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# Legal Matters®

## U.S. Government helps some personal injury victims

**T**wo U.S. Government agencies have issued rulings that will make life easier for some personal injury victims who are pursuing lawsuits.

One is from the federal Medicare agency, and it affects anyone who is insured by Medicare.

In general, if you have an accident and Medicare pays any of your medical expenses ... and you later bring a legal claim against someone and recover compensation ... you're required to reimburse Medicare out of your settlement proceeds.

A big problem is that Medicare is a huge bureaucracy, and it often takes it a very long time to determine exactly how much it's owed in reimbursement.

As a result, many claims and lawsuits that would normally result in a fairly speedy settlement for the injured person instead get caught up in red tape.

Why? One reason is that insurance companies are sometimes reluctant to sign off on a settlement until they know for sure how much the government is going to demand. If an insurance company pays an

injured person, and for some reason Medicare doesn't get its full share, Medicare can force the insurer to make up the difference. So many insurers want to wait until Medicare decides exactly how much it's owed, so they can make certain the government is repaid in full.

In other cases, an injury victim's claim might be settled, but a large amount of money will be set aside in escrow – meaning the injured person can't get access to it – while Medicare slowly makes up its mind.

This year, though, the Medicare agency has taken steps to fix the problem. It has adopted a rule saying that in many cases, it will provide a final "bill" within 60 days of a request.

Unfortunately, the new rule only applies to settlements of \$25,000 or less, but the agency says that it plans to increase this \$25,000 limit in the future. (The rule also says that if a settlement is for less than \$5,000, the injured person has the option of simply paying 25% to Medicare, regardless of how much reimbursement Medicare is actually owed.)

For now, the new rule is a step in the right



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## Three common drugs may have very serious side effects

Three frequently prescribed medications have recently come under increased scrutiny for causing serious health problems.

► Avastin is a cancer drug that is also widely used to treat macular degeneration, an eye condition. Although the U.S. Food and Drug Administration has never approved Avastin for eye problems, doctors have been using it anyway because it costs only about \$50 per dose, compared to the roughly \$2,000 per dose that patients typically have to pay for Lucentis, a drug that is approved for macular degeneration.

However, a number of patients across the country who have had Avastin injections for this purpose are now reporting that they have suffered severe eye infections, and in some cases blindness.

Using the drug for eye problems requires compounding and repackaging it into smaller doses. Some patients claim the drug was exposed to harmful bacteria in the compounding and repackaging process, causing contamination.

At least a dozen lawsuits have been filed against the manufacturer, as well as pharmacies that purchased, compounded and repackaged the drug; medical centers that received the doses; and doctors who prescribed and injected it.

Although the manufacturer never marketed the drug for eye problems, patients claim it knew that the drug was being used in this way and did nothing to discourage it.

► Actos has been effective in controlling blood-sugar levels for certain types of diabetes. But the FDA now says that taking Actos for more than a year is associated with a higher risk of bladder cancer.

The FDA cited an ongoing 10-year study in the U.S., as well as a French study that linked the drug to bladder cancer. French officials pulled the drug from the market there in the wake of the French study, and Germany has recommended halting its use in new patients.

Some lawsuits have been filed against the drug's manufacturer and marketer, claiming that earlier studies also suggested such a link and should have put the companies on guard against releasing the product to the public.

► Multaq, a drug used for abnormal heart rhythm, has been subjected to increased restrictions by the FDA.

Recently, clinical trials have shown that the drug can increase the risk of stroke, heart failure and death when used by patients with atrial fibrillation. Thus, the FDA has recommended that doctors not prescribe it to such patients, and has also recommended that all patients taking the drug be monitored with an electrocardiogram every three months.

The FDA also cautioned last year that Multaq can cause liver damage, noting at least two patients who suffered total organ failure and needed liver transplants.

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## Landlords may be responsible for assaults on tenants

A woman who lived in a Texas apartment complex was sexually assaulted by an intruder. The landlord notified the other tenants...but it didn't mention the sexual assault; it merely stated that an apartment had been broken into.

That wasn't good enough, a jury found.

The woman who lived in the next-door apartment renewed her lease shortly afterward. And just weeks later, she was also brutally sexually assaulted.

The woman sued the landlord, claiming that the landlord had a duty to provide tenants with all the facts about the dangers of living there. Had she known about the initial sexual assault, she wouldn't

have renewed her lease, she argued.

A jury awarded her substantial damages.

In another case in Tennessee, it was a tenant who assaulted someone in a public housing complex. Instead of evicting the tenant for being violent and dangerous, the landlord allowed him to continue living there. Four years later, a fellow tenant was killed by a stray bullet fired by the "problem" tenant.

