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# Legal Matters®

## Be sure to watch out for these potentially dangerous products

Whether we're talking about surgical devices, medications, exercise equipment, lawn products or even everyday household goods, we expect products to work as advertised and not to harm us. Sometimes, however, seemingly harmless products can contain dangerous defects that put the public at risk of injury or even death. That's why it's important to stay informed about safety issues with common products and pay attention to those that have been recalled. Here are some potentially hazardous products that have generated attention recently:

### • Peloton treadmills

Over the last few years, Peloton has become a wildly popular exercise craze. By paying thousands of dollars for an interactive Peloton stationary bike or treadmill (both equipped with large, high-definition touchscreen video monitors) and a monthly membership fee, you can participate in your choice of hundreds of video-streamed exercise classes of varying degrees of intensity led by expert instructors, getting the benefit of an exercise studio without leaving your living room.

But if you are a Peloton user you should be aware that this past spring the company, under pressure from federal regulators, agreed to recall 125,000 of its high-end "Tread+" treadmills amid reports of dozens of accidents in which children and adults were pulled under the rotating track, resulting in injuries and even the death of a small child. Peloton's other treadmill, the smaller "Tread" model, was also recalled



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because of reports that the video monitor could detach and fall off while in use. No injuries were associated with the "Tread," but that's still a risk Peloton and regulators agreed the public should be aware of.

### • CPAP machines/ventilators

CPAPs (or "Continuous Airway Pressure Machines") are commonly used to treat sleep apnea, a condition where breathing starts and stops while you're sleeping, and millions of patients use ventilators if they have trouble breathing on their own. Both devices are lifesavers for people with

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## Nursing home neglect victims settle claim

We all hope that when our loved ones who can no longer take care of themselves move into a long-term care facility like assisted living or a nursing home they will be getting the same kind of care we would provide ourselves. In many instances, they will. But that's not always the case, as a recent case involving a nursing home in upstate New York illustrates.

In that case, rumors of abuse and neglect at a nursing home in Syracuse led to a state investigation that turned up a long history of terrible care. Horror stories emerging from the investigation included a resident suffering from severe pain who was screaming and crying for two days before being sent to the hospital to treat a fractured leg, another resident accidentally being locked out of the facility and hitting his head on the sidewalk while trying to cross a busy street with his walker, and residents being left to lie in their own urine and feces for hours.

In addition to a state enforcement action against the facility, more than 2,000 former residents and their relatives joined a class-action lawsuit alleging that inadequate staffing led to the conditions that caused harm. The facility opted to settle with the class for nearly \$2 million rather than risking more adverse publicity from a trial.



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While this may sound like an extreme example, if you have a family member in a nursing home, it's important to make note of the surroundings when you visit and also look for any possible signs of abuse or neglect. See if your loved one seems unusually agitated or upset when you visit. If a resident is displaying unexplained injuries like bruises, cuts or welts or is suffering rapid weight loss or gain, that could be a sign that things aren't as they should be. While there can certainly be innocent explanations for such circumstances, they can also be red flags worth following up on. If that's the case, be sure to call an attorney where you live to discuss potential next steps.

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## Bicyclist deemed 'pedestrian' for insurance coverage purposes

Personal injury protection (or "PIP") coverage is insurance coverage that pays for medical expenses and lost wages from injuries related to a car accident, regardless of who is at fault. It is offered in about half of the states, and some require each driver to carry a minimum amount of PIP coverage in their auto policies.

However, whether PIP insurance covers a particular

injury will often come down to definitions. This happened recently in Washington state, where a parked motorist opened his car door and struck a

bicyclist, injuring the rider. The rider had an auto policy with Travelers Insurance that he bought when he lived in California. The policy provided \$5,000 in "MedPay" (similar to PIP) coverage, but it only applied to an "insured," defined by the policy as a "pedestrian ... struck by a motor vehicle." The insurer disclaimed coverage, arguing that the rider was not a "pedestrian" because vehicle codes in both Washington and California don't consider bicyclists to be pedestrians.

But the Washington Supreme Court disagreed, pointing out that the proper definition under the circumstances was found in the state's casualty insurance laws, not in its motor vehicle code, and that the relevant provision defined a "pedestrian" as anyone "not occupying a motor vehicle." The law may differ from state to state, of course. A local attorney can explain the law where you live.



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## Fall on deck stairs nets substantial recovery

If you rent an apartment or house and suffer injury as a result of unsafe conditions on the premises, you may be able to hold your landlord accountable, particularly if the landlord was on notice of the hazard.

