

NEWS YOU CAN USE:

How the Massive Airbag Recall Affects YOU!

By now most of our readers have probably heard about the massive airbag recall. The problem is that airbags manufactured by the Japanese Takata Corporation — a major supplier — tend to discharge shrapnel-like pieces of metal when they deploy, particularly in humid conditions. Obviously, serious injury can result.

To be on the safe side, if your car has the defective Takata airbags, you may want to switch them out for new ones.

By the way, recent evidence shows that Takata knew of this problem as early as 2004 but covered it up. Sound familiar? (hint: think tobacco).

If you own one of the vehicles with defective airbags, and bought it in a “high-humidity state”, you should have gotten a recall notice by mail. Humidity can cause the air bag propellant to burn too fast and cause the shrapnel-shooting effect.

If you bought your car in Central New York, you probably haven’t gotten a recall notice. Not a lot of humidity around here. But that may change soon. As you read this, the geographical restrictions of the recall may have already been removed.

But even if you have not received a recall notice, you should consider getting your airbags replaced (or getting a new car!) especially if you are taking your car to Florida.

If you are unfortunate enough to get injured by a shrapnel-shooting airbag, call us.

See page 3 for a list of makes and models the recall covers.

WELCOME TO THE

Michaels & Smolak newsletter!

Don’t hesitate to send your comments (*the good, the bad and the ugly!*) to Mike Bersani at bersani@michaels-smolak.com.

And if you like what you see, please add us on Facebook, follow us on Twitter ([@cnylawyers](https://twitter.com/cnylawyers)) and subscribe to our blog (centralnewyorkinjurylawyer.com).

Our Team



Lee Michaels



Jan Smolak



Michael Bersani



David Kalabanka

the

MICHAELS

SMOLAK

pledge

we deeply appreciate the trust our clients have placed in us and we will strive to uphold that trust by working hard and fighting for our clients' rights.



A LOOK INTO THE FUTURE:

A Future Free of Car Accidents? Michaels & Smolak's Prediction

We at Michaels & Smolak sometimes joke that safe driving would drive us out of business. Someone's negligent driving puts bread on our tables. Now isn't that just sick?

Sure it is, which is why we are perfectly prepared to move into another line of work should motor vehicle accidents ever become a thing of the past. It's just too sad seeing good people get crushed and mangled, or worse, in avoidable accidents. Our beloved clients pay the price of someone else's negligence.

And, believe it or not, car accidents most likely WILL become a thing of the past someday soon. By the end of the decade, the typical American vehicle will be navigating as part of a network, constantly sharing information as it travels via transmitters. A car will have a brain, and one that doesn't get distracted like human brains. The car's brain will monitor blind spots and warn you when you start to veer out of your lane. Sophisticated sensors, lasers and cameras will scan the road like electronic eyes.

But the wireless technology will go even further, allowing cars not only to "talk" to one another (The car in front of you will shoot a message, "brake lights on", to your car) but to communicate with the road itself, and with traffic lights. See that curve up ahead? It will send a signal to your car, "hey, I'm here". See that traffic light ahead? It will beam a message to your car, as you approach, "stop, red light".

Go ahead, future. Blast Michaels & Smolak's automobile injury business to smithereens. We'll survive. Unfortunately, there are still a lot of other types of injury cases out there

IN OUR COMMUNITY:**Michaels & Smolak Honors “Hometown Heroes” Again!**

For the second year in a row, Michaels & Smolak honored United Way of Cayuga County volunteers as “hometown heroes” at all Auburn Doubledays home games this year.

At each home game, a United Way volunteer was publicly recognized and honored as a “hometown hero” and received four game tickets and food vouchers for his or her family and friends. A different volunteer was honored at each home game. Michaels & Smolak funded the program, including the free tickets and food.

“It’s a wonderful program and I am thrilled that they generously continued it again this year,” says Carrie Collins-Fadell, Executive Director of the United Way of Cayuga County.

The unique aspect of this program is how it recognizes that volunteering is not just an individual effort, but a family, community one. Michaels & Smolak attorney Dave Kalabanka, who started and runs the program, explains, “if family and friends aren’t right next to the volunteers while they are giving of their time and talents, then they are often helping them balance things at home and work, so that they can volunteer. That’s why Michaels & Smolak treats not only the volunteers, but their family and friends, as well.”

Jan Smolak, another Michaels & Smolak partner, says, “there are amazing volunteers in our community that are doing all the things - little and big - that help us remain a successful community. We are happy to recognize and celebrate them for their volunteer efforts.”



