



SPRING 2007

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# BRIGGS & COUNSEL

L a w O f f i c e s



## Protecting the rights... ...of those who serve in our military

When a mortgage company wrongly foreclosed on the home of a military family living in Phoenix, Arizona, our civil justice system was their last resort to obtain compensation.

Gerald Thitchener, a National Guard jet-fighter technician who served in Desert Storm, was reactivated to serve a one-year tour in Las Vegas, Nevada. He had his mortgage temporarily forwarded to his new duty assignment and paid monthly.

A nationally known mortgage company, Countrywide, confused Thitchener with another customer and foreclosed on his Phoenix mortgage despite the protestations of a real estate agent. When the soldier returned to an empty and padlocked Arizona home, he learned that Countrywide had foreclosed on his mortgage and disposed of his family's possessions, including his Desert Storm medals and his wife's wedding gown.

Rather than admit error and offer compensation to its victim, Countrywide went to trial when Thitchener sued. A jury returned a verdict for the soldier's family and awarded compensation and damages.

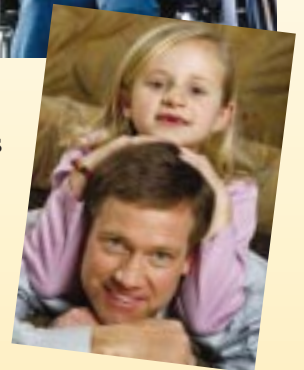
## We're always here for you

When a person or a family is seriously injured in a seemingly larger-than-life situation, we offer them the hope and promise of fair treatment and compensation for harm.

Victims of a person's or a business's negligence may be so injured, upset, confused, or traumatized that they cannot speak out for themselves. That's when we become their voice.

We will bring our experience, resources, and, most importantly, our passion and heartfelt concern to bear for those harmed by insensitive wrongdoers to compensate them for the harm they have suffered.

In consultation with our clients, we may recommend several alternate paths to injury-case resolution. However, when circumstances call for it, we will represent our clients in court, presenting evidence in the cases to judges and jurors in a convincing manner to help them perceive victims' plights as the victims themselves feel them.



Attorneys helping people.

## Workers' compensation When insurers refuse to pay

Workers' compensation regulations are state-based insurance programs that effectively cover claims by workers injured on the job or who suffer work-related diseases or illnesses. Insurers regularly handle claims with understanding and efficiency.

On occasion, an insurer may deny claims benefits, as the following case illustrates. Workers should consult an attorney experienced in workers' compensation law for counsel.

### Fall from a ladder

When a retail store employee fell from a ladder and severely injured her back, her physician recommended surgery. When she filed a workers' compensation claim, the insurer denied her petitions and an independent Industrial Commission's confirming orders for several years. The employee's attorney sued the insurer, demonstrating it had not acted in good faith.

A jury held for the plaintiff, stipulating a significant award, and held the insurer liable for lifetime medical care and disability benefits for the underlying injury under the state's Workers' Compensation Act.



## Drunk-driver accident victims

U.S. transportation authorities claim that motor vehicle accidents involving alcohol kill one victim every 30 minutes. Alcohol-related accidents also seriously injure other victims every two minutes. Annually, more than a million Americans and their families suffer at the hands of drivers who are impaired by alcohol.

Anyone injured in an alcohol-related auto accident should seek the counsel of an experienced attorney to obtain compensation for medical treatment, lost income, emotional distress, and other damages.

### Third-party responsibility

In addition to seeking recompense from negligent drivers and their insurance providers, personal injury attorneys may also uncover liability of third parties, such as restaurants and other establishments that serve or sell alcohol.

A drunk driver ran a stop sign, collided with another vehicle, and killed its driver. When the victim's wife and estate sued for wrongful death and emotional distress, the plaintiff's attorney also made a claim against a nightclub that served the drunk driver alcohol immediately before the accident. The parties settled before trial.

## Pharmaceutical MARKETING Dollars



## Pharmaceutical RESEARCH Dollars



## Pharmaceutical marketing

U.S. drug manufacturers spend 2.5 times more money on marketing drugs to consumers and doctors than they invest in pharmaceutical research.

To make windfall profits on prescription drug sales, pharmaceutical companies spend billions influencing physicians and other health-care providers to prescribe and utilize their medications.

In one case, former Medtronic employees blew the whistle on the company's marketing generosity, which included giving doctors financial kickbacks. Their case settled in federal court in August 2006 for \$40 million.

In other lesser instances, medical-school professors claim that drug representatives often provide many doctors' offices free lunches, some costing as much as \$250, to buy access for sales.

Access costs American consumers millions and adds billions to drug companies' marketing annually. In 2004, Merck alone spent \$7 billion in marketing, compared with \$4.01 billion in research. Public Citizen, a consumer advocacy group, reported that in 2005, the pharmaceutical industry committed more than \$60 billion to marketing efforts.

