

Legal Report

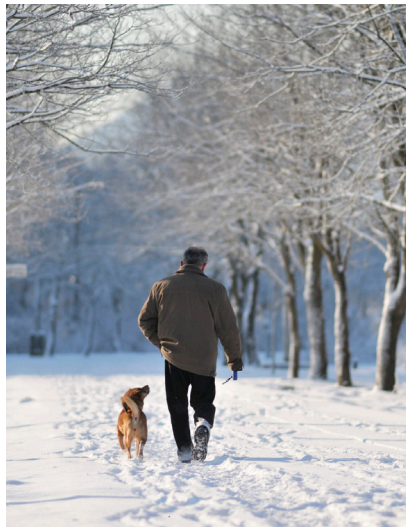
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With the Snow Comes Slip and Fall Season

The ice and snow that accumulates in parking lots, on sidewalks, outdoor stairs and stoops in our area at this time of year make walking a dangerous proposition. Young or old, it's easy to lose your balance and take a tumble that leaves you with a broken bone or other injury that interferes with your ability to work and to pursue your normal activities.

Business owners and homeowners have a responsibility to maintain their property so that the possibility of falling is greatly reduced. In some municipalities, ordinances require that you clear your sidewalks. Even indoors, the law requires safe flooring, good lighting and proper instructions for leaving a building. Slip and fall accidents don't just result from icy conditions, they can be caused by a number of issues such as wet floors, potholes, or uneven and weathered floors or stairs.

If you do fall in an area that should be maintained for public use, and the owner of the prop-



erty has been negligent, you may be able to file a lawsuit and receive compensation for your medical expenses, lost work time, pain and suffering, and interference with your usual pursuits.

Your case must fulfill certain criteria to succeed:

- The fall must have taken place in an area that is open and readily accessible to the public.
- You need to have been taking proper precautions for walking under the circum-

stances, by wearing appropriate boots, for example.

- You must have been paying proper attention to the conditions.
- The owners of the property must have known about the hazard and have had a reasonable amount of time to clear up the problem.
- Did the owner have any warning about the hazard and fail to try to alert you to the problem and prevent an accident?
- Could the same accident have happened to just about any person?
- Did the owner cause the unsafe conditions or was the owner negligent in getting the problem fixed?

If you have suffered a slip and fall accident and think your situation fulfills the above criteria, call us for a free consultation and evaluation of your case. At Jeffrey Freedman Attorneys at Law we have successfully represented many clients with similar cases. We are knowledgeable about the laws in injury claims and can help you get the settlement you deserve.

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Initial Claims for SSD Rising in Slow Economy

Initial claims for Social Security Disability (SSD) benefits are rising both throughout the nation and in New York State. During the fiscal year starting October 1, 2009 and ending September 30, 2010, filings in New York State were up by 11 percent, compared to the numbers filed during FY 2008 to 2009. Nationwide, initial claims rose 5 percent during FY 2009 to 2010. In Region II, which includes New York State, New Jersey, Puerto Rico, and the Virgin Islands, initial claims rose 7 percent during the past fiscal year.

According to the Annual Social Security Trustees report, the growth rate of disabled workers applying for and receiving SSD benefits is expected to increase over the next nine years. The report states: "Growth is largely attributable to the gradual progression of the baby-boom generation through ages 50 to normal retirement age, at which point higher levels of disability incidence are experienced . . . These increases are projected to result from the economic recession."

"Many people with disabilities hang on to their jobs because their

employers make concessions for their health problems. For example a person with back issues may be allowed to take several breaks during a day. However, when that em-



Our Social Security Disability Staff

ployee gets laid off, he or she will probably not be able to get the same concessions from a new employer," said Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law. "Plus, if a 25-year-old is applying for the same job, the employer is going to choose the young, healthy person over the more mature person who has health issues."

Older workers who cannot find employment look to a variety of sources for income; they may take Social Security retirement benefits

early, take income from their 401K fund, or apply for Social Security Disability.

"As the economy improves it is expected that the number of applications for SSD will begin to decrease. Some workers who have been receiving SSD benefits may even be able to find jobs that allow the concessions they need, and they'll choose to work and will discontinue their SSD benefits until they absolutely can no longer work," Freedman said.

Workers pay into SSD throughout their careers so they will have a safety net, should they no longer be able to work due to illness or injury. In order to obtain benefits, however, a claimant must prove he or she can not work at the job they have been doing or at any other job.