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The airbag recall covers the following makes and models:

Acura:

2002-2003 CL and TL; 2003-2006 MDX; 2005 RL

BMW:

2000-2005 3-series sedan and wagon; 2000-2006 3-series coupe and convertible; 2001-2006 M3 coupe and convertible

Chrysler (including Dodge):

2005-2008 Chrysler 300; 2007-2008 Aspen

Dodge/Ram (including Chrysler):

2003-2008 Dodge Ram 1500; 2005-2008 Ram 2500, Dakota, and Durango; 2006-2008 Ram 3500 and 4500; 2008 Ram 5500

Ford:

2004 Ranger; 2005-2006 GT; 2005-2007 Mustang

Honda (including Acura):

2001-2007 Accord; 2001-2005 Civic; 2002-2006 CR-V; 2002-2004 Odyssey; 2003-2011 Element; 2003-2007 Pilot; 2006 Ridgeline

Infiniti:

2001-2004 Infiniti I30/I35; 2002-2003 Infiniti QX4; 2003-2005 Infiniti FX35/FX45

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Lexus:

2002-2005 SC430

Mazda:

2003-2007 Mazda 6; 2006-2007
Mazdaspeed 6; 2004-2008 Mazda
RX-8; 2004-2005 MPV; 2004
B-series

Mitsubishi:

2004-2005 Lancer; 2006-2007
Raider

Nissan (including Infiniti):

2001-2003 Maxima; 2001-2004
Pathfinder; 2002-2004 Nissan Sentra

Pontiac:

2003-2005 Vibe

Saab:

2005 9-2X

Subaru:

2003-2005 Baja, Legacy, Outback;
2004-2005 Impreza, Impreza WRX,
Impreza WRX STI

Toyota:

2002-2005 Toyota Corolla and
Sequoia; 2003-2005 Matrix, Tundra

LEGAL QUESTION OF THE DAY:

Can You Sue a Hospital for “Ebola Malpractice”?

Let’s say you just got back from a holiday in Liberia, where, unbeknownst to you, you caught Ebola. You turn yourself into your local hospital with stomach pain and a fever. You even mention that you just got back from Liberia. Let’s say the hospital ER folks - unsuspecting of Ebola -- prescribe painkillers and antibiotics and send you on your way. Let’s say you end up dying a horrendous death, and that, if the Ebola had been properly and timely treated, you probably would have survived. Let’s also say that you contaminated your entire family, and some friends and associates, who either died or survived the harrowing illness. Oh, and let’s also say the hospital failed to provide the nurses who treated you with proper Ebola protective outfits, and they got Ebola, too.

Who can sue the hospital and doctors for negligent failure to properly diagnose and treat the disease? The answers might surprise you.

THE NURSES: In New York, the nurses can’t sue because they are barred by workers’ compensation law from suing their employer. All they get is workers’ compensation benefits. That’s 60% of lost wages. In the case of death, their family gets a measly \$50,000 in workers’ compensation benefits. No compensation for pain, suffering or loss of economic support.

THE PATIENT: If the patient dies and his family can prove he would have had a better chance of surviving had the hospital doctors properly diagnosed and treated him, his surviving family members can recover for their economic loss (mainly the loss of the financial support the deceased would have continued to provide to them had he not died).

THE FAMILY: What about the sickened family members? Can they sue the hospital for having been infected by the patient? If they die, can the family recover for their loss? This is not an easy question in New York. As a general rule, it is tough to sue a doctor or hospital for medical malpractice if you were not the patient. The law generally requires a doctor-patient relationship for a physician’s “duty of care” to reach you. But exceptions exist, and protecting a patient’s family from Ebola contamination

probably would fit the bill. For example, in *Davis v. Rodman*, 147 Ark. 385, 227 S.W. 612 (1921) infected members of a typhoid-fever patient's family sued the treating physician on the basis of the physician's failure to warn and advise them concerning the risk of contagion. The Court found that the physician's duty to the patient extended to the family to protect them from this highly communicable disease.

Also, in *Tenuto v Lederle Laboratories*, 90 N.Y.2d 606 (1997) New York's highest court ruled that a physician had a duty to warn a particularly vulnerable parent that the oral polio vaccine he had given to her child could infect her if she did not take certain precautions.

Based on this case law, it seems that New York courts would probably allow a family member who caught Ebola from the patient to sue the hospital and doctors for failing to diagnose and treat the Ebola because this in turn led to the hospital's failure to warn the family on how to avoid catching it.

FRIENDS AND ASSOCIATES: So far in New York the courts have not extended the duty of a physician to those outside the immediate family. In fact, in *Tenuto* the Court specifically said that "the physician did not . . . undertake a duty to the community at large". An argument can be made, though, for extending the duty here. It's not that the hospital had a duty to warn all the friends and associates of the patient - this would be a huge undertaking for a hospital. But at least the hospital should have a duty to warn the patient that he has a dangerous communicable disease and that he should take certain precautions not to contaminate others. If the hospital does not even recognize the Ebola, and thus fails to warn the patient of his need to take care not to contaminate others, and the patient then goes about without any precautions and causes others to fall sick, shouldn't the hospital be held liable to those others? Unfortunately, under the case law as it exists in New York at this time, the answer is probably "no".

