

## INJURY LAW ALERT

SUMMER 2007 ISSUE

### A BOATING ACCIDENT CAN RUIN A SUNNY DAY

Summer is upon us, and many Texans are getting their boats and jet skis ready for another season. At last count, Texas had over 600,000 registered watercraft (!) that are used on the largest volume of inland water anywhere in the United States. With all of these boats on all of these lakes and rivers (not to mention the Gulf), accidents are not uncommon.

Boating accidents can involve collisions between boats and between boats and personal watercraft, collisions between boats and obstructions such as rocks and tree trunks, and boats that capsize and trap people underneath. However, the most common type of boating-related injury occurs when people fall off of a boat. The injuries caused by boating accidents are as serious as any that occur on land, and they include everything from broken bones and knee injuries all the way up to serious brain injuries and drowning.

According to the Texas Parks and Wildlife Department, Texas averages about 150 serious injuries and about 50 deaths every year in boating accidents. The typical boating death involves:

1. an open motorboat;
2. people boating between noon and 7 p.m. on a weekend;
3. the victim falling overboard; and
4. an operator between 26 and 50 years of age.

Many boating accidents also involve the overuse of alcohol—statistics show that alcohol is a factor in about half of all boating accidents, and that the use of alcohol while boating more than doubles the risk of having an accident.

The number one thing you can do to protect yourself when boating is to wear a life jacket. Like wearing your seatbelt, the use of a life jacket takes little time or effort but significantly increases your chances of surviving an accident, especially if you fall into the water.

In fact, over 85% of the victims of boating accidents who drown are not wearing a life jacket at the time. Be sure to wear your life jacket even if you are a good swimmer, because even a good swimmer can get tired, suffer from a cramp, or be caught in an unexpectedly strong current.

Look for one that is approved by the Coast Guard, and do not rely on water wings, inner tubes, or other inflatable toys. The life jacket you choose should have the appropriate rating for a person of your size. A life jacket that is too small will not support you and one that is too big may slip off unexpectedly. Carry a few extras, in case someone falls in while not wearing one or in case you come upon someone from another boat who does not have one on.

Remember: The law requires that all children younger than 13 years old wear a life jacket at all times when the boat that they are on is moving. Make sure that they have life jackets sized for their smaller bodies. It is also a good idea to carry other kinds of gear that will allow you to help someone who has fallen into the water, such as spare ropes and a first-aid kit.

The other major thing you can do to prevent boating accidents is to control the use of alcohol. Many people who would never drink and drive think nothing of having a few drinks and then taking their boat out for a spin. The fact is that boating while intoxicated (BWI) is a crime just like driving while intoxicated, and the same blood-alcohol level of 0.08 means that you will be presumed to be an impaired boater. If you are caught BWI, you can be arrested, jailed, and even lose your driver's license.

If you are involved in a boating accident, it is a good idea to report it to the Texas Parks and Wildlife Department or (if the accident occurs in coastal waters) to the Coast Guard. If you have been injured in a boating accident through the negligence or carelessness of another, you might be entitled to be compensated for your injuries. The facts of each case will differ, and you will need to speak with an experienced lawyer to determine whether you have a claim and, if so, how much that claim may be worth.

## BOATING SAFETY CHECKLIST

- Make certain you know how to safely operate the watercraft you are piloting. Consider taking a boating safety class.
- Make sure that your watercraft is well cared for and in good mechanical shape before taking it out on the water.
- Always wear a life jacket, and remember that children under the age of 13 are required to wear a Coast Guard-approved life jacket while underway.
- Carry extra flotation devices in case you need to perform a water rescue.
- Follow the same rules that you would while driving your car: Operate the watercraft at a safe speed, do not overload it, and do not use alcohol. Boating while intoxicated is a crime that is treated in much the same way as driving while intoxicated, and it carries similar penalties.
- Keep a sharp lookout for submerged objects, other boaters, and, especially, personal watercraft such as jet skis.

