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# **BARON ASSOCIATES P.C.**

*Attorneys & Counselors At Law*



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## **Workplace safety**

The law requires employers to maintain safe working environments for employees.

Workplace-safety attorneys can help anyone who has suffered an occupational injury due to unsafe working conditions in the construction, manufacturing, service, and other industries.

### **Missing safety guard**

As a worker reached beneath a tortilla power press conveyor belt to clean an unexposed part while power was supposed to be off, the press descended and crushed his fingers. Physicians partially amputated his middle and ring fingers. He returned to work after three months but was laid off because he was unable to perform his duties. His attorney sued the food-processing company that owned the plant, demonstrating that the power press lacked a safety guard and interlocks required by state labor laws. A mechanic had allegedly removed the safety equipment when the machine failed to work properly. A jury recommended that the plaintiff receive a significant award.



*From darkness to light. From despair to hope. From anguish to joy. May this holiest of seasons inspire you and renew your sense of purpose.*

*Baron Associates P.C.*

**SPRING 2011**

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### **PERSONAL INJURY PRACTICE**

- Free consultation
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## **VEHICLE ACCIDENT Q & A** **“Totaled vehicle”**

**Q:** I was in an accident. I wasn't injured, but my insurer said my older pickup was “totaled.” What does that mean?

**A:** “Totaled” means an insurer determines that a vehicle's repair costs exceed its retail value.

**Q:** How does my insurance company calculate this?

**A:** Your insurer should document that it obtained its “totaled” estimate from averaged retail sales of comparable trucks according to the NADA Used Car Guide, compiled by the National Automobile Dealers Association.

**Q:** If I accept the “totaled” value, who keeps the truck?

**A:** Your insurer will probably keep it and transfer it to a recycler for “salvage” value.

**Q:** I'm thrifty. Can I keep my “totaled” truck and get it repaired?

**A:** Yes, it's still your property. However, the insurer will probably pay you only its “salvage” value. So, in addition to paying repair costs, you may have to deal with other issues such as remaining vehicle payments, liens against the vehicle from the accident, and reinsuring a vehicle with only a “totaled” value.



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

## Ruling keeps justice out of reach for many Americans

The 2009 U.S. Supreme Court ruling, *Ashcroft v. Iqbal*, combined with a 2007 decision, *Bell Atlantic v. Twombly*, makes it much harder for Americans to exercise their legal rights.

For more than 50 years, the first step in bringing a civil lawsuit has been to file an official “complaint” describing the case. The next stage in the process is “discovery,” when the plaintiff gains access to evidence needed to build their case. For example, if you file a wrongful-termination suit against your employer, the discovery phase is when you would obtain the company documents connected to the dismissal.

Under the new rules, the plaintiff must provide detailed evidence in order to even get to the discovery phase. Since the plaintiff wouldn’t yet have all of the evidence at this point, getting in front of a judge is much more difficult. At the same time, the new standard gives cover to those wrongdoers who go out of their way to conceal evidence.

Our firm is opposed to these rulings and supports efforts in Congress to restore the system to the previous standard. Please feel free to contact us to find out what you can do to protect your rights.

*“This rule will reward defendants who succeed in concealing evidence of wrongdoing, since claims will be dismissed before discovery can proceed, whether it is government officials who violate people’s rights, polluters who poison the drinking water, or employers who engage in blatant discrimination. Often, evidence of wrongdoing is in the hands of the defendants, and the facts necessary to prove a valid claim can only be ascertained through discovery.”*

*—Rep. Jerrold Nadler, testifying before the Subcommittee on Courts and Competition Policy, Dec. 16, 2009*

## Drug recalls

**Avandia®**, the type-2 diabetes medication, has had its use severely restricted in the United States, and the drug has been withdrawn from the market in Europe due to concerns over severe side effects. The U.S. Food and Drug Administration (FDA) concluded there is significant evidence that Avandia, also known as rosiglitazone, increases the risk of heart attack, stroke, and congestive heart failure in those taking it.

**Zicam Cold Remedy** nasal gel, swabs, and swabs for children may cause loss of smell. Anosmia, the official term for loss of the sense of smell, may be long-lasting or even permanent. The FDA, which does not regulate this product, is advising consumers to avoid it after receiving over 100 complaints of anosmia. Some complainants reported losing their sense of smell after just one dose; others said it occurred after several doses. The company denied that its products are unsafe, but recalled them anyway.

**Meridia** (sibutramine), a weight-loss drug from Abbott Laboratories, has been recalled by the FDA due to reports that it causes heart attack and stroke. Some groups believe that the recall was past due. The drug was first approved in 1997, and concerns over its safety have been expressed since 2002. A 2009 study showed that Meridia increased the risk of a serious heart event by 16 percent.