"It's a long and arduous process," Freedman said. "There has been a backlog in SSD cases for the past few years and, although the Social Security Administration has been diligent in trying to reduce that backlog, with the increases in initial claims there's a danger it will start to rise again."

Bar Association Seminar Addresses Tough Ethics Issues

Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law, joined seven other attorneys to address ethics issues at a seminar in December titled: Tough Ethics Issues held by the Erie County Bar Association (ECBA). The speakers, all current or former members of the ECBA or New York State Bar Association ethics committees, presented to 100 attorneys in the New York State Court Ceremonial Courtroom and was broadcast live to several locations throughout New York State.

Freedman spoke about standards in fee-sharing when multiple law firms handle personal injury cases. This was a critical seminar because 2009 was a watershed year for attorneys, with new rules for professional conduct taking effect April 1.



Jeffrey Freedman, Senior Partner

THE BUFFALO NEWS

Don't let toy recalls take the wonder out of the Holidays

Friday, December 6, 2010 • By Brian Knauth, Attorney



Unfortunately this year for parents, the wonder of the Holidays lies not in the mystery of the season, but rather in the mystery of how to find safe toys to buy their children. Fisher-Price recently recalled 10 million products including trikes, playground toys, and high chairs. Among other recalls, a few years ago seven million toys made in China were cited for excessive lead content in paint and for choking hazards.

Fisher-Price should be commended for removing its products from the shelves quickly and getting word out offering parents free replacements or repairs. Fisher-Price invests many hours designing safe toys and products, and many hours testing to ensure safety before a product or toy is ever sold. However, it is virtually impossible to test for and anticipate every possible risk or hazard. Parental supervision is expected.

Recently, the Consumer Product

Safety Commission (CPSC) proposed new regulations and definitions for "children's products." Industry organizations -- Halloween costumers, model train makers, and sporting goods manufacturers -- argued that their products are not "children's products" to avoid the stricter regulations.

As a personal injury attorney I have handled many cases over the years where infants and children suffered severe injuries or death in incidents involving a product classified as a "toy." These cases are very sad, typically leaving parents questioning their own responsibility for their child being in harm's way. Unfortunately, despite close supervision, parents cannot always keep their children from danger.

Based on my experiences as a personal injury attorney and a parent of three children, I offer these suggestions: Parents should check the age labeling on all product packaging, and only buy toys suitable for their child's age group. Read the warnings and instructions both on the packaging and inside. Buy from repu-

table companies who work hard designing, testing, and manufacturing their products, and avoid cheaply manufactured toys. A toy may not be a choking hazard as a whole, but if it breaks into smaller pieces or the wheels come off -- a choking hazard exists.

The internet and the media can help parents learn about toy safety and how to protect their children from dangerous or inappropriate products. Parents can face the Holiday buying season with confidence instead of bewilderment. Check for toy and product recalls at www.CPSC.gov, and subscribe to recall notifications via email. Fisher-Price's website provides buying guidelines for parents at www.fisher-price.com.

As parents, we must constantly supervise our children's use of toys and products even when they are at play. This begins when we make the effort to buy safe and age-appropriate products and continues for the life of the products. However, not all risk can be designed out of a toy or product lest we lose the fun or function. As we remember our own hours of childhood play, we must protect our children but also protect the fun and learning of childhood. Happy shopping and Happy Holidays.

If you are injured, our goal is to get you every dollar you deserve.
Contact us now for your Free Consultation.
www.jeffreyfreedman.com

THE BUFFALO NEWS

Reduction plan must protect those collecting disability

December 27, 2010 • By Regina Walker, Attorney



Last year, almost 8 million Americans depended on Social Security Disability benefits as their sole source of income. These people paid into the system, and when Social Security determined that they were too disabled by an illness or injury to work at any job, they were awarded benefits. As Congress considers changes to Social Security to help reduce the deficit, it needs to take into consideration the fate of these constituents.

For the past two years, there have been no cost-of-living increases to Social Security Disability due to the formula used to calculate such increases. This doesn't mean the cost of food, utilities, medical expenses and transportation have not gone up. These recipients are definitely feeling the effects of our tight economy. Certain members of Congress are saying we need to make major changes to the Social Security sys-

tem for it to survive. Yet data from the Congressional Budget Office shows income and expenses for Social Security leveling off from 2011 going forward.