So there you have it. If you are a nurse you can't sue, if you are the patient you can, if you are a family member you probably can, and if you are a friend or associate you probably can't. Go figure. In a sense, Ebola is more even-handed than the law. The virus treats us all equally but our legal system does not.

areas in which WE CAN HELP

our attorneys can help
with all personal injury &
malpractice cases such as:

- Motor Vehicle Accidents
- Catastrophic Injuries
- Construction Accidents
- Slip/Trip and Falls
- Wrongful Death
- Medical and Legal Malpractice
- Defective Products
- Almost any Accident or
Malpractice Case of Any Kind

attention attorneys

INJURY & MALPRACTICE REFERRALS

a lot of lawyers and law firms refer all their injury and malpractice cases to Michaels & Smolak. Why?

- (1) We are known for getting top dollar (in settlement or verdict) for the referred case
- (2) We carry all expenses of the case
- (3) We give personal attention to your clients

Consider referring your cases to us!



ATTORNEY SPOTLIGHT:

Michael Bersani

A top law firm needs a top “law guy”: A lawyer who can not only try lawsuits in front of juries, but excels at researching, writing and arguing the law to judges. Mike is Michaels & Smolak’s “law guy”.

Mike graduated Magna Cum Laude — the top 5% of his class — from Syracuse University College of Law 1993 and was then immediately recruited for a two-year stint as law clerk with the Appellate Court in Rochester. He joined Michaels & Smolak when his two-year clerkship ended in 1995.

Mike has highest rating a lawyer can have (“AV”) in the prestigious Martindale–Hubbell lawyer directory. This “AV” rating means that judges and other lawyers have rated him, compared to other lawyers, “very high to preeminent in legal ability, expertise, experience, integrity and overall professional excellence.”

While Mike’s courtroom performance is indeed highly respected, he is equally respected as a legal writer and lecturer on personal injury law topics. He is a lawyer’s lawyer. For example, every year the New York State Academy of Trial Lawyers invites him to travel all across New York State to lecture his fellow lawyers on his “Update on Municipal Liability Law”.

Mike has published numerous personal injury law articles. In fact, he literally “wrote the book” on the topic of “municipal liability” (how to hold a governmental entity liable for personal injury) by authoring the municipal liability chapter in the treatise “Plaintiffs Personal Injury Action in New York” (published by the New York State Bar Association).

Recently one of Mike's articles got a lot of "traction". A New York Appellate Court (Third Department), in deciding a case before it, cited to his article as legal authority on the issue of the "governmental immunity defense". It's very unusual for a Court, especially at the appellate level, to cite to a lawyer's article to support a legal proposition. Courts usually cite only to other judicial opinions.

We asked Mike how it felt to have judges relying on an article he wrote to decide cases. "I wrote my article to guide my fellow lawyers through this complicated area of the law, but how can I not be pleased that it also ended up guiding an important Court in deciding an important case?"

Before becoming a lawyer, Mike lived in Spain and France for 7 years, where he mastered both the Spanish and French languages. He then received a Master's degree in Spanish from Middlebury College in Vermont, and spent several years teaching and translating English, Spanish and French. He speaks only Spanish at home with his wife and kids. He also speaks basic Italian. He has many Spanish speaking personal injury clients.

Mike Bersani is not only a great lawyer, he's a great humanitarian. Because of his commitment to helping others less fortunate than himself, Mike Bersani was named 2009 Citizen of Year by Geneva, New York Chamber of Commerce.

The list of the civic leadership roles he has undertaken is indeed impressive: chair of the Geneva Human Rights Commission, chair of the board of directors of the Auburn YMCA, chair of the board of directors of the Boys & Girls Club of Geneva, New York, member of the board of directors of Farm Workers' Legal Services of New York (providing free legal service to underserved agricultural workers), volunteer taking Boys & Girls Club members to the YMCA swimming pool, provider of free legal services to Spanish-speaking migrant farm workers.

Mike lives with his wife, Alejandra Molina, and their two children, Sebastian (1996) and Nico (1998) in Geneva, New York. He enjoys competing in triathlons and traveling. Mike is also a prolific "law blogger". You can read or subscribe to his blog at centralnewyorkinjurylawyer.com.

SE HABLA ESPANOL!

Know any Spanish (or for that matter, French) speaking folks who need a personal injury lawyer? Attorney Mike ("Miguel") Bersani is totally fluent in Spanish. He also speaks fluent French. He'll be happy to "hablar" or "parler" with his clients.

MICHAELS & SMOLAK
CNY INJURY LAWYERS

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