

**SPRING
2008**

LAW OFFICES OF FREDERICK J. MARTORELL, ESQ., P.C.

*DEDICATED TO BRINGING JUSTICE
TO THE INJURED AND THE ELDERLY*

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- Auto Accidents
- Trucking Accidents
- Pedestrian
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- Slip and Fall
- Medical Malpractice
- On-the-Job Accidents
- Nursing Home Abuse
- Probate and Estate
Planning Wills
- Elder Law and
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- Powers of Attorney
- Health Care Proxies
and Living Wills
- Business and Real
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more easily with you,
please send your
e-mail address to us at
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OUR NEW *newsletter!*

We're sending our new newsletter to you because we care about your family's security and well-being.

In each issue, we'll give you information to help keep you and your family safe and healthy. Our newsletter will suggest protective steps to reduce the chances of harm or injury in your car, at home, at work, at school, or at play. We'll also update you about legal issues and cases you'll find helpful and which can improve everyday living.

Should you or a loved one suffer personal injury—and find you need us—you'll learn a lot here about what your legal options and remedies may be.

We hope you enjoy this newsletter. We have prepared it with the same personal and professional touches that you feel when you visit our practice. We also thank those who ask us to represent their legal needs and those who recommend us to others. We hope you'll share this information with friends and neighbors.

Frederick J. Martorell, Esq., P.C.

NURSING HOME ABUSE *Fall cases*

As many of us in the “sandwich” generation surely know, the care and protection of our elderly parents and relatives is our responsibility as loving and caring human beings. Their care, however, can become overwhelming. When advanced dementia takes over, many times we cannot provide them with the care and attention they need. So we turn to an assisted-living facility or a nursing home to protect our loved ones. Unfortunately, all too often the nursing home is understaffed and poorly operated, leaving our loved ones to suffer unnecessary neglect and abuse.

There are federal and state statutes which specifically require the nursing homes to follow certain standards to protect our seniors by ensuring that each resident of a nursing home receives adequate supervision and assistance devices to prevent accidents such as falls and burns. When a new resident first enters a nursing home, he or she is evaluated for his or her risk of falling, and certain safety measures are implemented to prevent the new resident from falling. Every time a resident falls or has an accident, that resident must be reevaluated and a new plan implemented to protect that resident. A failure to reassess or a failure to implement the safety measures to protect this resident is a violation of federal and state statutes and actionable.

If your loved one has unexplained bruising or has been injured in a fall at a nursing home, call us. We will help you hold the nursing home accountable and obtain justice for your loved one.



We take your family's safety and security personally.



FOR YOUR SAFETY

Recalled product roundup

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

- ✓ **Simplicity Inc.** has recalled about one million cribs whose drop-side may detach and entrap and suffocate infants.
- ✓ **Back to Basics Products, LLC**, voluntarily called back 10,000 IT400 Iced Tea Makers. Components can fail and burn users.
- ✓ **Wal-Mart, Inc.**, asks buyers to return 138,000 Ceramic Oil Torch Lamps with ceramic torch heads that can loosen or dislodge and lacerate or burn consumers.
- ✓ **Robert Bosch Tool Corporation** has recalled 811,000 Skil® circular saws. Users may turn the power tools on without a safety lockout, causing unexpected operation of the saw and injury.
- ✓ **Keystone Manufacturing Co., Inc.**, and **QVC** called back 32,000 Cook's Essentials Convection Ovens with Pull-Out Rotisserie and Deni Convection Ovens with Rotisserie. The control panel can overheat and pose fire and electric-shock hazards.

Auto seatback failure injuries

National safety standards fail to require sufficiently strong seatback construction in some cars and SUVs.

Vehicle makers tend to design, construct, and install less expensive seatbacks, recliner apparatus, and seat tracks in lower-end models. As a result, drivers and passengers may be injured when seatbacks collapse rearward during rear-end collisions and while accelerating, as seat-mountings or floors buckle and deform. When a car's seats collapse, the driver and passengers may not be able to get out of the vehicle quickly or safely.

Passengers involved in seatback failures may suffer serious injuries, including head trauma, spinal cord injury, broken bones, organ damage, disfigurement, and scarring.

