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From the Editor:



Welcome to the newest edition of the Blume Forte Fried Zerres & Molinari newsletter.

Our firm has worked for nearly a century to protect and help those injured as a result of medical and nursing home negligence, automobile accidents, unsafe products and premises, as well as workplace and construction site accidents.

In this newsletter you will see some of the results we have achieved that have helped our clients replace lost income, pay for past and future medical treatment and secure their families' futures.

Since the inception of our firm, we have been advocates and pioneers striving to ensure safer work conditions, homes, public places and improve health care for all those who live in, work in or visit the Garden State.

Blume Forte: We are New Jersey. On behalf of all of our attorneys and dedicated support staff, thank you for your trust.

Jeffrey Zenna

JEFFREY J. ZENNA

IN THIS ISSUE:

2

Letter from the Editor	2
Recoveries	3
Recoveries & FYI: Nursing Home Neglect	4
Achievements, Announcements & Events	5
FYI: A Higher Bar to Claims Against Employers and Coworkers	6
Our Referral Network	8
FYI: Product Liability — Compensation and Safety	10
What does it mean to be certified as a Civil Trial Attorney?	11
Achievements, Announcements & Events	12
FYI: Premises Liability Claims	14
Welcome	15

RECOVERIES

\$28,600,000 Medical Malpractice Verdict Obtained by Carol L. Forte and Connor C. Turpan

Our client, a 68-year-old woman, was admitted to Kessler Institute for Rehabilitation following spinal surgery. Two days later, she was injured while multiple rehabilitation assistants were attempting to transfer her from the toilet to her wheelchair. The transfer, which was not carried out safely by the Kessler employees, resulted in a fracture dislocation of her thoracic spine, which caused her to be paralyzed from the chest down.

Ken Elwood Secures \$1,800,000 Settlement in Motor Vehicle Accident

A 47-year-old Sparta man who was traveling home with his wife in the early morning hours after visiting a friend struck an abandoned, disabled vehicle left sideways in the roadway. Minutes later, he was struck by a speeding vehicle operated by a police officer from the Department of Health and Human Services who claimed he did not see the man or the vehicle in the roadway. While the state claimed that the decedent was intoxicated and the accident was his fault, the matter settled during pretrial conferences; the State of New Jersey paid \$1,700,000 and the insurance company of the operator of the disabled vehicle paid its \$100,000 insurance policy.

Jeffrey Zenna Secures \$825,000 Settlement in Motor Vehicle Accident

Our client, a 59-year-old man, was struck and injured by a truck while crossing a busy intersection in Jersey City, NJ. As a result of the impact, he sustained a head injury resulting in death. The accident was captured on surveillance video from a nearby store, which demonstrated that the truck driver did not observe our client in the crosswalk prior to the accident.

John Molinari Wins \$800,000+ Verdict in Trucking Accident

Our client's car was rear-ended at a traffic light just off the New Jersey Turnpike in Elizabeth, NJ by a tractor trailer. While his medical history included a lumbar fusion approximately 15 years earlier, he had had no problems from that procedure up until the time of the collision. He had undergone a cervical fusion 4 months prior to the collision and had just been cleared to return to work on a part-time basis. After the crash, his lower back and neck were reinjured. The defense claimed that the minimal damage to the vehicle indicated that such an impact could never have caused anything more than sprains and strains. The offer made prior to trial was \$400,000. After 5 days of trial in Middlesex County Superior Court, John Molinari secured a verdict of \$761,500.00 that, with pre-judgment interest, totaled over \$800,000.



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RECOVERIES

Here is a sample of other results we have obtained for clients since our last issue.

\$6,000,000

Medical Malpractice Carol L. Forte

\$2,600,000

Medical Malpractice Carol L. Forte

\$1,300,000 Motor Vehicle Accident Kenneth W. Elwood

\$1,250,000

Product Liability/ Motor Vehicle Accident Harris S. Feldman

\$1,200,000

Medical Malpractice David M. Fried

\$1,200,000

Medical Malpractice Michael B. Zerres

\$1,190,000

Trucking Accident David M. Fried

\$950,000

Product Liability Harris S. Feldman

\$875,000

Medical Malpractice Mitchell J. Makowicz, Jr.

