

# GOTTESMAN & HOLLIS

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## Injury Law Alert

Fall 2009

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### FDA Warns About Tainted Weight-Loss Pills

 Recently, the FDA issued a nationwide warning for consumers to stop using Hydroxycut, a popular nonprescription weight-loss product, because of reports that it caused serious liver damage. Although the Hydroxycut warning received a lot of attention (perhaps because almost everyone had seen ads for it on television), a larger and potentially more serious health warning has gone largely unnoticed.

In December 2008, the FDA warned consumers to stop using no fewer than 28 different weight-loss products that may be purchased without a prescription, because each of them contained one or more undeclared ingredients (ingredients that are in the pill but that are not listed on the label) that could cause any number of serious injuries. Since its initial warning, the FDA has done additional testing and has added another 41 tainted weight-loss products that also contain undeclared and harmful ingredients. Many of these products advertise

themselves as being “herbal” or “all natural,” but nothing could be further from the truth.

#### Dangerous Ingredients

So what is in these weight-loss pills and powders? All kinds of things, ranging from sibutramine (an illegal drug), to prescription drugs intended for purposes other

than weight loss, to rimonabant (a drug not approved for use in the United States), and even chemicals that are suspected carcinogens. Needless to say, the FDA is advising consumers to stop taking the tainted drugs and to see a doctor if they suffer from any unusual symptoms.

*Continued on page four.*

### How to Protect Yourself from Diet Pills

- Check the FDA’s website, [www.fda.gov](http://www.fda.gov), to see if you are taking any of the products that contain undisclosed and dangerous ingredients. If you are, stop immediately.
- Consult a doctor before taking any diet pill or dietary supplement to treat obesity or lose weight.
- Be skeptical: Weight loss is not usually “easy,” and if there were a “scientific breakthrough” or “miracle cure,” you would have heard about it on the news. Be especially wary of anything touting a “secret ingredient.”
- Remember that “all natural” is not the same thing as “safe.”
- If you have any unusual symptoms or just don’t feel right after taking a diet pill, see a doctor right away.

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# The Federal Trade Commission Is on Your Side

What do you do if you have been cheated over the phone or through the mail? What about if you are just dissatisfied with a product or service you received? Have you received some unordered merchandise and don't know what to do? The FTC may be able to help.

The FTC is an agency of the federal government whose job entails overseeing laws intended to protect consumers. Although the FTC cannot help every consumer who is disappointed with a transaction, it can help in some common situations.

For example, did you know that you have three days to cancel many purchases made from door-to-door salesmen? If the product costs more than \$25, is intended for your personal use, and is being sold door-to-door (as opposed to over the phone and delivered to you), federal law has the Cooling Off Rule, which gives you three days to cancel the purchase. Salesmen are supposed to give you a form telling you of this right; send in the form (postmarked within three days of purchase) to the address indicated (by certified mail, so you can prove you did it), and the sale is canceled.

The FTC also oversees a law allowing you to keep unordered merchandise. If someone sends you an item or product that you did not order, you may consider it a gift and keep it. You do not have to pay for it, and you do not have to return it.

Federal law also gives companies selling by mail or phone a limited time to send you your order. A company must send the item you order within the time promised, or

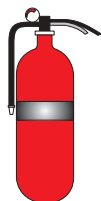
within 30 days if the company did not promise a time (50 days if you applied for credit to pay for the item). If the company fails to do so, it has to give you the option to cancel your order.

Finally, the Fair Credit Billing Act allows you to dispute charges and to withhold payment while the matter is being resolved. If you have a dispute, write the creditor at the address for disputes listed on

the bill, and make sure that your dispute is received within 60 days of the charge. The creditor must acknowledge your dispute and must resolve the matter within two billing cycles.

Need more information? Have more questions? Check out the FTC's website, [www.ftc.gov](http://www.ftc.gov), or call toll-free at 1-877-FTC-HELP (877-382-4357).

## Fire Extinguishers: Inexpensive Peace of Mind



Every year, about 4,000 Americans are killed and 25,000 are injured in fires. Over 2 million fires occur in the United States each year, causing over \$10 billion in property damage. Every 16 seconds, a fire department somewhere responds to the scene of a fire.

By using a home fire extinguisher, many of these fires can be contained before they get out of control. There are many varieties of fire extinguishers that are suitable for fighting different types of fires, such as fires fed by wood, electrical fires, grease fires, etc., but there are fire extinguishers that are able to fight all three. Make sure that the fire extinguishers you purchase are the correct ones.

There are colored stickers on the various models of fire extinguishers. These stickers state what types of fire they can extinguish. You should purchase fire extinguishers marked as Class A, B, and C. Put them around the house in places where fires are likely, such as the kitchen or garage. Keep them charged and in good condition so they are ready when a fire starts. Finally, be smart. If the fire is too large, or if you cannot contain it with your extinguisher, evacuate the building and call 911.