# FOR YOUR SAFETY

## Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Target Stores** is voluntarily recalling 185,000 Firestreet Scooters. The handlebars, wheels, and brakes can break and detach, causing rider injuries.
- ✓ **Acuity Specialty Products Group, Inc.**, asks consumers to return 6,800 five-gallon pails of “Zep Industrial Purple Cleaner & Degreaser” and “Zep Heavy-Duty Floor Stripper” cleaning products, which can crack, leak corrosive products, and harm users.
- ✓ **Atico International USA, Inc.**, has recalled 209,000 folding picnic tables with legs that can unexpectedly buckle, break, fold, or collapse, injuring users.
- ✓ **Fun Express, Inc.**, has called back 340,000 bendable toys given away at libraries. The toys are decorated with paint containing excessive levels of lead, which is banned under federal law. Lead is toxic and, when ingested by children, can cause adverse health effects.
- ✓ **Black & Decker** has requested buyers to return 160,000 cordless electric mowers. An electrical component in the lawn mower can overheat, catch fire, and burn users.

# Legal dictionary

Many clients find legal terms mystifying. From time to time, we’ll provide easy-to-understand definitions to help clear things up. This time, you’ll learn the meanings of several important terms used in courts to help you better understand our legal responsibility concepts.



## Liability

A person’s, group’s, or business entity’s legal responsibility for an injury or loss for which they are responsible.

## Negligence

The failure to exercise the kind of sufficient care that a reasonably prudent and careful person would use under specific circumstances. If an injury results from another’s negligence, that person or entity may be liable to pay damages for any injury they caused.

## Statute of limitations

Another arbitrary time limit—in years—that cuts off a plaintiff’s ability to file an injury case after a certain period of time from the date of the injury, even if the injury is not detected until much later.

## Statute of repose

An arbitrary time limit—in years—that terminates a corporation’s responsibility for marketing faulty or dangerous products.

# Damages limitations

Can lawsuit damages caps harm those injured? Damages-cap legislation restricts amounts a jury can award for injuries, no matter what case facts may be. Some state legislatures have enacted caps in civil cases, while others have not. Some caps apply to specific kinds of cases, such as medical malpractice. Other caps limit only noneconomic damages, and some limit punitive damages.

In states that cap damages, a jury’s or judge’s award is automatically reduced to the amount of the cap—even though the jury

or judge may believe the plaintiff should be awarded more than the cap as compensation, or even if the circumstances of the case show that a negligent or malicious defendant should be punished with a significant punitive-damages award. There is generally no way to raise a damages award beyond the cap once it is written into law.

Here is an example of how a cap of \$250,000 on noneconomic damages may be incredibly unfair to some victims.

Who is harmed	The victim’s injuries or losses	The amount the jury originally believed should be awarded	The amount the victim is awarded based on the legislature’s cap
<b>VICTIM A</b>	After being hit by a drunk driver, the victim’s car caught fire. Her husband (a passenger) was killed, she was burned and left disfigured, and lost the use of her right arm. She was a homemaker and can no longer work.	\$1.2 million noneconomic damages	\$250,000 noneconomic damages
<b>VICTIM B</b>	After being hit by a drunk driver, this victim suffered two broken legs, had to have surgery to repair them, and was forced to wear a full body cast for two months.	\$250,000 noneconomic damages	\$250,000 noneconomic damages

**VICTIM A, who suffered worse injuries than VICTIM B, nonetheless takes home the same compensation for her losses as VICTIM B. Even though the jury thought VICTIM A deserved far more compensation, the jury’s judgment was overruled by a cap put in place by the legislature long before VICTIM A’s case ever arose.**

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## An American hero

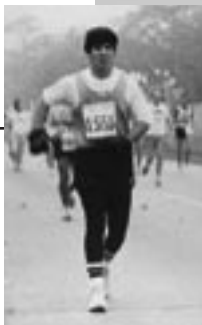
A workplace-injury lawsuit, American civil justice, and an injured worker's bigheartedness have improved Texas workers' safety.

John Caballero, permanently disabled by gross corporate negligence, generously decided to give up his damages judgment in return for company worker-safety upgrades.

Caballero, a healthy ironman triathlete, was severely injured at his oil-field job when a blast of fluid and gas from a well he was testing threw him more than 30 feet. He suffered scalping, brain damage, vision and hearing losses, broken vertebrae in his neck and back, a broken ankle, and a dislocated hip.

When he filed a lawsuit, a judge and jury awarded Caballero compensation for his past injuries and future medical care for a lifetime of degenerative physical problems. Jurors also awarded significant punitive damages against his employer to hold it accountable for the gross negligence that caused John's injuries.

Caballero turned down punitive damages in exchange for his employer's promise to institute new safety programs that would prevent other workers from suffering similar tragedies.



**John Caballero, permanently disabled by gross corporate negligence, generously decided to give up his damages judgment in return for company worker-safety upgrades.**



## Slips and falls

When someone slips, falls, and is injured because of a property owner's negligence, an attorney familiar with premises-liability accidents can help a victim obtain compensation for medical bills, lost wages, pain and suffering, and other damages.

An experienced personal injury lawyer can assess an incident, communicate with property owners, negotiate with insurers, locate experts to testify on a plaintiff's behalf, if necessary, and present the case at trial.

### **A shampooed carpet**

When a woman stepped from a freshly shampooed carpet onto a marble floor at an office, she slipped and fell. She suffered severe disk protrusions and back injuries, requiring surgery involving a spinal-cord-stimulator implant. When her attorney sued for failure to warn of danger, the parties settled for a substantial amount.