\$650,000

Premises Liability John E. Molinari

\$650,000 Product Liability Harris S. Feldman

\$600,000

Premises Liability John E. Molinari

\$500,000

Premises Liability John E. Molinari

\$500,000

Medical Malpractice Jeffrey J. Zenna

\$415,000

Motor Vehicle Accident Mitchell J. Makowicz, Jr.

\$415,000 Medical Malpractice

Richard J. Villanova

\$375,000

Birth Injury Jeffrey J. Zenna

\$375,000 Medical Malpractice Jeffrey J. Zenna

\$340,000

Premises Liability John E. Molinari

\$300,000 Product Liability

Jeffrey J. Zenna

\$300,000 Accidental Shooting

Jeffrey J. Zenna

\$275,000

Premises Liability Norberto A. Garcia

\$250,000

Motor Vehicle Accident John E. Molinari

\$200,000

Premises Liability Robert C. Sanfilippo

FYI

Nursing Home Neglect by Kenneth W. Elwood



New Jersey nursing home residents have special rights guaranteed by law. N.J.S.A. 30:13-1 sets forth an extensive list of nursing home responsibilities and a resident's bill of rights. New Jersey law also requires nursing

homes to comply with federal regulations, such as those imposed by Medicare. Any violation gives rise to a cause of action against the person or facility committing that violation.

There are approximately 369 nursing homes in the State of New Jersey. The types of cases that our firm has handled include injuries and death from falls, bedsores (also known as pressure ulcers), medication errors, improper use of physical or chemical restraints, elopement, dehydration and nutrition deficiencies. These cases are often the direct result of violations of the patients' rights under state and federal law.

If you suspect that a loved one or a friend suffered such neglect at the hands of a nursing home, the resident or his or her legallyappointed representative has the right to pursue legal remedies. He or she also should report such violations to the Office of the Ombudsman for the Institutionalized Elderly by calling toll-free 877-582-6995. The Office of the Ombudsman is duty-bound to investigate the complaint. Violations of a nursing home resident's rights are serious and give rise to legal liability, including claims for attorneys' fees, costs and potentially punitive damages.



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ACHIEVEMENTS, ANNOUNCEMENTS & EVENTS

11 Blume Forte Attorneys Honored as Super Lawyers; 2 Blume Forte Attorneys Named to Rising Stars List

Twelve Blume Forte attorneys have been named to the 2019 New Jersey Super Lawyers list, a designation awarded to just 5 percent of the lawyers in the entire state. This research-driven, peer-influenced rating system identifies attorneys who consistently hold themselves to the highest professional standards.

The following Blume Forte attorneys were recognized again in 2019 for their work in Personal Injury (the number of years next to their name indicates the number of consecutive years they have received the honor):



Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys. For more information about Super Lawyers, visit SuperLawyers.com.





Carol L. Forte was recognized by Super Lawyers in its top ten list as the <u>Number</u> <u>One Attorney</u> in the state of New Jersey.

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FYI

A Higher Bar to Claims Against Employers and Coworkers By Harris S. Feldman



We are routinely asked to look at cases involving injuries that happen at work. One hurdle we face in such cases is an immunity known as the "worker's compensation bar."

The workers' compensation system has been described by our Supreme Court as a "historic 'trade-off' whereby employees give up their right to pursue traditional lawsuits in exchange for prompt and automatic entitlement to benefits for work-related injuries."¹ What that means to litigants in a New Jersey personal injury case is that workers receive easily obtainable medical coverage and, for work-related injuries, limited recovery for permanent injuries in exchange for giving up the right to sue an employer or coworker who is responsible for the injury. New Jersey courts strongly favor this system, which covers a wide range of injuries that are "part and parcel of everyday industrial life."²

Not all work-related claims are subject to the employer immunity. Injuries caused by intentional conduct, such as removing safety guards meant to protect the kind of injury which occurred, may not be protected from suit by the worker's compensation bar. Conduct that could be described as certain to cause injury will *not* be protected by the bar.³ When a worker's injuries have been caused by that type of employer's "intentional wrong," that "intentional wrong" may void the "trade-off" and the employee may seek workers' compensation benefits and common-law remedies against the employer.⁴