## AGING TIRES CAN CAUSE ACCIDENTS

Cars are expensive to own and require the owner to continually buy “consumables” such as gas, oil, filters, spark plugs, and windshield wipers. Among these consumables are tires, and most car owners understand that they will have to replace their tires every so often because the treads will become worn.

However, did you know that you may also need to replace your tires because of their age, even if you have not driven very far and even if the tires look fine? This is because tires are usually made of rubber (real or synthetic), and all rubber products deteriorate with age, even if they are not actually being used.

Research conducted in the aftermath of the Firestone tire/Ford Explorer problems a few years back shows that tires as few as six years old may pose a danger to users because of

age-related deterioration, and even the tire industry (which has consistently downplayed the problem of old tires) has issued an advisory to its members recommending that tires should be replaced after 10 years.

Although many tires are purchased new and are used long before six years have passed, some are not. Some people do not drive their cars very often or very far, and six years may pass before the tire tread becomes worn enough to need replacing. Other people buy used or reconditioned tires, the age of which may be difficult to determine.

In addition, how many of us have a spare tire in the trunk of our car that is more than six years old? Placing such an old spare on a car can present a danger all its own.

### Tread Separation

The specific problem posed by old tires is the phenomenon of tread separation. This separation is caused by oxidation, a process that causes the structure of the rubber to break down. When the rubber breaks down, the tread (the part of the tire that touches the road) can separate from the rest of the tire when the car is moving. Some people believe that it is much harder to control a car when the tread separates from the tire than it is to control one after an ordinary blowout.

When the tread partially separates, it pulls the car to one side, and drivers compensate by pulling the wheel in the other direction. However, when the tread separates completely and falls off, the driver will be overcompensating, and this overcompensation can cause the vehicle (SUVs especially) to swerve into oncoming traffic or to roll over. This means that tread separation can be a much more dangerous matter than can an ordinary tire problem.

Tire safety experts have estimated that hundreds of deaths or serious injuries have occurred that can be attributed to age-related tire failure. To reduce the number of these deaths or injuries, consumer advocates have asked the federal government to require tires to be marked with an easy-to-understand “expiration date” so that a purchaser may easily determine its age.

## Calculate the Age of Your Tires

The government is considering this request, but, until then, consumers can check the 10- or 11-digit DOT identification number on their tires. The last 3 or 4 digits of this number show a tire's age: The first 2 give the week it was made (03 = the 3rd week of the year; 51 = the 51st week of the year), and the last 2 digits (or just the last digit for tires made in 1999 or earlier) show the year (03 = 2003), so a tire marked "1104" would have been made in the 11th week of 2004, and currently would be about 2-1/2 years old.

The moral of the story is to make sure that you replace your tires, including spares, regularly and not use a tire that you know is old, even if it does not appear to be worn. However, if you or someone you know has been the victim of an age-related tire failure, you may have a products liability claim against the tire's manufacturer, seller, or even the car company that used the tires on its vehicles. Each case depends on its facts, and, because such cases are so complex and require the testimony of so many experts, it is best to have a lawyer help you determine whether you have a claim.

## INSURANCE COMPANY SECRETS

When dealing with insurance companies, it is important to understand a few of their secrets so that you can get the settlement you deserve:

- Insurers make money in part by denying you benefits. They may try to discourage you from seeking medical treatment (especially from chiropractors), or they may tell you that rental car coverage is limited to a set number of days. In most cases, this is not true, and, if you are not at fault, you are entitled to have all of your reasonable damages and expenses covered.
- Insurance companies track every claim you make. When dealing with an insurance company, assume that it knows the history of every claim you have ever made, even if a claim was with a different company.

- The adjustor is not your friend. Despite his protests, he is not there to help you—he is there to reduce the insurance company’s payment as much as possible. You are also not required to give an adjustor a recorded statement or a medical authorization. If you feel you are not being treated fairly, it may be time to get an attorney involved.

