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Legal Matters®

Defective tire valve may spark suits in wake of investigation, recall

A federal investigation and recall of 6 million tire valve stems is underway following a lawsuit claiming a fatal rollover crash was caused by a cracked stem on a tire valve.

It's estimated that up to 36 million of the potentially defective valve stems were manufactured in China by the Shanghai Baolong Automotive Corp. between July 2006 and November 2006. A U.S. distributor notified the National Highway Traffic Safety Administration of the potential problem after it was named in the lawsuit.

With so many valves in circulation – they could be on any car tire – the defect could lead to more accidents and more lawsuits. A potentially big problem is that the valves are almost impossible to track down once they leave the warehouse.

The defect is related to the rubber valve flexing at a great angle when a tire is underinflated and losing air quickly, causing surface cracks on valve.

The lawsuit that sparked the recall was filed in Florida by the widow of a man killed when the tire of his 1998 Ford Explorer failed, triggering a rollover crash. The suit blames the accident on a crack on the stem of the rubber valve used to fill the tires with air.

The tire likely failed due to a "run-flat failure." This occurs when a tire loses air pressure quickly – probably after hitting a nail or screw – allowing the metal rims of the tire to dig down into the rubber. At high speeds, the rim acts like a knife and it cuts through the tire.

Experts say anyone who bought tires after August 2006 needs to have their valves inspected, and to also pay close attention to tire inflation pressure to prevent accidents.

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246 Revere Street, Winthrop, MA 02152
T: (617) 539-1010 · F: (617) 539-0505

65 Atlantic Avenue, Boston, MA 02110
T: (617) 742-2020 · F: (617) 742-2019

www.amarallaw.com · edamaral@amarallaw.com
Contact: Edward L. Amaral, Jr., Esq.

Congress makes 'jumbo' mortgages easier

Should you refinance now?

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Mortgages are often divided into two types – "conforming" and "jumbo." For some time, a "conforming" mortgage has been any loan up to $417,000, and a "jumbo" mortgage has been any loan over that amount.

The reason? Fannie Mae and Freddie Mac, the two quasi-governmental mortgage-buying agencies, could only repurchase loans up to $417,000. Because lenders could not re-sell a loan over $417,000 to these agencies, they often charged a higher interest rate for them.

To help borrowers, Congress recently raised the "jumbo" amount. The new limit is $417,000 *or* 125 percent of the median price for houses in a geographic region, as determined by HUD, up to a limit of $729,750.

This should make it easier to take out or refinance a large mortgage.

This new limit will be in effect until the end of this year, although many people expect Congress will extend it further.

In the past, many people avoided jumbo mortgages by splitting their loan in two. They took out a conforming mortgage and a home equity line of credit to finance the difference. But you might want to look carefully at whether this is still the best bet now that rates for loans over $417,000 could be coming down. Some people might be better off consolidating their mortgage and their credit line into a single loan.

Doctor can be liable for reducing patient's chance of survival

A doctor can be liable for negligently reducing a patient's chance of survival, even if the patient's prospect for recovery was already less than 50 percent, according to a recent ruling by the Massachusetts Supreme Judicial Court.

The court recognized a legal doctrine known as "loss of chance," which allows a patient whose odds of recovery are 50 percent or less to receive damages for any negligence that reduced those odds.

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Massachusetts joins 20 other states that recognize "loss of chance" recovery. Ten other states have refused to allow the cause of action.

In the Massachusetts case, a doctor overlooked a 46-year-old man's stomach cancer. The man had repeatedly complained to the doctor about stomach pains. The doctor diagnosed gastrointestinal reflux disease and recommended over-the-counter medications. The doctor four years later eventually ordered diagnostic tests. After the testing, the man was diagnosed with gastric cancer and died five months later.

The court said where a physician's negligence reduces or eliminates the patient's prospects for achieving a more favorable medical outcome, the physician has harmed the patient and is liable for damages.

Disabled employee didn't have to ask for an accommodation

An employee with cerebral palsy didn't need to ask his employer for an accommodation under the Americans with Disabilities Act.

The condition of the 19-year-old employee noticeably affected his ability to walk, speak, see and eat. Despite his disability, he had two year's experience dispensing prescription drugs at a pharmacy when he was hired as an assistant in another store's pharmacy.

His supervisor removed him from his department after becoming frustrated with the pace of the disabled man's work and telling his father he was unfit for the pharmacy job.

He was assigned to collect shopping carts in the parking lot. In response to his parents' complaints, the store transferred him back inside, but only as a food stocker in the grocery section.

The employee quit, became depressed and sought psychiatric help. He then sued the store for disability discrimination, claiming the store violated the ADA by failing to provide a reasonable accommodation despite knowing of his condition.

