

INJURY LAW ALERT

FALL 2010 ISSUE

TRAUMATIC BRAIN INJURIES

People who are injured in an accident can suffer many different kinds of injuries. Among the most serious, as well as the hardest to diagnose and treat, are so-called traumatic brain injuries (TBIs), sometimes also known as “closed-head trauma.”

TBIs send more than 400,000 people to the hospital for treatment each year, three-quarters of whom are males between the ages of 15 and 34. This group is over-represented because of the lifestyle that many of the accident victims lead: riding motorcycles without a helmet, participating in dangerous sports, drinking too much, and getting into car accidents. Although the majority of these injuries are moderate to mild, even a minor TBI can cause the victim to suffer serious problems.

Difficulty Treating TBIs

The problem with treating TBIs is that many doctors are not adequately trained in the neuroscience of head injuries and are unable to properly diagnose the injury when they encounter one. Although most doctors are capable of recognizing serious TBIs (such as those that put a victim in a coma), the less debilitating TBIs are more difficult to diagnose because there are often few outward signs of the internal injury. This misunderstanding of the symptoms of moderate TBIs has a number of serious negative consequences, both medical and legal.

Many people who suffer such TBIs do not receive the appropriate treatment. The long-term effects of a TBI can include many and varied symptoms, often related to brain function, such as seizures, headaches, dizziness, and problems with memory and concentration. However, TBIs can cause other symptoms not commonly associated with the brain, including

loss of motor control, fatigue, depression, speech disorders, anxiety, sexual dysfunction, and a short temper, as well as an increased chance of getting lost or becoming agitated.

Given the variety of symptoms and the difficulty some doctors have connecting them to the TBI, treatment is often delayed or not provided at all, and the patient continues to suffer, often unaware of the cause of his problems. Even when a TBI victim has been correctly diagnosed, the variety of symptoms can make treatment expensive and difficult.

Legal Obstacles

Legally, it is often difficult to prove that symptoms suffered by a TBI victim are directly related to the TBI. Because doctors can be slow to diagnose the connection, proving that a TBI has caused the symptoms that a person describes to the jury in court can be difficult.

Compounding the problem of the doctor's slow diagnosis, many of the people who serve on juries have trouble believing that a head injury can cause so many different problems, not all of which are related to the victim's brain function. All of these factors make it more difficult for a TBI victim to win a full recovery of damages for the injury.

Lessons Learned

Several lessons can be drawn from this. If you have suffered a TBI, even a minor one, and are suffering from symptoms that you never experienced before being injured, stay on top of your health-care providers. While not all symptoms that a person may suffer from are necessarily caused by a TBI, the range of symptoms is great and it may take some time to get a correct diagnosis.

If you are involved in a lawsuit where you or a loved one suffered a TBI, be sure to retain qualified counsel to help you prepare and present what can be a difficult and complex case. This way you can help ensure that you are fully compensated for all of the injuries that you or yours have suffered.

AFTER THE INJURY

Victims of brain injuries will receive care from a wide range of professionals. Realizing the diversity of these providers is essential to understanding the gravity and magnitude of TBIs. The range of professionals who may have to be consulted illustrates the breadth of disability that a survivor must endure.

Perhaps the most important of these professionals is the neurologist. This doctor specializes in the medical treatment of the nervous system: the brain, spinal cord, nerves, and muscles. A neurologist makes an initial evaluation, diagnoses the injury, and consults on immediate medical care for the patient to follow.

Other professionals involved with individuals who suffer brain injuries include:

Neuropsychologists • Physical Therapists • Respiratory Therapists
Speech Pathologists • Occupational Therapists • Cognitive Therapists
Educational Therapists • Vocational Counselors • Social Workers
Therapeutic Recreational Specialists • Rehabilitation Case Managers

SOCIAL SECURITY DISABILITY BENEFITS

Many people have heard that disabled workers are entitled to disability benefits but have questions about the process of making a claim and collecting those benefits.

Q: Who can apply for disability benefits?

A: Benefits are available to disabled workers, disabled surviving spouses of workers, and disabled adult children of workers.

Q: What benefits are available?

A: If you qualify, the benefits come as a monthly check. If you receive disability benefits for at least two years, you are also eligible for Medicare.

Q: What does it mean to be “disabled”?

A: A worker is disabled when some illness or injury leaves him or her unable to do the work he or she did before, or to adjust and do any other work. The disability must be expected to last for at least one year or result in death. People who are partially disabled or who have short-term disabilities are not considered disabled by the Social Security Administration (SSA).