Defectively designed SUV seats

A front-seat SUV passenger was rendered paraplegic when her seatback collapsed in a rear-end collision, throwing her into the back seat and breaking her neck. When her attorney demonstrated that the SUV's design and manufacture, different from higher-end models, were defective and unreasonably dangerous, a jury awarded significant damages.

Anyone involved in an accident in which seats collapsed should contact an attorney. No one should suffer because of an automobile manufacturer's negligence.



Child day care

When both parents must work, they want their young children to enjoy safe, educational, and productive experiences at day care.

Parents should investigate children's day-care centers to be certain that providers understand child learning and growth, administer discipline consistently and positively, recognize when a child is ill, and maintain a clean and safe operation.

On occasion, a parent may drop in on day care to feel assured that the center has sufficient and well-trained and motivated caregivers, to observe activities and programs, and to examine books, toys, and facilities.

When there's a problem

When day care fails to meet expectations, parents can usually work out problems by speaking with operators or caregivers, writing letters, or filing complaints. When his child was injured after being pushed from a slide by another child, a father had to sue a day-care center for resolution. His attorney demonstrated that caregivers failed to provide adequate supervision and discipline for an aggressive child who had previously pushed other children during activities. The parties settled on the day of trial.





Words we live by

The late U.S. Supreme Court Justice William H. Rehnquist had immense respect for each American's right to trial by a jury of peers. Here are some of his words we can all live by:

★ The right to trial is *“so fundamental and sacred to citizens, where guaranteed by the Constitution or provided by statute, [it] should be jealously guarded.”*

★ *“Those who oppose the use of juries in civil trials seem to ignore [that] the founders of our nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary.”*

★ *“The guarantees of the Seventh Amendment [right to civil jury trial] will prove burdensome in some instances...but as with other provisions of the Bill of Rights, the onerous nature of the protections is no license for contracting the rights secured by the Amendment.”*

In short, our firm is committed to preserving the right to a jury trial for each of our clients, just as we are dedicated to battling large corporations, which, every day, try to whittle away rights protected by our Constitution. If you are a victim of personal injury from another's negligence, please call us.

Assisted-living residences

When concerned family members search for a care residence for a beloved grandparent or parent, they need to look past pleasant decor.

They should investigate resident-care assessment and planning, medication treatment, dressing and bathing assistance, nutrition needs and dining experiences, discomfort assessment, and social engagement and activity plans.

Bed side rails

A 66-year-old nursing home resident suffering from Parkinson's disease fell from her bed and was asphyxiated after becoming wedged between the bed and a wall. Her two children, individually and on behalf of their mother's estate, sued the nursing home, alleging the facility failed to provide their mother with a bed equipped with side rails, in contravention of her care plan. A jury awarded damages and court costs.



Recreation product LIABILITY

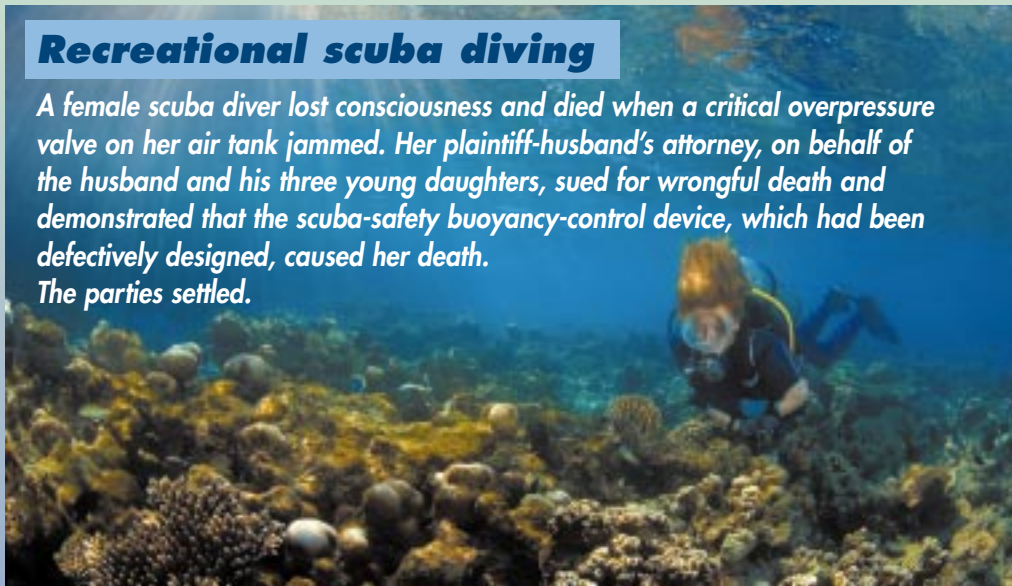
Our nation's civil justice system can hold manufacturers of defective products liable for harming users. Consumers injured by products with serious defects in design, manufacture, or improper or incomplete explanation of dangers or proper use can hold manufacturers and marketers accountable.

