

# GOTTESMAN & HOLLIS

PROFESSIONAL ASSOCIATION

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## Injury Law Alert

Summer 2009

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### Lawnmower Accidents and Injuries



As the days get longer and hotter and as the grass starts to grow, more people will be taking out their mowers and cutting their lawns. However, it is easy to forget just how dangerous mowers can be. Every year, mowers are responsible for thousands of injuries, many to children.

The injury rate with mowers (riding mowers in particular) is very high, with 663,000 people needing medical attention due to mower injuries between 1996 and 2004, and with an average injury rate among owners of riding mowers of 2.6 injuries per 1,000 users. It is important to remember that most people, on average over the course of a year, use their mowers only once or twice each month. This means that, per use, mowers are far more dangerous than many other kinds of products, including cars and even guns.

Injuries caused by lawnmowers can be very serious. Many injuries are the result of people being exposed to the whirling mower

blades. These blades, designed to cut grass, can also efficiently cut humans, and can result in the loss of fingers, toes, and even entire limbs. Some people suffer eye injuries and blunt trauma when debris, such as rocks and sticks, is

shot out of the mower's discharge chute at 170 miles per hour; others are burned on exposed engine parts and mower decks, which can get very hot when a mower is in use.

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### Lawnmower Safety Tips

Although lawnmowers are very dangerous, they can be used safely. Follow these tips to reduce the chances of injuring someone while mowing the lawn:

- When you mow, make sure that the area is clear, especially of children.
- Inspect the yard before you start, and remove debris. A mower can shoot a stick or rock out of the chute at 170 miles per hour, causing serious injuries.
- Inspect your mower before you begin, in order to make sure that it is in good condition and safe to operate.
- Do not mow up and down hills, as the mower can roll backwards. Instead, mow across a hill. NEVER mow while going in reverse.
- Do not mow wet grass. Operators can slip on wet grass, losing control of the mower.
- Wear the proper safety equipment, including long pants, long sleeves, sturdy shoes, eye protection, and ear protection.
- NEVER put your hand anywhere near the blades of a mower that is running, even if you think that the blades are disengaged.

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# Medicare Limits Payments for Treatment of Infections

In a potentially helpful development, the federal government has passed new rules that limit the payments Medicare will make to a hospital to pay bills incurred in treating preventable infections and medical errors the hospital should have avoided. These same regulations also specify that neither may the hospital bill the patient for this care.

Proponents of these regulations claim that making the hospitals pay for their own mistakes will give them a financial incentive to take steps to prevent infections and errors that can be avoided. However, some ask whether Medicare will be able to adequately monitor these rules, while others ask whether these rules might endanger patients because hospitals are unwilling to provide high-quality care if they know they will not be paid.

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## Dealing with an Insurance Company

Although no one enjoys it, from time to time it may be necessary to deal with an insurance company, usually to make a claim. Although the process may seem overwhelming, a few common-sense tips will help to prepare you.

First, read the policy. Although policy language is often hard to understand, some states require policies to be written in “plain language,” and, in any case, the policy is what the insurer will look at to evaluate your claim. The policy’s declarations page often contains a useful summary of the coverage provided and the dollar limits.

Next, start a file. Everything related to your claim should go into that file: the policy, letters sent and received, notes of calls made and conversations, information about the claim, evidence of damages, etc. Having a single file prevents things from getting lost, and is valuable to show what was and was not done.

When you contact the insurer, it is best to do so in writing. While people often disagree about what was said over the phone, the text of a letter or an e-mail should be clear. If you do speak with someone on the phone, it is a good idea to immediately follow up the call with an e-mail, confirming what was discussed or decided.

When dealing with the adjuster, be civil. The old saying that you catch more flies with honey than vinegar is still true. However, being polite does not mean giving up a valid claim. You can be firm while still being polite.

Finally, if you are unable to settle the matter yourself, consider contacting an attorney. Lawyers speak the same language as insurers, and hiring a lawyer shows that you are serious and are not to be ignored. If you have kept a good file of your communications and evidence, it will be easier for a lawyer to help you make your claim.

# Carbon Monoxide Poisoning

Carbon monoxide (CO) is a colorless, odorless gas given off by fuel-burning appliances such as gas heaters and gasoline-burning engines. CO can become deadly when these types of appliances are used indoors or without adequate ventilation. According to the CDC, about 500 Americans die every year from CO poisoning not related to a house fire, and more than 15,000 are injured.

Deaths and injuries peak in midwinter, when heater use is highest and when houses are tightly closed. Symptoms of CO poisoning include headache, dizziness, weakness, nausea, and confusion, and, because they resemble symptoms of other illnesses, people often do not realize they are being poisoned by carbon monoxide until it is too late.

In order to protect yourself against CO poisoning, you should have your gas heating system inspected every season. Don’t use generators or gasoline-powered heaters or tools inside or in an enclosed space like a garage. Also, keep these CO-producers away from windows and intake vents, which can spread CO throughout the house.

