



FALL 2006

Brought to you by  
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- Appointments available on evenings and weekends
- Free initial consultation

**AREAS OF PRACTICE**

- Automobile Accidents
- Trucking Litigation
- Wrongful Death
- Product Liability
- Highway Defects
- Slip and Falls
- Burn Injuries
- Pharmacy Malpractice
- Medical Device Failures
- Joint Replacement Failures
- Medical Malpractice
- Commercial Litigation
- ERISA and Insurance



**ATTORNEYS AT LAW**

## Juries protect us all

America's civil justice system has stood the test of time. It doesn't put anyone in jail. Instead, it punishes those who act with disregard for the welfare of the rest of us. It also strives to restore the health and well-being of those who have been harmed by others' actions.

Our fundamental constitutional right to a trial by jury is under attack. Special interests, such as the manufacturing, insurance, and drug industries, want to change the system to benefit their own financial and legal interests.

Here are other challenges to our justice system that many of us may not often think about:

- Inadequate juror compensation.
- Juror prejudice from public relations campaigns.
- Delayed or denied justice from court budget cuts.



- Judge shortages backlogging cases.
- Appellate courts reversing jury verdicts.
- Secret settlements hiding justice from the public.
- Refusing media access to investigate court files.
- Legislatures predetermining legal issues.
- A poisoned, partisan political landscape.

## Nash & Franciskato win \$2.5 million award in wrongful death case

In what appeared to be a routine traffic accident, Robert van Driel failed to stop at a stop sign in rural Boone County, Missouri, and was killed by an oncoming motorist. Nash & Franciskato represented Mr. van Driel's wife and son in the case, which was filed in Boone County, Missouri.



After extensive investigation, attorneys at **Nash & Franciskato** were able to prove that the intersection was unnecessarily dangerous due to changes made during ongoing road construction. The contractors on the project

*(continued on back page)*

**Let our experience get you the results you want!**

# Premises liability

## Home or apartment fires

Every day, roughly 800 residence fires occur in the nation, with most starting overnight, between 8:00 p.m. and 8:00 a.m. More than 6,500 Americans die in home and apartment fires annually, and over half are children and older persons.

### Fire safety

Taking three precautionary steps can save lives:

1. Install smoke alarms, and teach everyone about the dangers of smoke and flames in a home fire.
2. Plan and practice primary and alternate escape routes.
3. Identify a post-escape meeting place.

### A negligent landlord

A renter was severely injured when he had no alternative to jumping from a window during an apartment fire. The plaintiff's attorney recovered damages by demonstrating that the landlord's negligence was responsible for the client's injuries. The landlord dead-bolted a fire exit to keep trespassers out and permitted other tenants to prop open internal fire doors to improve air circulation.

# Medicare claim hearings

A July 2005 change in federal policy limits Medicare beneficiaries' access to claims-denials hearings, making it harder for older Americans to obtain justice. Forty-one million Americans participate in Medicare.

When Medicare denies claims for prescription medications, in-home care, nursing home medical services, or other benefits, claimants are now required to attend hearings conducted via video-conference or by telephone with judges supervised by the Department of Health and Human Services in only four cities—Cleveland, Ohio; Miami, Florida; Irvine, California; and Arlington, Virginia.

The recently enacted Medicare drug benefit is expected to create large numbers of claims. Previously, beneficiaries petitioning personal claims-denial hearings could travel to 1 of 140 Social Security offices located throughout the nation. Now, Medicare will conduct face-to-face hearings only under very special circumstances, and those demanding personal hearings forfeit the right to a 90-day decision.

Many legislators, patients' rights groups, and Medicare attorneys claim four offices were insufficient and worried that the change would result in sick or aging beneficiaries not obtaining just or positive decisions.