### INSURERS PLAY HARDBALL

Month after month, you pay hundreds of dollars in insurance premiums, expecting that if you have an accident your insurer will cover the bill. Unfortunately, this expectation all too often goes unmet because insurers play hardball in accident claims.

For the past decade or more, many insurers (including Allstate and State Farm) have taken a tough stance on paying so-called “soft-tissue” claims—those claims where the injury does not show up on X-rays, such as whiplash. This stance is sometimes called the “Three Ds”: Deny the claim, delay the settlement, and defend in court.

So why the tough stand? The answer is simple: MONEY. For every dollar not paid out in claims, the insurer makes another dollar in profit. The fact that its insured gets dragged into court on a relatively minor claim does not seem to bother the insurance company, nor does the fact that an injured person goes uncompensated.

Despite paying less and less in claims, premiums continue to rise. Why? Again, the insurers have done a good job of convincing people that liars and cheats who make false or inflated claims are actually costing them millions of dollars a year. This is also part of their strategy: Make the victims look as though they are trying to defraud the insurers, and make the lawyers who represent the victims look greedy.

The sad truth of the matter is that, as long as people let insurers get away with this strategy, insurers will continue to use it. The only hope is that when enough people have been treated unfairly, we won't put up with it anymore.

## SAFETY WITH ELECTRICITY

Electricity is an irreplaceable part of our modern world. In fact, it is hard to imagine what it was like living in the days before electricity. However, it is important to remember that, as useful as it is, electricity can be dangerous. Remember these safety tips:

1. Do not touch electrical power lines, EVER. If working near a power line, call the electric company to have it shut off. If the power line is down, stay away.
2. Do not run electrical wiring under carpets or across floors, even if the wiring is covered by tape. Walking on wires will eventually result in the insulation being worn away, increasing the chances of your being shocked or of starting a fire.
3. Inspect your electrical cords regularly. If a cord is frayed or damaged, have it replaced.
4. Use grounded (three-pronged) plugs. Do not use a grounded plug in a non-grounded outlet.
5. Install ground fault circuit interrupters (GFCIs) on outlets that are near water, such as those in the kitchen and bathroom.
6. Do not pull on electrical cords, and do not carry corded appliances and power tools around by their cords.
7. When in doubt, leave electrical work to a qualified electrician. When working with electricity, you may get only one mistake, and, since that mistake can kill, you will not learn much.

## HOME LOANS AND PREDATORY LENDERS

We shop around for the best deals on the food we eat, the clothes we wear, and the cars we drive. So why do many people not shop around for the best deal on the largest expense they will ever incur—their mortgage? The answer is that many people are taken in by the high-pressure tactics of predatory lenders.

Who are predatory lenders? They are lenders more concerned about making a buck than

finding the right mortgage for you. Their lack of concern for the welfare of borrowers can cause all kinds of harm:

- They convince people to buy more home than they can afford through the use of pressure tactics and “teaser” rates;
- They sell properties for more than they are worth by using false appraisals; and
- They charge exorbitant rates for services that they do not provide or that are not necessary.

Because they target the very old, the very young, and those with less-than-perfect credit, predatory lenders can often convince people that they should not bother to shop around, and they lie to people about the process and about the loans they will receive. Often, the borrower discovers that he has paid too much for what he got or that he cannot afford the loan that was made, and he loses the house through foreclosure.

So what can you do to protect yourself? Much of it is common sense. Shop around for a loan, just as you would shop around for anything else. Ask for recommendations from professionals who do not work for the lender, such as your real estate agent. Remember, once the loan is made, it is your responsibility to pay it back in full, and anyone who tells you otherwise is not telling you the truth. Understand everything that you are asked to sign—if you need to, take a document home and look at it first. And remember: If it sounds too good to be true, it probably is.