For decades, our courts applied the "substantial certainty" standard involving claims against employers. However, the New Jersey Supreme Court in Van Dunk v. Reckson Associates <u>Realty Corp.</u> recently made it harder to meet that standard, but still left the door open to some claims. The new test focuses on both the employer's conduct and the context within which the negligence occurred.⁵

As the court in <u>Van Dunk</u> explained:

[W]hen assessing claims of intentional wrong, the court engages in a two-step analysis. First, a court considers the "conduct prong," examining the employer's conduct in the setting of the particular case. Second, a court analyzes the "context prong," considering whether "the resulting injury or disease, and the circumstances in which it is inflicted on the worker, [may] fairly be viewed as a fact of life of industrial employment," or whether it is "plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the Compensation Act.⁶

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When it analyzed the level of danger to workers necessary to satisfy the conduct prong, the Supreme Court held that the employer's conduct must now be "virtually certain" to cause injury.⁷ As the court explained, "An intentional wrong must amount to a virtual certainty that bodily injury or death will result."⁸ Most importantly, "A probability, or knowledge that such injury or death 'could' result, is insufficient."⁹

Examples of cases where a worker could defeat employer immunity include claims that "involve the employer's affirmative action to remove a safety device from a machine, multiple prior OSHA citations at the same site, deliberate deceit regarding the condition of the workplace, machine, or the employee's medical condition, knowledge of prior injury or accidents, and previous complaints from employees."¹⁰ Today, marshalling the right facts to support such a claim is more important than ever.

To defeat an employer's immunity today, a party must present evidence of conduct which is virtually certain to cause harm and proof that the context in which this conduct occurred created an environment that is not a normal consequence of industrial life and is beyond what a regular worker would experience in a regular industrial setting. Plaintiffs seeking to overcome the strong preference for compensation as the sole remedy for workplace injury must conduct a detailed investigation. We must not only know the facts of a case but also have a thorough understanding of a particular work setting to be able to explain to a judge how an injury and event were not a normal consequence of that setting.

¹ Laidlow v. Hariton Mach. Co., Inc., 170 N.J. 602, 605 (2002).
² Van Dunk v. Reckson Associates Realty Corp., 210 N.J. 449, 461 (2012).
³ Van Dunk 210 N.J. at 470.
⁴ N.J.S.A. 34:15-8. Charles Beseler Co. v. O'Gorman & Young, Inc., 188 N.J. 542, 546 (2006).
⁵ Van Dunk v. Reckson Associates Realty Corp., 210 N.J. 449, 461 (2012).
⁶ Van Dunk v. Reckson Associates Realty Corp., 210 N.J. 449, 461 (2012).
⁷ Van Dunk 210 N.J. at 470.
⁸ Ibid.
⁹ Id. at 470.
¹⁰ Van Dunk v. Reckson Associates Realty Corp., 210 N.J. 449, 471 (2012).





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OUR REFERRAL NETWORK





Blume Forte Fried Zerres & Molinari

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OTHER COUNTRIES:

Barbados Canada Israel Turks and Caicos Vietnam

FYI

Product Liability — Compensation and Safety By Mitchell J. Makowicz, Jr.



Each and every day, people use many consumer products to carry out their daily activities of living. Some are quite simple, but others — such as automobiles — are complex engineering marvels. Given our constant reliance on these products, it

is incumbent upon manufacturers and distributors of products to design and manufacture them in such a way that they are safe to use.

While the immediate goal of a product liability claim is to compensate someone who has been injured, there is another benefit that perhaps is less apparent: safer products. That was the intent of the California Supreme Court when it ruled in 1963 that manufacturers and distributors were liable if the products they made were "defective" — that is, unreasonably unsafe for their known and anticipated uses. An example of this principle in action is the automobile, a product that most people use on a daily basis.

Before he gained fame as a presidential candidate, Ralph Nader was an attorney and consumer advocate who focused his attention on the dangers posed by faulty and dangerous automotive designs. His landmark book, "*Unsafe At Any Speed*," took the automotive industry to task for refusing to integrate a simple safety feature that is now taken for granted: the seatbelt.

Studies from the National Highway Safety Administration as early as 1972 demonstrated that many lives have been saved by the introduction of seatbelts as standard equipment in cars. As additional features have been designed and introduced — frontend airbags, side-curtain airbags, heads-up displays, automatic emergency braking, blind spot detection and rear-view cameras, to name but a few — each has enhanced the safety of everyone who drives or rides in a car.