Some of the proposed changes, such as those drafted by the co-chairmen of President Obama's deficit reduction commission, could even backfire. Increasing the retirement age from 65 to 69 will not work for workers who perform physical labor.

These folks could easily end up needing disability benefits instead of retirement benefits because their bodies simply will not stand up to working until they are 69. The proposal does contain a "hardship" clause, but no one knows yet how this would work. And the suggestion to index Social Security to an even lower inflation rate means that those who are already struggling on what is a minimal income at best will be further marginalized.

People who are collecting disability benefits have already faced two of life's biggest challenges: serious

illness or injury; and the inability to provide for themselves and their families. After the Great Depression, our Social Security program was implemented as an "economic stabilizer" to ensure the retired, as well as those who fell on hard times and could no longer work, could buy food and pay rent. In other words, they could still participate in our economic system of supply and demand for goods and services.

Clearly we need to make changes to pay off the deficit so that we are not passing it on to future generations. But we should not be trying to do this by further eroding the incomes of the recipients of Social Security Disability, who are already living on the minimum and who paid into the system.

Those who are disabled and can no longer work should be able to collect their promised benefits. When it comes to balancing the budget and reducing the deficit, there are other options that can be considered—options that won't impact people who are already struggling to get by.



Brad J. Davidzik has joined Jeffrey Freedman Attorneys at Law as an associate attorney. He will practice in the areas of bankruptcy, social security disability, supplemental security income, and consumer law. A 2005 graduate of UB Law School, Brad has spent the past three years practicing in the field of debtor/creditor law, with a focus on the mortgage banking industry. Most recently, he worked for a local not-for-profit law firm where he represented homeowners in connection with residential mortgage foreclosure and predatory lending matters. He is a member of the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorneys, and the Erie County Bar Association.

Amended Exemption Statute May Allow Debtors to Protect More Assets in Bankruptcy

In evaluating whether or not bankruptcy will provide relief to a debtor in financial trouble, one of the main issues is often whether or not the debtor will be able to keep their assets. These assets are typically not extravagant, but rather the home in which a debtor has raised a family, the car he drives to work, or the tax refund that a single mother receives. Under the prior law, these assets would often be at risk, because the exemption statute was outdated.

Thankfully, former Governor David A. Paterson recently signed into law, a pro-debtor exemption statute. Debtors will now be able to protect more assets from being taken by a bankruptcy trustee in Chapter 7. It will also reduce the amount which may have to be repaid to creditors in a Chapter 13 repayment plan. The changes will go into effect January 22, 2011.

The new exemption law will now permit debtors to protect a greater portion of equity in their motor vehicles, home, jewelry, and tools of the trade. The amended statute also institutes a Cost of Living Allowance (COLA) so that in the future, exemptions will increase as the cost of living goes up.

"In my opinion, these changes are long past due," said Jeffrey Freedman, Senior Partner at Jeffrey Freedman Attorneys.

Another significant change is that the new statute allows New York State residents the same option as other states have, which is to choose between the exemptions allowed by Federal law and the exemptions allowed under state law. If it is not necessary to claim the homestead exemption, it may be possible to protect up to \$10,000 in cash or property per debtor, under the federal exemptions. Accordingly, debtors who may not have had the option to file bankruptcy at all, or who only had the option of a Chapter 13 repayment plan they could not afford, may now be able to file a Chapter 7.

The notable exemption increases allowed per debtor under the amended New York Statute are: equity in a car increased from \$2,400 to \$4,000; increased equity in a home from \$50,000 to \$75,000 (in Western New York); and tools of the trade from \$600 to \$3,000. Again, as stated above, if a debtor uses the federal exemptions instead, he may be able to protect up to \$10,000 in funds or property per debtor, for a possible total of \$20,000 per couple.

Debtors who are having financial problems should speak with a knowledgeable attorney who practices in this area to see whether or not bankruptcy would be an available option.



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Jeffrey Freedman Attorneys in the News



Paul M. Pocheban, an attorney at Jeffrey Freedman Attorneys at Law, represents consumers filing for Bankruptcy, and clients in need of Social Security Disability and SSI. He was recently honored with a pro bono award from the Volunteer Legal Services Project (VLP) for service to the community. Paul is celebrating his 20th year with Jeffrey Freedman Attorneys at Law. A resident of Niagara County, Pocheban is a graduate of the University at Buffalo, and has a J.D. from Syracuse University College.