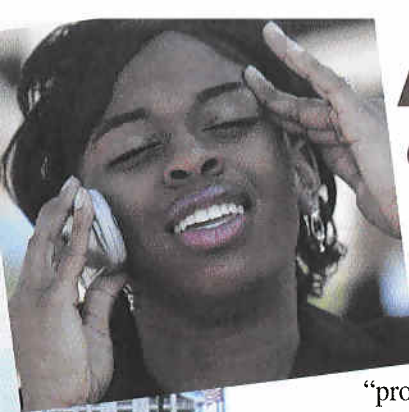


# FOR YOUR SAFETY

## Recalled product roundup

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

- ✓ **King of Fans, Inc.**, recalled 75,000 Maxi-Heat™ Dream Tower Heaters. Interior heater wiring can short-circuit and burn consumers.
- ✓ **Porter-Cable** has voluntarily called back 70,000 Porter-Cable 890 Series Routers with motor coil insulation that can be worn away by vibration and shock users.
- ✓ **Country Home Products, Inc.**, has asked buyers to return 15,700 2005 Model NEUTON® Cordless Electric Lawn Mowers. Even when the handlebar is released, the motor sometimes continues to run, causing the blade to spin, which can harm consumers.
- ✓ **Fisher-Price** has recalled 614,000 Fisher-Price® Laugh & Learn™ Musical Learning Chairs™. Children may become trapped between the chair seatback and side table, which poses a strangulation hazard.
- ✓ **Simplicity Inc.** requests consumers to return 104,000 Aspen 3 in 1 Cribs, sold under the Graco Trademark. Support screws can loosen, allowing mattresses to fall, posing a suffocation hazard to young children.
- ✓ **LTD Commodities and its subsidiary, The Lakeside Collection**, have voluntarily recalled 34,600 Pilates Balls. Exercisers using the ball can be hurt by plastic clips or grommets that may loosen from rubber tubing on nylon webbing.



## **Auto accidents** **What is "proper lookout?"**

In auto accident cases, drivers may be found negligent for failing to keep "proper lookout."

A driver is obliged by law to constantly monitor all the circumstances of driving in order to prevent a car accident. Requirements include paying attention to the roadway, traffic signals and controls, and other drivers.

To keep a proper lookout, drivers also should avoid common distractions. Studies show that the most common driver diversions are accidents, slowdowns, or other events outside the driver's vehicle; changing radio stations or CDs; talking with passengers; adjusting heating or cooling controls; eating or drinking; talking on a car or cell phone; and smoking.

Younger drivers are more prone to music-related distractions. Adults have their attention diverted by passengers. Seniors attend to objects or events happening outside the vehicle.

Drive safely. Keep a proper lookout.



## **You can beat City Hall** **Police officers and qualified immunity**

The long-standing legal doctrine of qualified immunity protects police officers and public officials from unreasonable allegations or false accusations that might hamper their ability to enforce the law or perform governmental business.

Most citizens understand that police put their lives at risk during dangerous situations and believe officers deserve some leeway in their behavior—as long as the police obey the law and uphold citizens' civil rights.

### **When police overstep bounds**

When police violate the law while performing their duties, our civil justice system provides citizens a way to protect their rights. An appellate court ruled that a defendant law-enforcement officer who conducted clearly unconstitutional strip searches on two suspects arrested for drunk driving, and also made racist and threatening comments, did not have qualified immunity from prosecution. The court permitted the plaintiffs to sue to recover damages.

## **Consumer credit-card disputes** **Collusion lawsuit challenges mandatory arbitration**

Credit- and charge-card marketers take away consumers' rights to dispute unauthorized use, erroneous merchant billing, and extra fees by requiring cardholders to accept mandatory arbitration clauses in disagreements.

A 2005 lawsuit filed against these marketers alleges that they met in secret numerous times between 1998 and 2003 to establish strategies for industrywide imposition of mandatory arbitration clauses for settling customer disagreements. The plaintiffs claim that the clauses "deprive cardholders of effective recourse for illegal anticonsumer and anticompetitive activity, secure an unfair advantage for defendants in the dispute-resolution process, and immunize defendants from collective action by consumers."