It is well known to car manufacturers that, despite all of these safety features, accidents can and will happen. For this reason, manufacturers must also design their cars in a way that will lessen or eliminate the risk of serious injury to occupants. Sometimes, either due to a flaw in design or a failure in the manufacturing process of the component parts, cars do not appropriately protect the occupants.

Because cars commonly travel at high rates of speed and sudden deceleration can result in serious traumatic injuries, car manufacturers are obligated to perform extensive design and failure testing to ensure that their cars will protect occupants in accidents.

When a car's safety features fail to prevent a serious injury in an accident, or when it lacks protections, a potential source of compensation may be the manufacturer and distributor of the car. At Blume Forte, we have the knowledge, experience and resources to effectively investigate any potential claim due to product defects in cars and other consumer products.

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WHAT DOES IT MEAN TO BE CERTIFIED AS A CIVIL TRIAL ATTORNEY?

The Supreme Court of New Jersey created a special designation to identify attorneys who have a demonstrated level of competence in a particular area of law. There are five areas of designation in our state: civil trial law, criminal trial law, matrimonial law, municipal court law, and workers' compensation law.



TO BE DESIGNATED AS A "CERTIFIED" CIVIL TRIAL ATTORNEY IN NEW JERSEY, AN ATTORNEY MUST:

- be a member of the New Jersey Bar in good standing for at least five years
- have taken a specific number of continuing legal education courses
- demonstrate substantial involvement in the preparation of litigated matters
- demonstrate an unblemished reputation by submitting a list of attorneys and judges who will attest to their character and ability, and
- pass a written examination covering various aspects of practice in the designated specialty

LESS THAN 3%

OF ALL NEW JERSEY ATTORNEYS CARRY THE "CERTIFIED" DESIGNATION.

OVER HALF

OF THE FIRM'S ATTORNEYS - AND <u>ALL</u> OF OUR PARTNERS - CARRY THE "CERTIFIED" DESIGNATION.

ACHIEVEMENTS, ANNOUNCEMENTS & EVENTS

Our attorneys maintain active involvement in many associations and professional organizations and are often recognized for their experience and successes.

- Carol L. Forte co-chaired the Medical Malpractice section of the New Jersey Association for Justice Meadowlands seminar
- John E. Molinari served as a judge for the Hudson County High School Mock Trial Competition
- John E. Molinari spoke at the 2019 Winter Seminar of the New Jersey Association for Justice, presenting "Trial Tips in Snow/Ice Cases"
- Richard J. Villanova will be speaking at a seminar in June for the New Jersey State Bar Association, "Preparing and Presenting the Auto Injury Case"
- Jeffrey J. Zenna was admitted to the New York Bar Association
- Jeffrey J. Zenna served as a supervising attorney investigator for the New Jersey Supreme Court District Attorney Ethics Committee
- Harris S. Feldman was named to the Top 10 list of the Trucking Trial Lawyers Association of America
- Carol L. Forte and Jeffrey J. Zenna were recently admitted to practice before the Supreme Court of the United States



12

Jeff Zenna, third from left, and Carol Forte, second from right, stand with colleagues who were admitted with them to practice before the United States Supreme Court

Blume Forte Fried Zerres & Molinari

ACHIEVEMENTS, ANNOUNCEMENTS & EVENTS

The firm hosted a networking and educational breakfast at Forsgate Country Club: The Clock is Ticking: Notice Requirements, Statutes of Limitation and Immunities in New Jersey and Common Ethical Issues.

The event offered an overview of what every attorney needs to know about notice requirements, immunities and statutes of limitation that apply in New Jersey, as well as common associated ethical issues.



This CLE event featured speakers Mitchell J. Makowicz, Jr. from Blume Forte Fried Zerres & Molinari (right) with special guest speaker Andrew B. Kushner of Andrew B. Kushner, LLC



Mitch Makowicz reviewed statues of limitation, notice provisions and immunities



Guest speaker Andy Kushner discussed ethics issues



David Fried offered helpful input from the floor

COMMUNITY:

The firm supported the 2019 Seaside Heights Polar Bear Plunge, which raised almost \$7,000 for Special Olympics New Jersey.