For just a few dollars and a little bit of attention, fire extinguishers can be an important, even life-saving, tool.

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# Nursing Home Problems

The number of lawsuits against nursing homes, alleging negligence and substandard care, is on the rise. A recent report, issued by the Inspector General of the Department of Health and Human Services, confirms the prevalence of problems with nursing homes.

According to the report, over 90% of all nursing homes in the United States were cited for some kind of deficiency, with 17% having some problem that caused actual harm or put residents in immediate danger.

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This information came from unannounced surveys of nursing homes that participate in Medicare and Medicaid. The surveys categorize 190 different possible problems, in areas ranging from patient rights to quality of care, infection control, and administration, with quality of care, resident assessment, and quality of life being the most common areas where deficiencies were found.

Where the problems relate to the standard of care provided to the residents, a long follow-up survey is done to assess the true scope of the problem. Depending on the number and severity of the violations, nursing homes may be ordered to fix the problem, may be fined, may be subject to closer monitoring, or may be closed. It

may come as a surprise that for-profit facilities have a higher rate of problems and a higher number of average problems per facility than non-profit and government facilities.

Additionally, as the number of elderly citizens increases, the number of problems is likely to increase. Unfortunately, mandatory arbitration provisions and corporate shell games often make it difficult or impossible to collect damages from a nursing home that has caused an injury or death.

If you or a loved one has suffered from nursing home negligence, call us. We would be happy to discuss your case and the options

## 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!*

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## Case by Case

### Injury-Causing Gravel

Although when we think of injury cases we usually think of car accidents and slip-and-falls, a recent case reminds us that there are almost as many ways to be injured as there are injuries. A suit was brought by a man who spent his adult life working as a brakeman in a railroad yard. He eventually developed bad osteoporosis in his hips, leaving him unable to walk.

The worker blamed the gravel used to cover the railroad yard where he worked. The gravel—called “ballast”—forms the base under railroad tracks and in railroad yards, allowing water to drain away. According to the worker, his employer used the wrong-size ballast, using a large gravel intended for rail lines instead of the smaller

“yard ballast” it should have used. The larger ballast left the surface on which he walked every day uneven, causing his injuries.

The railroad argued that it was impossible for the worker to prove that his hip condition was caused by the condition of its railroad yard, but pictures showed that the larger ballast left the surface very uneven, and also showed that the surface was covered with junk that the workers had to step over and around. The worker’s doctor testified that walking on such a surface for years could either cause or aggravate a hip condition by changing the worker’s “gait patterns,” i.e., how a worker walks.

The jury agreed and awarded the worker almost \$1.5 million for his injuries.

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## Weight-Loss Pills

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Some of the health risks posed by the undeclared ingredients in these pills are very serious. For example, sibutramine (which has been found in several products) can cause high blood pressure, seizures, strokes, and heart attacks. Rimonabant, a prescription drug used in Europe, is linked to increased risk of depression and suicidal thoughts in users. Cetilistat, an anti-obesity drug that is only now undergoing clinical trials, can cause organ rejection and gastrointestinal problems in certain people.

Other diet pills have been found to contain drugs (such as bumetanide, a diuretic, and fluoxetine, the active ingredient in Prozac) that are approved for use in the United States and that are proper with a prescription, but that can be dangerous to people who

don't realize what they are taking. Finally, many of the pills contain things that are not drugs at all, but chemicals that should not be ingested, such as phenolphthalein, a carcinogen.

### Origins

Many of the products subject to the FDA's warning are not made in the United States, and the FDA believes that a majority of them are made in China. It is suspected that these products also come from other places across the globe, including Brazil, Malaysia, and Peru.

The manufacturers of these pills are violating U.S. law, either because their products contain a prescription medication (in which case they cannot be sold without FDA approval) or because they are not actually exempt "dietary supplements." In many cases, the label information on these products is false and misleading.

The fact that these pills are coming from other countries presents a real problem: If a product is made in the United States, the FDA can order a recall (as with Hydroxycut), but if it comes from a foreign country, the FDA often lacks the practical ability to stop the drug's production. The size of the market is also a problem: With billions spent on weight-loss pills every year, the FDA simply lacks the resources to test all pills to determine what is in them.

Because there are so many products, concerned consumers should check the FDA's website for product warnings and recall information, [www.fda.gov](http://www.fda.gov), or call toll-free at 1-888-INFO-FDA (888-463-6332). And remember, the best way to lose weight is to eat less and exercise, which has the added benefit of not enticing you to spend money on a pill that might harm you.

*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.*

If you have a question and  
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