The Tennessee Supreme Court allowed the victim's family to sue the landlord for permitting the violent tenant to remain, thus endangering the other people who lived in the building.

# U.S. Government helps some personal injury victims

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direction toward helping injured people get the compensation they deserve in a timely way.

## The IRS helps, too

The IRS has also issued a decision that will help certain injured people.

The general rule is that, if you receive compensation for a physical injury, you don't have to pay income tax on it.

In the past, though, the IRS has insisted that it's not enough just to show that you were compensated for a physical injury; you also had to show that you brought the "right" type of legal claim. You had to show that the type of lawsuit or claim you brought

met certain requirements under state law. And while most claims for a physical injury met this test, not all of them did, and as a result some people who received a settlement for a physical injury ended up having to pay income tax on the proceeds.

Now, however, the IRS has dropped this second requirement – so regardless of the exact nature of the claim, as long as you recover compensation for a physical injury, the money is tax-free.

You might want to consult with your lawyer or tax advisor to see whether this change applies to you. In some cases, if you received compensation in recent years and paid income tax on it, you might be entitled to a refund.



## Slip-and-fall victim sues over 'unknown' liquid on floor

A contractor who slipped and injured himself while working on-site at a jewelry store could hold the store accountable for his injuries even if the store didn't know that there was a slippery substance on the floor, the California Court of Appeal recently decided.

The contractor claimed he slipped on jewelry cleaning solution that someone else had spilled on the floor of the employee break room.

In California and many states, the general rule is that a store isn't responsible

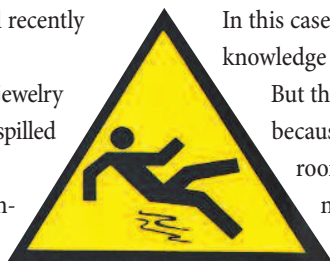
for something slippery spilled on a floor unless the store knew about the problem – or had reason to know – and didn't do anything about it. So, for instance, if a customer spills juice on the floor of a grocery store, and 15 seconds later another

customer slips on it, the store probably won't be responsible because it couldn't reasonably be expected to have discovered the problem and fixed it in that time.

In this case, the jewelry store claimed it had no knowledge of the spilled cleaning liquid.

But the court said that this case was different because the spill was in the employee break room. That meant that a store employee, not a customer, was responsible for the spill.

And while a store isn't responsible for problems caused by customers unless it knows about them, a store *is* responsible for the careless acts of its employees whether the management knows about them or not, the court said.



A store might not be responsible for spills caused by customers unless it knows about them, but a store is responsible for the careless acts of employees whether management knows about them or not, a court said.

## Be wary of loan offers from 'litigation funding' companies

Many people who have a personal injury case pending are being approached by "litigation funding" companies. These businesses offer instant cash to financially strapped people who may be out of work and facing large medical bills. The idea is that these loans will eventually be repaid out of a lawsuit recovery or settlement.

These loans may be tempting, and there might

perhaps be situations in which they make sense, but you should talk with your attorney about the idea before you seriously consider such an offer.

These loans often come with sky-high interest rates, and other terms and conditions that are not to your benefit. Your attorney can help you understand if these sorts of offers are really in your interest, and whether there are better alternatives.



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## Weight-loss surgery can be more dangerous than advertised

For people who are significantly overweight, “lap-band” surgery can seem like a quick fix ... especially in advertisements on billboards promising to make people look like sleek models if they undergo what’s described as a safe, easy, one-hour procedure at a surgical center.

In reality, this surgery – which involves placing bands around the upper part of the stomach to create a pouch, limiting the amount of food that can be eaten at one time – can be very risky, and has even resulted in death in certain instances.

That’s why, when the U.S. Food and Drug Administration approved the use of lap bands a decade ago, it did so only for patients 18 or older who are considered obese on a body-mass index chart. And last year, the FDA further limited the use of lap bands to patients who also suffer a health condition as a result of their obesity.

Nonetheless, it appears that a number of busi-

nesses may be engaging in misleading advertising to attract potential patients, while performing surgery without meeting the FDA guidelines or general medical standards. As a result, a number of patients are filing lawsuits, claiming medical malpractice and false advertising.

Some lawsuits claim that surgical centers didn’t provide proper pre-operative testing or post-operative treatment, used unsterilized surgical instruments, and engaged in other types of improper cost-cutting.

That’s not to say that lap-band surgery can’t be safe and effective in the right case and with the right medical care. But it’s very important for anyone considering it to fully investigate the surgical center and the physicians who perform it, and to get a separate opinion from their own physician as to whether they’re a good candidate for the procedure.



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