Blume Forte continued its support of the McNany Charitable Foundation, a local organization that supports a variety of community endeavors: scholarship programs, youth athletic sponsorships, public safety and welfare efforts, and several other efforts assisting those in the local community.

Blume Forte celebrated another year of its employee student scholarship fund, and also established a \$1500 scholarship for current and aspiring college students that love their dogs. Photos of the applicants and their pups will be posted on Facebook weekly.

Blume Forte SCHOLARSHIP FUNDS

FYI

Premises Liability Claims By Richard J. Villanova



Premises liability cases are those that are based upon unsafe conditions of property. Trips and falls and dog bites are types of premises liability claims. New Jersey has adopted a traditional law approach to these types of claims. Your status on a

person's property will determine whether the property owner has any obligation to you and, if so, what.

There are three categories of visitors on a property: business invitee, licensee and trespasser. The property owner's obligations are different depending on your status.

- A business invitee is entitled to the highest standard of care. For example, anytime you go to a store, even if you do not buy anything, you are a business invitee and the owner of the property is required to keep the premises safe and free of defects or obstructions. The owner must make reasonable repairs of any dangerous conditions as well as warn visitors of any dangerous hidden conditions. A business invitee is afforded the highest degree of care since the owner is potentially receiving a monetary gain from the visitor's presence on the property.
- Licensees are those who are legally on the property of another. Social guests are a type of licensee. While a property owner is required to keep the property safe, the owner is not obligated to inspect the property looking for dangerous conditions. However,

they must warn the guest of dangerous conditions known to them that would not otherwise be known to the guest.

• Trespassers are those for whom the law provides the least protection. Since a trespasser is not legally on a property, an owner is only liable to a trespasser if he or she intentionally or recklessly causes him or her harm.

An owner may be liable for the condition of property to one person but not be responsible to another for the same condition depending on the party's status on the property.

The above standards may also differ depending on the age of the injured party. For example, children who trespass on a property are owed a greater duty by the landowner if the trespassing is reasonably foreseeable, the owner has reason to know of the danger and that the danger would likely attract children to it.

We are here for any questions you have, or if you would like to discuss a specific instance of suspected premises liability.

WELCOME

Blume Forte Fried Zerres & Molinari welcomes our newest attorneys.



Norberto A. Garcia returns as a partner to the firm. He previously spent 17 years at Blume before leaving in 2010 to start his own practice in Jersey City. He is the incoming president of the New Jersey State Bar Foundation. He is a trustee

of the New Jersey State Bar Association, where he is also co-chair of the diversity committee and on the executive committee of the Civil Trial section. Norberto is a graduate of the University of Pennsylvania Law School. He has been certified as a civil trial attorney since 2001. He is a past president of the Hudson County Bar Association and the North Hudson Lawyers Club, and co-chair of the Hudson County Civil Practice Committee.

Norberto lectures regularly for various bar and professional associations and law schools and has written articles for the *New Jersey Lawyer Magazine*, the *New Jersey Law Journal* and *New Jersey Biz Magazine*.

He has had multiple 6 and 7 figure verdicts throughout a career that includes 100 jury trials to verdict. His recent settlements include a \$450,000 dram shop case, a \$625,000 auto accident case and a \$2,100,000 trucking accident case. He has also appeared regularly before the appellate division of the New Jersey Superior Court.

Norberto grew up in Hudson County and currently resides in Morris County. He is fluent in Spanish.



Ashley A. Smith joined the firm in 2018. Her practice is focused on all areas of personal injury litigation and medical malpractice. Ashley is a graduate of Amherst College and New York University School of Law. At NYU, Ashley served as

an executive editor for the Journal of Legislation and Public Policy and participated in the school's rigorous year-long Civil Rights Clinic, helping to represent individuals in a federal lawsuit arising out of their unlawful arrests and detention.

Prior to joining Blume Forte, Ashley worked for a firm in central New Jersey where she litigated numerous personal injury, medical malpractice, employment law, and class action matters, regularly appearing in courts all over the state. In addition to being regarded by her peers as a superb writer, Ashley is a skilled public speaker who has served as a coach for The Dale Carnegie Course in New York City. Ashley brings to the firm broad, in-depth knowledge and experience in civil litigation. Ashley is admitted to practice in the State of New Jersey, the U.S. District Court for the District of New Jersey and the State of New York.