Because CO is hard to detect, the best way to protect yourself from CO exposure is to buy a CO detector. They look like smoke detectors and will sound an alarm if CO levels get too high. Be sure to play it safe and protect yourself against this deadly gas.

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## Common Treatment Tied to Jaw Problems

According to a recent university medical study, a drug commonly prescribed to treat osteoporosis in women may have the unintended side effect of causing a serious jaw disease.

The drug, called Fosamax, is made by the pharmaceutical company Merck. It is the most common drug prescribed to treat osteoporosis (which affects about 10 million Americans) and is one of the 20 or so most common drugs prescribed in this country. Unfortunately, researchers at the University of Southern California have linked its use with a condition known as “jaw necrosis” (also known as “ONJ” or “Dead Jaw”), which causes the jaw bone to decay. Symptoms can include jaw pain, sores on the jaw, and loss of teeth. The condition can be disfiguring, and is often very difficult to treat.

According to the study, 9 of 208 people prescribed Fosamax developed jaw necrosis, about 4% of those taking the drug. Some developed problems even though they took the drug for only a short time. However, Merck does not warn people of the danger and, in fact, denies that Fosamax causes jaw necrosis.

If you have reason to suspect that you or someone you love has been harmed by Fosamax, or know someone who has developed jaw necrosis, call us. We can help you determine if you have been injured or are entitled to any compensation.

## Construction Sites = Construction Injuries

Construction is one of the largest industries in the United States, employing over six million people nationwide, and is a vital part of our economy. However, being a construction worker is also one of the most dangerous occupations, with over 8,000 people killed on jobsites every year and thousands more injured.

The reason construction is such a dangerous occupation is obvious: Sites where buildings are under construction can be very dangerous. Although state and federal regulators have passed rules intended to make construction sites safer, there are any number of ways for construction workers to be killed or injured:

- Excavations can cave in;
- Workers can fall off scaffolding and ladders;

- Tools can be used improperly or can fail;
- Cranes can drop loads on workers' heads; and
- Exposure to loud machinery can result in hearing loss.

Unfortunately, suits involving injured construction workers are often more difficult to handle than other kinds of injury cases. An injury or death at a construction site involves the acts of many workers employed by different companies, each of whom is pointing at someone else as the party responsible. The question of liability can turn on whether a party is the property owner, the general contractor, the subcontractor, or someone else. Because of these complexities, it is vital to have a lawyer involved in a construction injury case as early as possible.

## Know About the “No-Zone”

All drivers should be aware of the “no-zone,” the area on the sides and rear of 18-wheelers where the truck driver cannot see a car. This dangerous area is easy to locate: If you can't see the driver of the truck in his mirror, then he can't see you.

The no-zone is dangerous for two reasons. First, if the truck driver cannot see you, he might try to pull into your lane, causing a crash. Second, if you drive in the no-zone, the truck and its trailer cut off your view to the side and reduce your view to the front, making it harder to avoid accidents.

If you are behind a truck, stay out of the no-zone so that the driver can see you. If you are passing a truck, do not linger in the no-zone—get through it as quickly as you can while still driving safely. Remember: No matter who has the right of way, when an 18-wheeler and a car collide, the car always loses.

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## Lawnmower Injuries

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### Backover Accidents

The most serious type of lawnmower injury is the so-called “backover accident.” As the name suggests, a backover accident occurs when a lawnmower operator backs over himself or someone else. Backover accidents alone injure almost 600 children per year. Although all mower accidents have the potential to be serious, backover accidents are often the worst for children because the operator does not see the child behind him and rolls the mower entirely over the child.

A few years ago, the lawnmower industry voluntarily placed a safety feature on mowers, called the “no-mow-in-reverse” feature. This feature automatically disconnects the mower’s blades when the mower is put into reverse, in theory

eliminating the possibility of a backover accident. The problem is that the mower industry also added a feature that allows mower operators to override this safety feature and continue to mow in reverse. It is also possible to mow in reverse even if the operator does not override the feature, for example, when the mower is mowing uphill and the gears slip, causing the mower to roll backwards—in such cases, the no-mow-in-reverse feature often does not work.

### In the Courts

Lawsuits over the dangerous condition of mowers have had mixed results. In several federal cases, the courts have found that warnings to keep children away from the mower were adequate and that the mower manufacturer was therefore not liable for not installing a no-mow-in-reverse feature or for allowing it to be overridden. Law-

suits in state courts have been more favorable, with juries several times faulting the mower manufacturer for the lack of some safety feature.

If you have been injured by a lawnmower, you might have a products liability suit against the manufacturer and others. Products liability suits tend to be complex: The defendant usually fights such claims very vigorously, because even one successful claim could open the door to hundreds or thousands of other claims.

These lawsuits also tend to be highly technical, requiring detailed evidence from design and manufacturing experts about how the product was made incorrectly, how it could have been done differently, and how all of these failures caused the injury.

It is tough to go it alone. Call us. We look forward to discussing your case and your options with 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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