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# Legal Matters®

## A 'minor' accident can cause a major pain in the neck (or back, or joints...)

Jeff Dobbelmann was a big, likable stockbroker – he stood 6'5" and was 270 pounds. And he seemed to be completely unharmed when another car rear-ended him. He had no apparent injuries, and the damage to his car was nothing more than a dented bumper.

But in the weeks and months that followed, Dobbelmann began experiencing pain – neck pain, back pain, and frequent headaches. Could this pain possibly be the result of his "minor" fender-bender?

Yes, it could. Dobbelmann suffered what's known as a "soft tissue" injury. A soft tissue injury means damage to a muscle, ligament or tendon in the body.

These injuries are not always easy to see or diagnose. There is often no obvious bleeding or bruising. And unlike damage to bones or organs, soft tissue injuries usually don't show up clearly on an x-ray or an MRI.

But that doesn't mean they aren't serious. They can cause persistent pain in the neck, back, shoulders, or joints, as well as headaches, dizziness, blurred vision, irritability, and difficulty in concentrating or swallowing.

Many people don't realize that these symptoms are the result of a car crash or other accident. For one thing, the symptoms often don't develop until some time has passed after the crash. Because the symptoms don't show up right away, people don't necessarily

make the connection.

Many people also find it hard to believe that a "minor" rear-ender can cause serious pain. But just because there was little or no damage to your car doesn't mean there was little or no damage to your body. Your metal bumper is specifically designed to absorb sudden, jolting movements, but your joints and tendons don't have the same kind of protection.

Even a low-speed "bump" can potentially cause muscle strains and tears, ligament sprains, tendonitis, bursitis, deep muscle bruises or contusions, joint dislocations, or nerve damage.

Car accidents are not the only causes of soft-tissue injury. These injuries can also happen as the result of slipping and falling, a sports injury, an assault, a work accident, or even just repetitive motions at work over time.

If you have this type of pain, it's good to talk with an attorney.

In Jeff Dobbelmann's case, a Minnesota jury found in his favor and awarded him compensation for all his medical expenses, plus a substantial award for his pain and suffering.



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# Company sued for ‘pressuring’ employee on medical leave

A company can be sued if it “pressures” an employee who is on medical leave by repeatedly calling to find out when the employee plans to return to work.

That’s the message of a new case from a federal court in Arkansas.

In that case, a woman took leave from her house-keeping job at a hospital to recover from back surgery. She claimed that while she was out, her immediate supervisor called her every week to ask when she was coming back. In one conversation, she asked if her job was in jeopardy, and the supervisor responded by telling her that she should return as

soon as she could.

The court said that the employer could be sued under the Family and Medical Leave Act if its repeated phone calls had a “chilling” effect on the employee’s ability to exercise her rights.

This is a tough situation, because employers have to plan to get work done and need to know when employees will return, and employees are also required to return to work as soon as they no longer need time off for a legitimate reason. In general, both sides should be very careful how they communicate with each other over the extent of medical leave.



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**A trust in a will lets you decide how your assets will be used after death...so they don't end up under the control of a beneficiary's creditor or an ex-spouse.**

## Here's another reason why trusts in a will are a good idea

In a recent case, a Texas man inherited \$400,000 in cash from his aunt. The man’s ex-wife went to court and claimed that as a result, his child support payments should be increased.

The Texas Court of Appeals agreed with the ex-wife. It said that even though the \$400,000 wasn’t wages or earnings, it was still a “resource” that had to be considered in determining how much the father had to pay for his two children.

Now, we don’t know what the aunt’s feelings were. It’s entirely possible that she was happy to use her money to take care of her nephew’s children.

However, she probably never considered that after her death, a large portion of her assets would end up under the control of her nephew’s ex-wife.

It’s a good bet that the aunt might have been happier if she had put the \$400,000 into a trust that would benefit the nephew and his children. In that way, she would have had control over how the money was spent for their benefit – rather than the ex-wife.

In addition, the nephew wouldn’t have had to go to court to fight over who got the money.

Trusts can be an excellent way to protect assets if you’re considering leaving an inheritance to someone who might otherwise lose the property for any number of reasons, including divorce, lawsuits, business problems, addiction, or simply a lack of investment acumen.

## Can landlords limit the number of people in an apartment?

Do landlords have a right to limit the number of people who can occupy an apartment?

The answer, as often happens in the law, is, “It depends.”

In general, landlords own the property and they can decide how many people can live there. However, under federal law, a landlord is not allowed to discriminate against families with children. So if a family with seven children wants to rent an apartment, the landlord can’t say “no” based on that fact alone.

On the other hand, a landlord doesn’t have to allow a family with seven children to occupy a tiny studio apartment. Refusing to allow such an arrangement wouldn’t be discrimination; it would be common sense.