Q: How do I apply for benefits?

A: You can file an application on the SSA website, www.ssa.gov, by calling the SSA at 800-772-1213, or by visiting a local SSA field office. The application forms will ask for information about your disability, the names of your doctors, and about your work.

Q: What happens after I file my application?

A: It is sent to the state Disability Determination Services office, which will investigate the claim.

Q: How long does it take for my application to be processed?

A: It depends. Usually it takes three to five months but can take longer depending the nature of your disability, the speed with which your doctors respond to requests for information, and whether a special medical examination is required.

Q: Can I lose my benefits?

A: Yes, if you are no longer eligible. Cases are reviewed periodically to see if the person receiving benefits still qualifies. The amount of time that passes between reviews depends on the severity of the disability and ranges from six months to seven years.

Q: What if I disagree with a benefits determination?

A: Whether it is a denial of a claim or a decision to stop your benefits, you can appeal the decision. In most cases, you have 60 days to appeal. If you are still dissatisfied after appealing, you may appeal further and can even go to court.

PETS IN THE CAR: BUCKLE UP

Most people today know the importance of buckling up when they get in the car, but few know that the same rule should be applied to pets.

People will often drive with their pets in the car, whether to the store, the park, or a neighbor's house. However, most people don't secure their pets before setting out. Buckling in your pets is important, for a number of reasons.

First, an unrestrained pet might interfere with the driver's operation of the car, causing a crash. In the event of a crash, an unsecured animal can be turned into a projectile, causing further injury to the pet or the passengers. An unsecured pet also presents a potential threat to firemen and EMS workers in the event of a crash. For example, your dog might try to bite those trying to render aid, or he might run away and cause further confusion.

Pets can be secured in a number of ways. Small pets, especially cats, are best kept in a pet carrier. Some stores sell special seats intended for small- to medium-sized pets. Larger animals may be strapped to the seat with a special seat-belt attachment.

No matter what system you use, the rule is the same for pets as it is for humans: Buckle up!

GOVERNMENTAL NEGLIGENCE

Tort Claims Act

With the government involved more and more in our lives, there is an increased chance that you could be injured because of the government's negligence. Since the Middle Ages, the law of England has followed the edict that the "king can do no wrong," and, thus, if you have been hurt by the king or his agents, that is your own bad luck.

Although the United States has no king, we do follow English law, including this idea of "sovereign immunity." In its modern form, sovereign immunity prevents people from suing the

government unless the government gives them permission to do so.

Because sovereign immunity can unfairly result in injured persons not being compensated for their injuries, most states and the federal government have passed laws called Tort Claims Acts. These laws give citizens advance permission to sue for certain kinds of injuries caused by the negligence of government employees. If a claim is subject to the Act, the government is liable in much the same way as a private person can be liable.

However, the kinds of claims permitted by the Act are fewer than the kinds of claims that can be brought against a private person. For example, a citizen may be able to sue for injuries caused by a police officer's negligent driving but probably not for the police department's negligent failure to catch the thief who robbed the citizen. Additionally, claims against the government may be subject to special rules and special time limits that differ from those in a normal lawsuit.

Don't despair because your injury was caused by the government. You do have rights, and we will help you protect them.

CASE BY CASE

When in Doubt, Recall

Toyota has received a lot of press lately for failing to act quickly to recall cars with accelerator problems, but it is not the only company that needs to learn the importance of recalling defective products promptly. A recent case involving Caterpillar illustrates this point.

The case involved a tractor driver who was thrown from the seat of a Caterpillar tractor and was forced up against the machine's frame. As a result of this, he suffered broken ribs, a punctured lung, and spinal injuries that have left him paralyzed from the waist down.

According to Caterpillar, the worker fell from the machine because he was driving in an unsafe fashion and hit a bump, causing the machine to malfunction. However, an eyewitness

testified that the driver was not driving too fast, and pictures of the site did not show a bump.

What the evidence did show is that Caterpillar knew of a mechanical flaw in the tractor that could cause it to suddenly downshift from sixth to second gear, and had been aware of the problem for years. Internal memos also showed that Caterpillar, in an effort to keep costs down, sought to delay a recall to address the problem and then sought to fix only certain parts rather than the whole system.

The jury was unimpressed by Caterpillar's attitude toward the safety of people using its product and found it responsible for the worker's injuries. It returned a verdict of almost \$16 million for medical expenses, lost wages, and suffering, and more than \$40 million in punitive damages.

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!