



# CKRK&M Briefs

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BROUGHT TO YOU BY

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## Social Security Disability

By David Kimberley

If you have been seriously injured or have an illness that prevents you from working, you should consider whether Social Security benefits for your disability may be appropriate. There are two categories of benefits to consider, depending upon your circumstances. If you have contributed to the Social Security Fund from your wages (FICA withdrawals) for 20 quarters out of the previous 40 quarters (or five years out of the previous ten years), then you may qualify for Social Security Disability Insurance (SSDI). If you haven't put into the fund the required number of quarters over the previous 40 quarters, then you might still be eligible for Supplemental Security Income (SSI).

SSDI is usually a considerably larger benefit than SSI, depending on the amount you contributed to the fund during your working life. Both come with Medicare health-insurance benefits. You become eligible for Medicare coverage after two years from your disability onset date. If you are eligible for SSI, the income level of other members of your household may impact your qualification with SSDI. With SSDI, family income is not a factor.

The standard for qualification for SSDI and SSI benefits is the same: the inability to perform any substantial, gainful employment. "Substantial" employment is anything that requires substantial work activity (the ability to engage in work of at least a sedentary nature for at least six hours out of an eight-hour day). "Gainful" means any type of work activities for which a person is typically compensated.

The Social Security Administration (SSA) will look at your previous work history, your age, education, and work experience to determine your residual functions after your illness or injury, and your prospect of being retrained. If the SSA determines you are

unable to return to your previous work, it then determines if there are any types of jobs remaining in the economy in any substantial numbers that you could do. If the SSA determines that there are none, then you qualify. If it determines there are jobs in the economy available within your residual functional capacity and transferability of skills from your previous work, then you will be turned down, but you can appeal to the SSA Administrative Law Judge.

Lawyers can help you, since they know what questions should be asked of the doctors concerning your impairments and the limitations they place on your physical ability and function. They can also determine whether a physical capacities evaluation should be done and whether you need a vocational disability expert to provide you with an evaluation. There are examples of information that could be integral to the success of your case that the SSA will not necessarily obtain on its own.

You have to initiate the process yourself, and at the first level of application, attorneys are typically not involved. If benefits are denied at the initial level and you apply for a hearing with an Administrative Law Judge, you can then obtain a lawyer to represent you. Regulations allow "contingency" fees (meaning there is no fee unless you win benefits) based on 25 percent of "past due" benefits, along with certain other restrictions.



**We take your family's safety and security personally.**

# FRAUDULENT health insurance

Wrongdoers selling phony insurance plans are popping up everywhere. Their less-expensive coverage may look very appealing to Americans who lose coverage at work, experience rapidly escalating premiums, or cannot get coverage elsewhere.

Not only do scammers often lack licenses to sell insurance, they also

don't have sufficient reserves to cover payments. Their game is to pay smaller initial claims to solicit greater premiums from future policyholders. A study found that more than 100,000 scam-insurance-plan buyers have been

stuck with \$85 million in unpaid medical bills since 2001.

Experts offer the following warning signs to look for in potentially counterfeit health-coverage solicitations:

- Unbelievably low rates.
- No health prescreening requirement.
- Automatic preexisting-condition coverage.
- Promoted and endorsed by individuals allegedly representing labor unions or professional associations.
- Sales pitches that replace "insurance" with "benefits."

To check a plan's legitimacy, call our state's insurance commissioner's office for licensing, know the agent who will pay claims, and contact an attorney for counsel.



# Housing discrimination...and the elderly

As our nation grays, greater numbers of aging people may find themselves denied equal opportunity in obtaining housing.

Housing discrimination against the elderly usually involves two factors. First is a perceived inability of an elderly person to live independently and to care for him- or herself and a property. The second consists of past, actual, or perceived disabilities that might make someone incapable of independent living.

If real-estate agents, rental agents, condominium associations, landlords, or even family members unlawfully deny the elderly equal opportunity to obtain housing in single-family homes, condominium communities, or rental communities, those harmed have recourse. Elderly people who have suffered discrimination are increasingly turning to the Fair Housing Act (FHA) of 1968 and the Americans with Disabilities Act (ADA) to obtain their fair rights to housing.

When a Texas couple was refused admission to a subsidized apartment complex on the basis of the husband's blindness and partial paralysis, the U.S. Department of Housing and Urban Development's FHA division determined that discrimination had occurred and took the apartment's owners to federal court. The court ruled that the FHA had the authority to bar discrimination against seniors with disabilities.