This happened recently in Missouri. A woman in the Kansas City area alleged that she was injured after falling down a poorly maintained deck staircase at her rental home. She claimed that as she was walking down the stairs they swayed below her, causing her to lose her balance, tumble down three steps and land on her left ankle.

The tenant was diagnosed with fractures in her ankle that required surgery and allegedly developed a chronic pain condition.

She also claimed she had raised concerns about the staircase, which apparently did not comply with

building code requirements, with her landlord in the past, but the landlord failed to address them.

Ultimately the tenant sought to hold the landlord responsible for her injuries. After a neighbor testified that she had seen the staircase swaying in the wind before the incident occurred, the landlord decided to settle the claim rather than risking going before a jury. The seven-figure settlement was enough for the plaintiff to buy a new house retrofitted to accommodate her ongoing physical issues from the fall while meeting her needs going forward.

While not every case will bring a similar recovery for the victim, don't assume you have no recourse if you are hurt and believe it is somebody else's fault. It's always worth talking to an attorney and finding out what he or she thinks.

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## *Be sure to watch out for these potentially dangerous products*

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respiratory conditions, but Philips, the multinational conglomerate that manufactures both types of machines, recently announced that it was recalling them amid reports that certain foam-based components were breaking down into particles and gas chemicals that were putting users at risk of cancer. Between 3 and 4 million machines were included in the recall.

Philips also recommended that if you are using a CPAP you should stop using the device and consult with your physician about what to do next. If you are using a ventilator, however, the company recommended that you do not stop using it without first talking to your doctor, as the consequences of a disruption in therapy could be dangerous. Meanwhile, if you suspect foam degradation has caused cancer in yourself or a loved one, you should reach out to a lawyer to discuss your options.

### **• Inclined baby sleepers**

Inclined baby sleepers, like the Fisher-Price Rock 'n Play Sleeper, are a godsend to exhausted parents whose infants simply won't fall asleep in a crib or a bassinet. Unfortunately, an investigation by the watchdog organization Consumer Reports has linked inclined sleepers that position babies at greater than a 10-degree angle to at least 94 infant deaths, spurring the federal Consumer Product Safety Commission to tighten regulation of these products.

This means that by next June, only federally regulated, safety-tested infant sleep products, such as cribs, bassinets, play yards and bedside sleepers, will be allowed to be sold for that purpose on store shelves or online. This doesn't mean that products like the Rock 'n Play can't be sold, but companies will not be able to market them for sleep. This also means that parents currently using such products as sleepers may need to train their babies to sleep in a crib.

### **• Electric pressure cookers**

Electric pressure cookers have become a popular way to quickly prepare meals with little prep and even less cleanup. Newer electric pressure cookers like the Instant Pot and those sold under the Crock-Pot, Ninja and other labels are equipped with safety features that are supposed to avoid the safety risks associated with older stove-top pressure cookers. But a series of recent claims suggests that these pots can still burst open under pressure, essentially exploding and resulting in severe burns from the steam. People have also reported eye injuries, broken bones and other complications from spills and explosions. Crock-Pot recalled its own pressure cookers last November and other manufacturers may be following suit. If you have been hurt by a malfunctioning pressure cooker, discuss the situation with an attorney.



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## Family of jogger struck in crosswalk secures settlement



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A recent case demonstrates that public authorities can, in certain circumstances, be held accountable for injuries or deaths that result from defectively designed streets and roadways.

The case involved a 50-year-old schoolteacher, Amy Higgins, who was struck and killed in the crosswalk of a suburban Seattle intersection while jogging. The driver who struck Higgins was driving with a suspended license and speeding at the time and received a 7-year prison sentence for vehicular homicide.

Meanwhile, Higgins's family sought to hold the county responsible for her death, contending that

the crosswalk was not adequately designed to keep pedestrians safe, particularly in low light.

The county agreed to settle the family's lawsuit for more than \$2 million, presumably because it was concerned about the implications of leaving it up to a jury to decide the case. While the county did not admit fault in the design of the crosswalk, it did install stop signs at the three-way intersection and plans are underway to turn the dangerous intersection into a traffic circle, or "roundabout."

Of course the results of any lawsuit will depend on the particular facts and circumstances of the case. But if you or a family member has been injured in a dangerously designed crosswalk or intersection, it's important to meet with a good local attorney to discuss what rights and options you might have.