**Hydroxycut**, the weight-loss/bodybuilding drug, has been linked to one death and numerous cases of liver damage. Hydroxycut is not tightly regulated by the government, since it is a dietary supplement. Still, FDA officials are warning dieters to stop taking the supplement right away. Health officials are having trouble determining what makes Hydroxycut toxic, since the formulation of the product has changed many times over the years.





# HOME POISON CONTROL

Young children are curious and may place everything in their mouths. To minimize potential risk, you can take several preventive steps:

- Keep all toxic substances and medications locked and out of reach. Household cleaners, paints, insecticides, and other dangerous products may be everywhere—in kitchens, baths, basements, and garages.
- Keep emergency medical service numbers and the poison control center number (800-222-1222) near a telephone.

- Purchase ipecac syrup for use only with the approval of a poison control center or your physician.
- Ask for childproof caps and keep prescriptions and over-the-counter medications out of the sight and reach of children.
- Use children’s medications only as prescribed.
- Investigate your residence for lead-based paint exposure if it was built before 1978.
- Install carbon-monoxide detectors and have furnaces, fireplaces, and woodburning stoves inspected and cleaned annually.

## Debunking myths

### MYTH—

*Insurance premiums are skyrocketing due to lawsuits.*

Premiums may be going up, but lawsuits have nothing to do with it. The more likely culprits are rising medical costs and insurance-industry profits that get bigger every year. In 2004, the insurance industry recorded a \$38.7 billion profit, an all-time record. By 2007, that number shot up to \$61.9 billion.

Meanwhile, even those in favor of “tort reform” can’t promise that limiting damages will lower premiums. For example, American Insurance Association spokesman Dennis Kelly told the *Chicago Tribune* in 2005 that “we have not promised price reductions with tort reform.”

### MYTH—

*Big awards line the pockets of attorneys and leave nothing for the victim.*

Civil justice attorneys rarely charge an hourly fee like other attorneys. Instead, they work on a “contingency fee basis.” This means if they win, they get a percentage of the damages.

This contingency fee system has allowed Americans a level of access to justice that is simply unimaginable in many countries. Every American, no matter how much money they have, can stand up for their rights in court, with legal representation. That’s a big deal!

### MYTH—

*Lawsuits are preventing people from volunteering for Scouts, Little League, and other children’s programs.*

This is just flat-out wrong. This myth, like so many others, has been spread by special-interest groups dead set on restricting Americans’ legal rights.

In truth, the Volunteer Protection Act of 1997 provides immunity to volunteers at nonprofits during the course of their charity work.






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## Premises liability

A dark-colored sedan is parked in a parking lot. The car is viewed from a high angle, showing its top and rear. White lines on the asphalt indicate parking spaces. The background is slightly blurred, focusing attention on the car.

Businesses that invite customers to their premises have a legal duty to provide sensibly safe parking for those who enter their grounds. Attorneys counsel many who are injured through others' negligence.

### A parking-lot pothole

After a woman parked her car in an unlit casino parking lot, she stepped into a large pothole, fell, and fractured her leg. When her attorney sued the establishment for failing to maintain safe conditions for customers, the casino claimed the hole was an obvious condition that it had no duty to repair or to warn anyone about. Casino attorneys also argued that the victim should have seen the pothole and avoided it. The parties settled before a jury trial.

## Auto accident victims

Auto accident victims and survivors who have suffered personal injuries or property damage in automobile, motorcycle, truck, or bus accidents have important recovery rights.

### When insurers won't pay

A 32-year-old doctoral student suffered career-ending brain injuries in a head-on collision with a negligent driver. When the other driver's insurance defaulted on her medical expenses, she filed an underinsured-motorist claim

with her own auto insurance plan which entitled her to \$1.5 million in benefits. Her insurer declined to pay for several years, claiming she had no head injury. Her attorney sued the insurer and its agent, alleging bad faith, breach of contract, and violations of a state unfair trade practices statute. A jury awarded significant compensatory and punitive damages, plus attorney fees and prejudgment interest.

## Avoiding FORECLOSURE

Anyone can lose a job or become ill and run short of funds for mortgage payments. Failing to receive timely payments may force a lender to repossess and sell a home, and even seek a deficiency judgment.

An attorney experienced in foreclosure and bankruptcy law can advise, inform, and guide clients and help identify options to delay or catch up on payments.

**Special forbearance**—A lender agrees to arrange a payment plan that may include temporary suspension or reduction of payments.

**Mortgage modification**—The lender issues a new mortgage to refinance debt and extend the loan's terms.

**Partial claim**—A mortgage company can work with the Department of Housing and Urban Development to obtain an interest-free loan to bring the mortgage up-to-date.

**Preforeclosure sale**—A borrower agrees to sell personal assets and property to pay off the mortgage loan.

**Deed-in-lieu-of-foreclosure**—A last resort is voluntarily giving back a home to the mortgage company. The owner loses the home but maintains a better credit rating.