In a Florida case, an administrative law judge ruled on another FHA complaint. Here, the court agreed that a condominium association was required to make reasonable disability accommodations for a longtime resident who experienced a stroke that made him unable to walk.

Courts have also ruled that older residents are entitled to maintain service- or emotional-support animals as long as tenants reasonably comply with general tenancy obligations.



A reasonable housing accommodation for a senior can sometimes make the difference between living independently in a community or entering a care facility or nursing home. Seniors, or their children, who believe housing discrimination has occurred should consult legal counsel.



# SEAT BELTS SAVE LIVES

No one ever plans on having an automobile accident. But everyone can plan to drive more safely and buckle seat belts.

Here are some statistics on how seat belts can save lives:

- Seat belts save nearly 10,000 drivers' and passengers' lives annually.
- Only seven in ten auto occupants in accidents are buckled up.
- Young males—age 16 to 25—are the least likely to buckle up and are the most likely to be involved in life-endangering accidents.
- Hospital costs for unbelted auto-crash victims are 50 percent higher than for those who buckle up.
- If 90 percent of passengers use their seat belts by 2005, the nation will likely see a 25 percent reduction in child fatalities in accidents.

**PLEASE DRIVE SAFELY.**



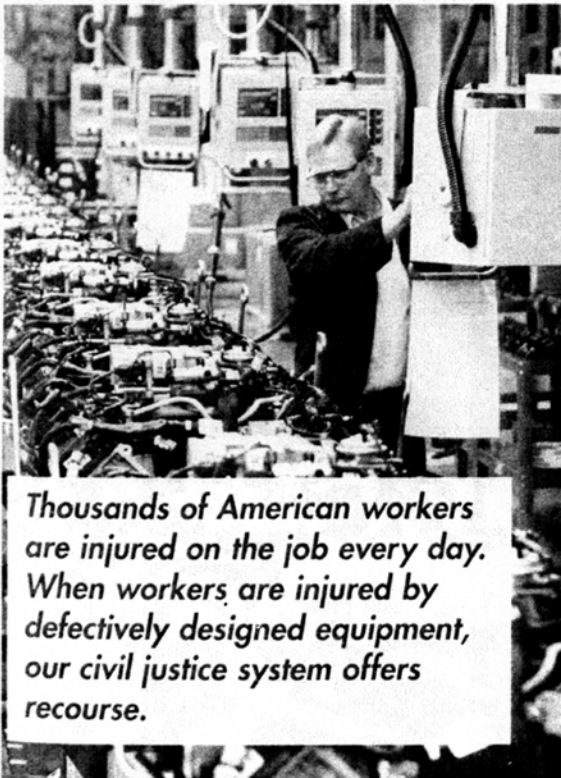
## **Workplace injuries... ...and equipment design**

Thousands and thousands of American workers are injured on the job every day. In fact, according to the Bureau of Labor Statistics, 4.7 million nonfatal workplace injuries and illnesses were reported during 2002.

Many workplace injuries could be prevented if manufacturers designed machinery and other equipment with high safety standards in mind, and businesses required all machinery to be operated as instructed.

### **Worker fatality**

When workers are injured by defectively designed equipment, our civil justice system offers recourse. Family members of a woman who suffered fatal injuries when a grinding wheel she was working on exploded brought suit. Their attorney alleged that the equipment's manufacturer failed to warn of design dangers and was further negligent in failing to include a protective guard on the equipment that would have prevented serious injury. The parties settled out of court.



*Thousands of American workers are injured on the job every day. When workers are injured by defectively designed equipment, our civil justice system offers recourse.*

## **LEGAL DICTIONARY**

Many clients find legal terms puzzling. From time to time, we offer some easy-to-understand definitions to help clear things up. This time, we'll look at legal terms associated with civil wrongs.

### **Tort**

This is behavior or an act that one person negligently or intentionally performs which harms another person physically, monetarily, or in some other way. Torts commonly involve assaults, auto accidents, defamation, fraud, malpractice, and premises liability. The injured person has the right to sue for damages.

### **Tortfeasor**

A tortfeasor is a person who commits the act that harms another person.

### **Tort of Another Doctrine**

This generally accepted convention permits a plaintiff to obtain reasonable compensation for attorney's fees they have paid to sue a tortfeasor or third party.