At a recent proof hearing in Union County, Ashley obtained an award of \$275,000 for a client who suffered complications following an improperly performed spinal surgery. This fall, she will be participating in the Heart Walk for the American Heart Association.

OUR ATTORNEYS

- David M. Fried*
- Carol I., Forte*
- Michael B. Zerres*
- John E. Molinari*
- Kenneth W. Elwood*
- Mitchell I. Makowicz. Ir.*
- Jeffrey J. Zenna*
- Harris S. Feldman*
- Richard I. Villanova*
- Norberto A. Garcia*
- Robin A. Donato
- Alexa C. Salcito
- Robert C. Sanfilippo
- · Ashley A. Smith
- Connor C. Turpan

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FOLLOW US ON SOCIAL MEDIA:

PERSONAL INJURY

- Brain Injuries
- Slip & Falls
- Catastrophic Injury Burn Injury
- Explosion Injuries
- Fire Injuries
- Hot Water Heater Injuries

OUR PRACTICE AREAS

- Scalding Burn Injuries
- Child Injuries
- Daycare Injuries
- Dog Bites
- Nursing Home Negligence
- Wrongful Death
- Amputations
- Clergy Abuse Assault
- Aviation Accidents

MEDICAL MALPRACTICE

- Birth Injuries
- Erb's Palsy / Shoulder Dvstocia
- Abrupted Placenta
- Baby Brain Damage
- Bell's Palsy
- Birth Defects
- Cerebral Palsy
- Cesarean Section
- Cystic Fibrosis Down Syndrome
- Failures of Prenatal Diagnosis
- Fetal Distress
- Forceps Injury
- Inadeguate Prenatal Screening



- Iaundice
- Sickle Cell Anemia
- Spina Bifida
- Tay-Sachs Disease Thalassemia
- Wrongful Birth
- Cancer Misdiagnosis
- Breast Cancer
- Cervical Cancer
- Colon Cancer
- Lung Cancer
- Ovarian Cancer
- Prostate Cancer
- Radiology Errors
- Uterine/Endometrial Cancer
- Other Cancers

Surgical Malpractice

- Anesthesia Accidents
- Informed Consent
- Preoperative Clearance Failure
- Postoperative Care Failure
- Surgical Mishaps
- Delayed Diagnosis / Failure to Diagnose
- Delayed or Incorrect Treatment
- Failures in Emergency Room Care
- Physician Malpractice
- Hospital Negligence
- Nursing Malpractice
- Medication Errors
- Clostridium Difficile Colitis
- Hemochromatosis



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This publication constitutes an advertisement. It is not intended to convey advice and does not constitute an attorney-client relationship. The information, opinions, case examples and figures shared in this document are examples only. Results in any legal matter will vary depending on the case's particular facts and circumstances.

MRSA Infections

PREMISES LIABILITY

Lead Poisoning

DEFECTIVE PRODUCTS

Defective Auto Parts

• Air Bag Defects

Car Seat Defects

Defective Brakes

& Brake Pads

Defective Tires

Electronic Stability

Control Defects

Gas Tank Defects

Seatback Defects

Seat Belt Defects

Structural Auto

SUV Rollovers

Defective Medical

Stryker Hip Implants

Defective Appliances

Defective Machinery

Household Product

LEGAL MALPRACTICE

ON THE JOB INJURIES

LITIGATOR

AWA R DS

Zimmer Knee Implants

Defects

Devices

Asbestos

Defects

Αννο

& Explosions

Unsafe Stairs

• Falls on Snow and Ice

Inadequate Security

- Opioid Prescription Malpractice
- Testicular Torsion
- Testing Errors
- Wilson's Disease

MOTOR VEHICLE ACCIDENTS

Motorcycle Accidents

Pedestrian Accidents

Uber & Lyft Accidents

Intersection Accidents

CONSTRUCTION ACCIDENTS

Construction Site Deaths

Electrocution Accidents

Industrial Accidents

Machinery Accidents

Nail Gun Accidents

Scaffold Accidents

Trench Accidents

Welding Accidents

Chemical Exposure

Construction Worker

Crane Accidents

Waving Accidents

Burn Injury

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Auto Insurance Coverage

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 Car Accidents Truck Accidents

Boat Accidents

Bus Accidents

ATV Accidents