

# Injury Law Alert

Spring 2009

## ATVs: Accidents Waiting to Happen



Since they were introduced in the early 1970s, ATVs (all-terrain vehicles) have become increasingly popular. With this popularity comes an increasing number of accidents and injuries—according to the Consumer Product Safety Commission, approximately 136,000 injuries and 700 deaths occur every year. Children under the age of 16 account for over one-third of all ATV-related injuries. Between 1983 and 2005, over 2,175 children died from ATV-related accidents.

### Design Problems

The reason ATVs are so dangerous has a lot to do with their design. They have no frame protecting the operator in the event of an accident. They ride on large, low-pressure tires that can have difficulty gripping the rough terrain over which they travel. They are stopped by hand-operated brakes, which can lack sufficient power and can cause ATVs to overturn as they stop.

ATVs have relatively large engines for their size and weight, which means they can travel as fast as 70 mph, often across broken, uneven terrain. Although ATVs are not designed for passengers, it is possible (even easy) for people to

jump on—people who will be injured if there is a crash. Earlier three-wheeled ATVs were less stable than the current four-wheeled versions, but even the four-

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## Children and ATVs

Children are involved in over 45,000 ATV accidents every year. Amazingly, 95% of children between the ages of 12 and 15 who are injured on ATVs (and 65% of younger children) are injured or killed while riding a full-size ATV intended for an adult. These full-size machines are dangerous for children because they are too big and powerful for kids to control.

Alarmed by the number of injuries and deaths suffered by child ATV riders and passengers, neurologists who conducted a study of ATV accidents involving children issued a call for a number of com-

mon-sense guidelines, including banning children younger than 16 from riding ATVs and requiring all ATV riders to wear a helmet. Such common sense would reduce the profits of ATV manufacturers, who oppose any such regulation and continue to market ever more powerful ATVs to children.

Regulations or not, if parents allow their children to ride ATVs, they should insist that their children safely ride ATVs of an appropriate size while wearing a helmet. This is not a cure-all but should help reduce what is becoming an epidemic of ATV-related injuries.

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# Be Alert for Medication Errors

Rarely a year passes without the announcement of some new wonder drug to treat another disease. While more and better drugs are usually considered a good thing, the increase in the number of drugs available and in the number of drugs the average person takes has led to an explosion in the number of errors made in prescriptions.

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*Medication errors can occur in hospitals, nursing homes, and the corner drugstore.*

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These errors can take all kinds of forms and can occur in many different ways. Sometimes a drug other than the one prescribed is provided, or the correct drug is provided in the wrong dosage. Sometimes a drug is prescribed that interacts negatively with another drug the person is taking and the patient is not warned of the danger. Sometimes the mistake is made by the doctor prescribing the drug, sometimes by the pharmacist filling the prescription, sometimes by the person administering the prescribed drug. Mistakes can occur in hospitals, nursing homes, and the corner drugstore. Regardless of the many different ways that prescription problems can occur, they all share one thing: They can be serious and potentially deadly.

A recent study concluded that out of 3 billion prescriptions filled each year, *51.5 million of them contain some kind of error*. Although reliable statistics are hard to come by, these errors lead to thousands

of unnecessary hospitalizations and hundreds of unnecessary deaths.

Interestingly, many consider the primary reason for the rise in errors to be financial—the doctors who write the prescriptions, the pharmacists who fill them, and the nurses who often administer them are pressured to serve more patients in less time, increasing profits, but also increasing the risk of an error. Others point to the rise in the marketing of drugs directly to patients. Patients

are more likely to go to their doctors and demand a prescription for some drug they saw on television, leading to more prescriptions and more chances for error.

Several solutions to this problem have been suggested. The first is also the easiest: Slow down and make sure the prescription is correct. The second is to install more safeguards, such as having another person check the prescription. An-

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## Umbrella Insurance Policies

As insurance prices continue to rise, many people are looking for more and better insurance coverage for less money, and “umbrella policies” are often a good option for increasing coverage. Umbrella policies get their name from the coverage they offer: Like an umbrella, they provide expansive coverage for you and your assets. Umbrella policies act as a kind of backup for your primary insurance and can provide a cost-effective way of increasing your insurance coverage.

Most of us carry several kinds of liability insurance policies: car insurance, homeowner’s insurance, renter’s insurance, etc. All of these different policies do essentially the same thing. They cover us for the different careless acts we might commit. However, the coverage available under these different policies varies, and their cost is often very expensive compared with the coverage they provide.

Umbrella policies begin where other insurance ends. They provide additional coverage—coverage that is available only after the underlying liability policy has been exhausted. Umbrella policies are often surprisingly inexpensive, given that they can provide additional coverage in amounts up to \$1 million or more. The reason umbrella policies are relatively inexpensive is that they are asked to cover only the largest of claims. Because of this, the number of claims brought against umbrella policies is lower than the number of claims brought against “regular” policies.