The long list of recreational products that have harmed consumers include all-terrain vehicles, bicycles, boats, campers, helmets, playground equipment, pools, snowmobiles, swing sets, trampolines, and many more. Children, who may assume products are always safe and who may impulsively take risks, are in particular jeopardy.

Recreational scuba diving

A female scuba diver lost consciousness and died when a critical overpressure valve on her air tank jammed. Her plaintiff-husband's attorney, on behalf of the husband and his three young daughters, sued for wrongful death and demonstrated that the scuba-safety buoyancy-control device, which had been defectively designed, caused her death.

The parties settled.



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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

Protect your family— be prepared

There are certain legal documents that you should have prepared and executed for protection and peace of mind for your spouse, children, and loved ones. They are a **Last Will and Testament**, **Durable Power of Attorney**, **Health Care Proxy**, and a **Living Will**.

A **Will** allows you to appoint an executor to be responsible for making sure your property is distributed according to your wishes at the time of your death; specify guardians to take care of your minor children; establish trusts for your children's benefit; and reduce or eliminate federal estate taxes. Failing to have a **Will** or failing to have it properly prepared and executed will leave your personal property to be distributed pursuant to state law, excluding friends, unmarried partners, charities, and distant relatives.

A **Durable Power of Attorney** permits you to appoint someone as your attorney-in-fact, a person who can make some or all of your financial decisions if you become incapacitated.

A **Health Care Proxy** enables you to appoint someone you trust to make health-care decisions for you when you are incapacitated. If you do not have a **Health Care Proxy**, your health-care decisions will be made by your doctor or hospital physicians.

A **Living Will** enables you to appoint someone to make decisions pertaining to life-and-death situations, when you are incapacitated or in a vegetative state and your recovery is highly unlikely. Without a **Living Will**, your medical providers will take whatever action is necessary to prolong your life, regardless of age, health, or likelihood of recovery.

My office can help you prepare and execute these documents so you can have peace of mind for yourself and your family.

Sidewalk defects Who's responsible?

As we all know, the public sidewalks of New York City are poorly maintained. Many of the sidewalk flags are raised, broken, and uneven. These trip-and-fall hazards are called sidewalk defects, and when someone is caused to trip and fall by these defects, resulting in a fractured bone or some other serious injury, he or she is entitled to compensation.

In 2003, the City of New York passed legislation which transferred much of the responsibility for the maintenance, inspection, and repair of the public sidewalks from the City to the owners of commercial property, such as office buildings, condominium and cooperative apartment buildings, multiple dwellings, rental apartment buildings, shopping malls, gas stations, etc. The City, however, remains responsible for all sidewalks adjacent to City-owned property and one- and two-family residential homes so long as the owner of those properties is residing at the property.

Recently, I resolved a case for a substantial six-figure settlement that involved a middle-aged woman who sustained a serious spinal injury after being caused to trip and fall due to a raised sidewalk defect in front of an apartment building. If you or a loved one is caused to trip and fall due to a sidewalk defect, be sure to contact our office immediately. We will investigate the accident, photograph the scene of the accident, and identify who is responsible for the sidewalk defect. If the City is responsible, we will file a Notice of Claim on your behalf within 90 days of the accident pursuant to New York State law so that your case will not be dismissed, and we will help you obtain justice and money damages commensurate with your injuries.