So where do you draw the line between a legal occupancy requirement and illegal discrimination?

It’s not always easy, but in general, the federal government says that it’s okay to limit occupancy to two people per bedroom. Thus, a family of four could live in a two-bedroom apartment, but not in a one-bedroom apartment.

However, many cities and towns have different rules, and some require landlords to allow “two plus one” occupancy. That means two people per bedroom, plus one extra person in the unit. This is more common in areas where apartments typically have large rooms or extra rooms such as a den.

Also, “senior living” communities for people age 55 or older may have their own sets of rules.

## Cash plays a big role now when buying or selling a home

Cash is playing a more significant role in residential real estate sales right now than at any time in recent memory.

Across the U.S., the median down payment on houses was 22% last year, according to a study by Zillow.com of sales involving conventional mortgages in nine major U.S. cities. That's the highest figure ever since the data started being kept back in 1997.

By comparison, just three years ago the figure was 11%. And back in late 2006, it was only 4%.

The main reason for the change is that banks are tightening their standards and demanding larger down payments to qualify for mortgages. Banks are figuring that borrowers who can afford a larger down payment are less likely to default.

Many people who don't have a large enough down payment to qualify for a conventional bank mortgage have been looking into alternative mortgages, such as those backed by the Federal Housing Administration or the U.S. Department of Agriculture.

Another startling statistic is that 28% of home sales last year were all-cash transactions, according to the National Association of Realtors.

When that organization first began tracking all-

cash sales, back in late 2008, the figure was only 14%.

In some markets, the percentage is much higher. In the Miami-Fort Lauderdale area, more than half of all home sales last year were all-cash deals, according to Zillow. In Phoenix, the figure was 42%.

The numbers are another reflection of the fact that banks have tightened their lending rules – the proportion of all-cash deals is higher because the number of people who can qualify for a typical mortgage is lower.

However, the extremely high percentage of all-cash sales also suggests that a growing proportion of homes are being purchased not by families, but by investors and speculators who believe that the housing market has hit bottom and is poised for a rebound.

If they're right, then this could be an excellent time for people who can afford to buy a new home to do so.



## New problem for seniors who move to a nursing home

A growing number of Medicare beneficiaries who are transferred from a hospital to a nursing home are discovering that Medicare won't pay for the first 20 days of their nursing home stay.

Ordinarily, Medicare covers nursing home stays entirely for the first 20 days as long as the patient was first admitted to a hospital as an inpatient for at least three days. But here's the problem: A lot of people are discovering that there were never actually "admitted" to the hospital for three days, but rather were in the hospital only under "observation."

Often, hospital patients often have no idea that they haven't actually been "admitted" to the hospital. They are given a bed and a wristband, nurses and doctors come to see them, they get treatment and tests, and they fill out a meal chart just as if they had been formally admitted.

Increasingly, hospitals are choosing not to admit

patients but rather to place them under observation to determine whether they should be admitted. This is in part due to pressure from Medicare to reduce costly inpatient stays.

Medicare guidelines say that it should take no more than 24 to 48 hours to decide whether a patient should be admitted, but in reality hospitals can keep patients under observation for much longer.

The consequence is that if a patient moves to a nursing home, and later discovers that he or she wasn't formally admitted to the hospital for three days, the patient must pick up the tab for the entire nursing home stay.

Medicare doesn't require that patients be notified as to whether and when they have officially been admitted – so it's a very good idea to ask. If you haven't been admitted, and if a nursing home stay is likely, you should discuss this with your doctor.

### **We welcome your referrals.**

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

## Facebook may be involved in 20% of all divorces



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Facebook is playing a role in as many as a fifth of all divorces in the U.S., according to a study by the American Academy of Matrimonial Lawyers.

Facebook can come up in a divorce case in several ways. One is that marriages sometimes end because people have affairs with people they met – or re-connected with – over the

social networking site.

One of the most common uses of Facebook is getting in touch with old friends. But if a marriage is in some trouble already, and a spouse gets back in touch with an old friend (or an old flame) who is emotionally available, a simple “hello” could turn into something much more complicated.

But Facebook can also come up in a divorce case

because it can provide evidence of a spouse’s misconduct. For instance, because people put so much of their lives onto the site, it can be a rich source of evidence of adultery.

Facebook evidence can also be used to show that someone has questionable parenting skills, or might be misrepresenting their financial circumstances.

People who are involved in the divorce process, or even just contemplating a divorce, should be very careful about what they put online through social media and what they allow others to put online about them. Once things are on the Internet, they can almost never be completely deleted.

Something that seems fun to a person at the time could come back later to haunt them. So before you post something on a social media site – Facebook, Twitter, LinkedIn, etc. – it’s good to think about how it might look later to a neutral third party who may be making decisions about your future.

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