### **Defendants**

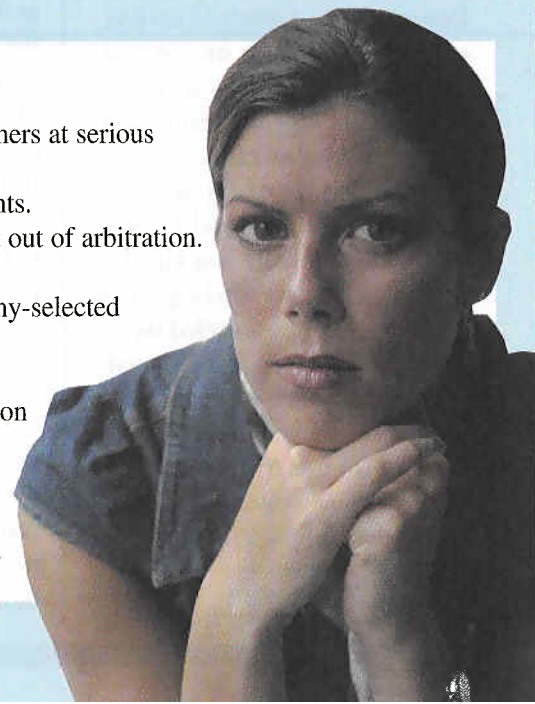
American Express  
Bank of America  
Capital One  
Chase, Bank One  
Citibank/Diners Club  
Discover, Household  
First USA  
J.P. Morgan Chase  
MBNA  
Wells Fargo

Plaintiffs want the clauses, which also ban class actions and let companies skirt consumer protection and antitrust laws meant to prevent corporate misconduct, declared void.

### **Mandatory arbitration**

Credit-card mandatory arbitration puts consumers at serious disadvantage because it...

- forces unknowing waivers of constitutional rights.
- does not give cardholders an opportunity to opt out of arbitration.
- screens cases from public scrutiny.
- compels cardholders to agree to biased, company-selected arbitrators.
- fast-tracks cases card issuers can win quickly.
- prevents legal discovery of important information about a company's disputed actions.
- limits remedies available to wronged purchasers.
- may require consumers to pay arbitration costs.



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## Nash & Franciskato win \$2.5 million award...

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had built large dirt mounds at the intersection that blocked visibility of the intersecting highway. Additionally, the Highway Department had directed the removal of a flashing red light that had been present at the intersection for 30 years, and failed to compensate for the removal with any advance warning signs or devices. It was also discovered that the Highway Department had received several complaints about the intersection prior to Mr. van Driel's accident. Included in those complaints was one concerning a "near miss" collision that occurred just two months prior to the accident in which Mr. van Driel was killed.

The contractors working on the construction project settled the claims against them prior to trial for \$505,000. The remaining claim against the Highway Department was tried before a panel of three arbitrators, who awarded \$2.5 million.

## D A INTERSECTIONS

**G** Every driver knows of dangerous intersections that literally *cause* accidents.

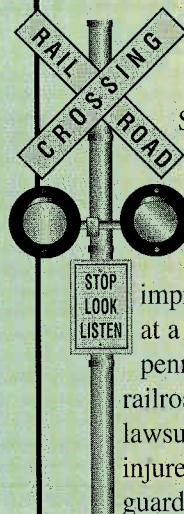
**E** A 1997 California case demonstrated that our civil justice system helps make driving safer for all of us.

**R** When a driver suffered a disabling injury from an accident, he sued California's Department of Transportation (Caltrans) for failing to install a signal at an intersection it long knew to be dangerous. Although Caltrans claimed motorist negligence, it knew that a signal light was installed at the intersection after the accident but before the suit was filed.

**O** The injured driver's attorney convinced the jury that Caltrans knew of the intersection's danger by presenting a petition signed by 870 residents and three local businessmen's letters asking Caltrans to install a signal. The town's engineer testified that the city once offered to pay Caltrans to install a traffic light. The state highway patrol's head accident investigator said that he ran out of room on a map of the intersection to add pins for accidents.

**S** The jury awarded the driver a sizeable verdict for Caltran's failure to protect motorists at the intersection. Here is yet another case of courts keeping motorists safe when those in positions of responsibility don't take their duties seriously.

## Unsafe railroad crossings



Early in 2000, the U.S. Supreme Court dealt a serious setback for safety at the nation's railroad crossings, ruling that when safety improvements are installed at a crossing using even one penny of federal money, railroads are protected against lawsuits by people who are injured because the safeguards are inadequate.

## Referrals



Please call us if you have legal needs. If we can't help, we will try to refer you to someone who can. Although we handle only major litigation matters, we have relationships with other attorneys who specialize in other matters, and we can recommend them to you.

You will feel better if you call.