As with any kind of insurance, the coverage offered by umbrella policies and the rates charged for them can vary greatly. Consider the possibility of buying an umbrella policy. You may find that it is right for you.

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## FDA Orders New Warning

The federal Food and Drug Administration (FDA) recently ordered a serious change to the warning label on four drugs commonly used to treat rheumatoid arthritis: Enbrel, Remicade, Humira, and Cimzia. These drugs work by suppressing the immune system, thereby reducing symptoms of the disease. The problem is that if your immune system is suppressed, then you are more susceptible to other kinds of infection or illness.

The FDA became concerned because it received a number of reports of people taking these drugs who contracted a fungal infection called histoplasmosis. This infection can have serious consequences

if not caught early. However, because its initial symptoms resemble the flu, people often do not seek treatment until it is too late. Almost 20% of the cases where people took rheumatoid arthritis drugs and contracted histoplasmosis ended in death.

To better warn people of the danger, the FDA now requires these four rheumatoid arthritis drugs to contain a warning about histoplasmosis in a “black box.” A black box warning is the strongest kind of warning found in prescription drug literature, and will hopefully help bring the matter to the attention of both doctors and patients.

## We Are Here to Help

*The period of time following an accident is one of confusion and uncertainty. There are many things to take care of. Hiring a good lawyer is one of them.*

*Many times, people don't know where to go when they need legal help. If you or a loved one has been injured in an accident, call us. We will vigorously represent you and make sure that you are justly compensated for your injuries. That's our job.*

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## Balance Your Checkbook

Although no one would argue that balancing your checkbook is a fun way to pass an evening, balancing it every month is important for several reasons.

### Bouncing Checks Is Expensive

Banks make much of their profit on bounced check charges and overdraft fees, and these charges and fees keep going up. They can also have a negative effect on your credit rating, making borrowing for everything from a house to a car to a vacation more expensive. Balancing your checkbook every month (and keeping good records of ATM withdrawals, fund transfers, etc.) helps make sure you don't write checks you can't cover, saving money.

### Mistakes Happen

Although not common, banks sometimes make mistakes on your statement. If you balance your checkbook every month, you can find these mistakes early, when they are easier to correct.

### Stop the Bad Guys

Finally, as much as we hate to think about it, fraud and identity theft are on the rise. While rare, it is possible for others to siphon off funds from your bank account without your knowledge. If you go over your records every month, you can discover this kind of problem before you lose too much of your hard-earned money.

## Medication Errors

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other solution is to make sure that different drugs or different dosages don't look similar, reducing the chance that the wrong bottle will be used. Yet another suggested solution is to make sure that pills are always available in many dosages, which will prevent people from having to break their pills into halves or quarters, possibly exceeding the intended dosage.

Cases involving prescription errors, which can involve claims of negligence, medical malpractice, and products liability, and which require a great deal of expert testimony, can be very complicated to pursue. If you or someone you know has been injured due to a prescription error, call us.

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## ATV Accidents

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wheeled models can be top-heavy and prone to serious rollover accidents. Even on roads and flat surfaces, ATVs can be unstable.

## Consent Decree

As the result of safety concerns expressed by the federal government, ATV manufacturers entered into a consent decree in 1988. In this decree, they agreed to halt production of three-wheeled ATVs, to provide safety training for new owners, to place warning labels on their products, and to make recommendations about what size of ATV is appropriate for different age groups. Although this consent decree expired in 1998, ATV manufacturers have pledged to continue to follow most of its provisions. However, the government can no longer force them to do so.

Despite these improvements, the number of injuries and deaths per year attributable to ATV accidents continues to rise. To some degree, this is because ATVs continue to become more popular, and more people ride them. However, another reason for the increase in injuries and deaths is that ATV makers are building more powerful ATVs and marketing them to younger and younger children.

The latest marketing gimmick is the so-called “transitional” ATV, one that is sized between the smaller ATVs intended for children and a full-sized adult ATV. ATV makers claim that these ATVs are more appropriate for the 14- to 15-year-old age group, but critics note that bigger ATVs with bigger engines undercut the messages conveyed by safety training and other warnings, increasing the likelihood of injuries.

In addition to making more

powerful ATVs, ATV makers have fought any attempt to impose regulations on ATV ownership or use (such as age limits and mandatory helmet laws). With the expiration of the 1988 consent decree, it will take either new laws passed by Congress or new action by federal agencies (such as the Consumer Product Safety Commission) to force ATV manufacturers to pay more attention to safety. Neither of these outcomes appears likely to happen.

Sad to say, the only kind of regulation available to many is the “private” regulation that comes with lawsuits. Enough successful suits may convince ATV manufacturers that the cost of not planning for safety is just too high.

If you or someone you know has been injured or killed while riding an ATV, contact us so that we can help protect your legal rights.

*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.*