mouths and never shoot anything at another person's face.

If you believe that your child has been injured by a toy, report it to the CPSC. Finally, if your child has suffered a serious injury, hire a lawyer. If dangerous toys are unprofitable, companies will make safer ones.

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