The store argued it had no duty to accommodate him because he never asked to be accommodated.

But a federal appeals court disagreed, noting that the ADA says known disabilities must be accommodated, not just those for which an accommodation has been requested.

New rules for home mortgages will protect consumers

The Federal Reserve Board has issued a number of new rules for home mortgages designed to protect consumers.

The rules apply to "subprime" mortgages and to some "Alt-A" mortgages. "Alt-A" mortgages are for borrowers whose credit is less than ideal but better than the credit of borrowers getting subprime mortgages.

Below are highlights of the new rules.

- Lenders cannot offer a mortgage unless they first verify the borrower's income.
- Lenders must assure themselves a borrower is likely to make the mortgage payments for at least seven years, even if the interest rate adjusts upward during that time.
- "Prepayment penalties" – essentially a fine borrowers must pay if they refinance or pay off the mortgage within a certain period – will be prohibited on loans where the interest rate can adjust within the first four years. For other loans, prepayment penalties can be imposed only if the mortgage is refinanced or paid off within the first two years.
- Lenders' advertising must include additional information about rates, monthly payments and other features. In addition, certain required disclosures must now be made earlier in the transaction.
- Lenders cannot advertise a mortgage interest rate as "fixed" if it is fixed for only part of the loan period and can change afterward.
- Borrowers who want to sue a lender for issuing an improper loan will be able to do so without having to show that the borrower had a regular practice of issuing improper loans to other customers. However, lenders will be able to defend themselves from such claims in court by showing they followed certain steps in verifying the borrower could repay the loan.

The new rules go into effect Oct.1, 2009, and will apply only to mortgages issued after that date. And starting in 2010, lenders will be required in all first mortgages to establish an escrow account to pay property taxes and insurance.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

Age bias suits now harder to defend

The U.S. Supreme Court recently made it easier for workers to win age bias lawsuits.

The court ruled employers must prove it didn't violate age discrimination laws related to job actions that affect groups of employees – so-called "disparate impact" cases. The court said companies must prove "reasonable factors other than age" were the basis for an employment decision having an adverse impact on workers protected by the Age Discrimination in Employment Act – those 40 and older.

This decision means employers will have to explain to juries all the factors involved in making personnel decisions, which isn't always easy to do.

The tough economy could lead to the filing of

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Dishonest spouses leave electronic trails

In 21st century divorce cases, electronic data is a key source of evidence – whether it's instant messages, web browsing histories or text messages sent via cell phone.

Laws regulating electronic evidence vary tremendously from state to state. But across the country spouses are scouring electronic gadgets to uncover unfaithfulness and find hidden assets.

Electronic evidence in divorce cases can come from:

- GPS histories of a vehicle's locations and the amount of time spent at each one;
- EZ pass records showing toll booth locations en route to a rendezvous;
- Deleted e-mails;
- Internet histories detailing the web pages a person has visited (such as gambling or dating sites); and
- Blackberry and cell phone records.

Many states have no-fault divorce laws, so proving infidelity isn't necessary in divorce proceedings in those states. Even so, electronic evidence can and does turn up evidence of hidden assets such as bank accounts.

Workplace computers are fair game in divorce discovery and often turn up important financial information. If statements from private bank accounts aren't on workplace computers, often information about the true worth of a closely held company is, for example.

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Pre-paid funeral plans can be risky business

Many people like the idea of pre-paid funeral plans because they allow funeral services to be locked in at today's prices, and save family members the trouble of selecting caskets and attending to other matters at a time of great sadness and stress.

But if you're thinking of such a plan, be cautious.

After you've paid, there's always a risk the funeral home will go out of business, or the owner (or a new owner) will abscond with the money.

A well-known mortuary in Memphis was in the headlines recently when the new owner announced he had no intention of honoring some 13,500 pre-paid funeral contracts. The owner now faces criminal charges that he effectively stole the funds.

While this case is unusual, it's not unique. Funeral homes in general are regulated by the Federal Trade Commission, but pre-paid burial plans are regulated by individual states, and many state regulations are very lax.

In addition, pre-paid plans may make it hard to change your mind. In some states, if you've paid for a casket and later decide you want to be cremated, the funeral home can simply keep the money you paid for the casket even though you won't use it.

A number of alternatives to pre-paid funeral plans are available. One is simply to buy life insurance to cover the funeral costs. Another is to use a "pay on death" bank account earmarked for funeral expenses, with instructions to the beneficiary on how to use the money.

Some people buy single-premium life insurance and put the policy into a "funeral trust." This can provide tax benefits, and can also shelter the funds from Medicaid requirements.

One advantage of this type of planning is that you can set aside funds not only for the funeral itself, but also for travel and lodging expenses for family members.

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