## **SECRET settlements**

Secrecy and gag orders in our state and federal courts undermine every American's right to know. Since the mid 1970s, defendants in civil litigation, as a condition of settlement, have sought to keep out of the public's eye important information that should emerge from litigation.

For instance, over the past 20 years, secret settlements have been reached to conceal very important information about sexual abuse of children by clergy, injuries from medical malpractice, automobiles that flip over or explode in accidents, and medical procedures and products that endanger health.

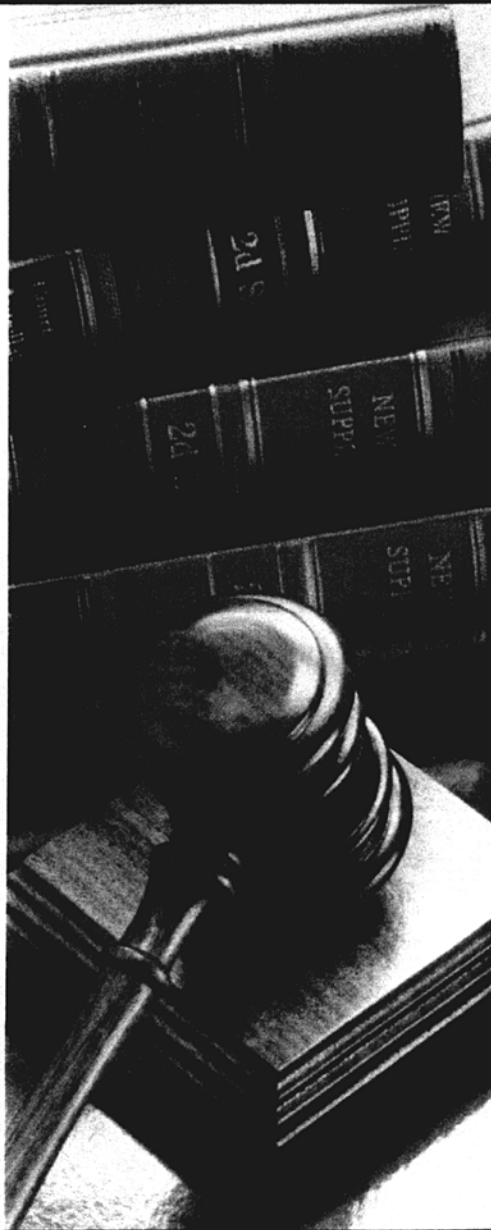
This insidious practice also affects Americans' perceptions of their courts and our justice system. "Protective Orders" close off the nation's courts, which are supposed to be institutions open to public scrutiny and review. "Sealed Court Files" deny a presumption of openness and honesty to court proceedings. "Confidentiality Agreements" undermine the public's respect for the courts and justice. And "Secret Agreements" increase the likelihood of additional litigation to find the truth.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

## Exxon verdict

It is somewhat amazing that big business points to the recent verdict against Exxon in favor of the State of Alabama as an example that Alabama jury verdicts are out of control. Two separate juries, and now two separate courtroom judges, have listened to the testimony, studied detailed records, and heard arguments from both sides, including arguments from some of the biggest, most high-powered law firms in the state arguing for Exxon, and reached the conclusion that Exxon, for many years, systematically cheated Alabama taxpayers (that is—YOU) out of billions of dollars in revenue that Exxon was supposed to have paid. Jim Martin, a former Republican congressman, who served as head of the state agency involved, recently wrote a detailed article in the *Gadsden Times* explaining why the verdict was correct.

If big business can use this verdict (which has already been substantially reduced by the trial judge) to complain about our civil jury system, it is likely that no verdict that tries to enforce personal responsibility and accountability for wrongdoing will ever satisfy them.



## Emily Hawk Raley's leadership honored

**E**mily Hawk Raley recently received two separate honors. Based on Emily's work as a founder and leader of the YMCA Collegiate Legislature, an award was named in her honor in spring 2004. This program, founded by Emily in 1995, permits participating students the opportunity to draft, present, and debate legislation on current issues. Workshops on leadership and ethics are also held. The award was named in her honor in recognition of her leadership throughout this process.

Emily was also selected to present a speech at the University of Alabama, at Bryant Center, along with the Executive Director of the Association of Trial Lawyers of America, on the topic "What It Means To Be A Trial Lawyer." This presentation was made in April.