### DANGEROUS DRUGS: TRASYLOL

Trasylol is the only FDA-approved drug for the prevention of blood loss during heart surgery. By boosting the body’s ability to stop bleeding, it can help reduce the need for blood transfusions. Unfortunately, it can also have dangerous side effects, including kidney failure, heart failure, and stroke.

A recent study shows that Trasylol may double the risk of kidney damage, as well as

increase the risk of heart attack by nearly 50%.

The FDA recently issued a Public Health Advisory urging physicians who use Trasylol to carefully monitor patients for the occurrence of toxicity to the kidneys, heart, and central nervous system. The FDA also revised the labeling requirements to strengthen safety warnings and limit usage of the drug to specific situations.

If you have suffered kidney failure or heart problems following heart surgery, you may have been treated with Trasylol and you may be entitled to compensation for your injuries. Contact our firm to discuss your case.

#### REPORT ELDER ABUSE

It is a sad fact, but, with the increase in the population of the elderly, there is an increasing number of cases of elder abuse. Whether the abuse takes the form of a pattern of physical violence or just neglect, the problem is a growing one.

In order to combat elder abuse, Texas law requires that anyone who believes that an elderly or disabled person has been abused or neglected is required to report their suspicions to the Texas Department of Human Services or to local law enforcement agencies. Failure to do so can result in the person who failed to report the suspected abuse being charged with a misdemeanor.

Failure to report abuse has been made a crime because the elderly or disabled individual is often entirely dependent on his or her caregiver and may be unwilling, or even unable, to report abuse on his or her own. Symptoms of abuse or neglect range from the obvious (such as reports of abuse or assault, frequent or unexplained injuries, or a lack of sufficient food) to the more subtle (such as passive or emotionless behavior, fear of being alone with a caretaker, and being left unattended for extended periods of time).

Reports of suspected abuse may be made orally or in writing, and should include the name and address of the person being abused, the name and address of the person or facility

responsible for the abuse, information about the abuse that is suspected, and any other relevant information. Abuse may be reported toll-free at 1-800-458-9858 (the Texas Department of Human Services) or 1-800-252-2400 (the Texas Department of Protective and Regulatory Services) or to local law enforcement agencies.

### FINGERPRINT YOUR CHILD

A staple of every cop show, the use of fingerprints or DNA evidence to catch criminals is well known. But did you know that there is a move afoot to gather the same information from America's children?

The availability of photographs, fingerprints, and DNA samples can make all the difference in cases where a child has been lost or even kidnapped. To ensure that this information is readily available, the National Child Identification Program has created an ID kit that allows parents to take their own child's fingerprints and even collect their DNA by means of a mouth swab. These kits are available for a small fee from the National Child Identification Program's website ([www.childidprogram.com](http://www.childidprogram.com)) or through distributions being made by the American Football Coaches Association throughout the country.

Don't wait until it's too late to collect this valuable information.

### CASE BY CASE

As more and more Americans are categorized as obese, many are choosing to undergo gastric bypass surgery, which is intended to help them lose weight by surgically reducing the size of the stomach. Although this surgery is becoming more common, there are serious concerns about the safety of the procedure. Recently, a Texas jury was faced with just such a case, and it returned a large verdict for the victim.

In this case, a woman who weighed over 400 pounds wanted the surgery so that she could

lead a normal life. Unfortunately, after the surgery, she suffered respiratory failure and spent almost a week in intensive care. She then developed an infection, and the incision from the surgery broke open. Despite these problems, the doctor continued to treat the patient as if she were an ordinary gastric bypass patient, right up until the time she bled to death from complications due to the infection.

The lawyer representing the woman's family convinced the jury that the doctor's treatment was negligent, and the jury awarded the family of the victim \$200,000.

#### WE APPRECIATE YOU!

Thank you for choosing our firm for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.

We also appreciate the trust that you have placed in us by referring your friends, family, and associates to us for legal services. Thanks!