

From The  
Law Offices of

# Goldberg & Gille

Practice of Steven Paul Goldberg

*Specializing in matters of wrongful death, serious injury, professional malpractice and insurance bad faith.*

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## From the desk of Steve Goldberg

“Autumn, the year’s last, loveliest smile.” Obviously William Cullen Bryant didn’t live in Southern California, but his words still ring true. As the year winds down we hope you’ll find the latest issue of our newsletter informative and timely!

From Crocs™ to cribs, it seems that some companies are putting profits ahead of safety. A recent rash of “shoe entrapment” accidents involving Crocs™ and escalators have prompted warning signs and more than a few nervous parents. Also, Graco and Simplicity have recalled several crib models due to the danger they pose to infants.

If you think you or someone you know has been a victim of medical or professional malpractice, insurance bad faith, wrongful death or serious injury, then I encourage you to call our office to set up a free consultation.

Be sure to visit [www.goldbergandgille.com](http://www.goldbergandgille.com) and click on the NEWS button for up-to-the-minute legal news and stories.

And remember, your highest compliment is a personal referral. Thank you.

## San Dimas paying \$9 million to teen badly hurt in car crash

The Associated Press

SAN DIMAS, Calif.—The city agreed to pay \$9 million to a teenage beauty queen badly injured when her car crashed into an equestrian fence, sending a chunk of wood through her forehead.

Samantha Palumbo, 18, suffered a broken jaw and severe brain injury in the April 2005 crash on San Dimas Avenue. The accident led to criticism over the city’s installation of the equestrian fences along roadways.

As the case headed to trial, the city’s lawyer Scott J. Grossberg and Palumbo’s attorney Gregory G. Rizio reached a settlement Wednesday after two days of mediation.

“The concept from the beginning was to come up with some resolution that would help her,” Grossberg said.

The settlement money will go to Palumbo’s ongoing care and rehabilitation to ensure her best quality of life, the attorney said. Rizio said the money will be put into a trust or an annuity fund.

Palumbo was the 2004 Miss California Junior National Teenager.

After months of hospitalization and rehabilitation, she began walking and engaging others by using her own form of sign language. In June, she attended her San Dimas High School prom and received an honorary diploma.



## Children Could Be Getting Soft-Soled Clogs Caught in Escalators

At rail stations and shopping malls around the world, reports are popping up of people, particularly young children, getting their toes caught in escalators. The one common theme seems to be the clunky, soft-soled clogs known by the name of the most popular brand, Crocs.

One of the largest U.S. subway systems — the Washington Metro — has even posted ads warning riders about wearing such shoes on its moving stairways. The ads feature a photo of a crocodile, though they don't mention Crocs by name.

Four-year-old Rory McDermott got a Croc-clad foot caught in an escalator last month at a suburban Washington mall. His mother managed to yank him free, but the nail on his big toe was almost completely ripped off, causing heavy bleeding.

At first, Rory's mother had no idea what caused the boy's foot to get caught. It was only later, when someone at the hospital remarked on Rory's shoes, that she began to suspect the Crocs and did an Internet search.

"I came home and typed in 'Croc' and 'escalator,' and all these stories came up," said Jodi McDermott. "If I had known, those would never have been worn."

According to reports appearing across the United States and as far away as Singapore and Japan, entrapments occur because of two of the biggest selling points of shoes like Crocs: their flexibility and grip. Some report the shoes get caught in the "teeth" at the bottom or top of the escalator, or in the crack between the steps and the side of the escalator.

The reports of serious injuries have all involved young children. Crocs are commonly worn by children as young as 2. The company introduced shoes in its smallest size, 4/5, this past spring.

Crocs Inc., based in the state of Colorado, said it does not keep records of the reasons for customer-service calls. But the company said it is aware of "very few" problems relating to accidents involving the shoes, which are made of a soft, synthetic resin.

"Thankfully, escalator accidents like the one in Virginia are rare," the company said in a statement.

In Singapore, a 2-year-old girl wearing rubber clogs — the brand is uncertain — had her big toe ripped off in an escalator accident last year, according to local media reports.

And at the airport in Atlanta, a 3-year-old boy wearing Crocs suffered a deep gash across the top of his toes in June. That was one of seven shoe entrapments at the airport since

May 1, and all but two of them involved Crocs, said Roy Springer, operations manager for the company that runs the airport terminal.

One U.S. retailer that caters to children, Mattel subsidiary American Girl, has posted signs in three locations directing customers wearing Crocs or flip-flop sandals to use elevators instead of escalators.

During the past two years, so-called "shoe entrapments" in the Washington subway system have gone from being relatively rare to happening four or five times a week during warm months, although none has caused serious injuries, said Dave Lacosse, who oversees the subway's 588 escalators, the most of any U.S. transit system.

The U.S. Consumer Product Safety Commission said escalator accidents caused more than 10,000 injuries last year in the United States, but the agency has few records of specific shoe problems. Only two shoe entrapments have been reported by consumers since the beginning of 2006. One reported in May involved "rubber footwear."

### Jury Awards \$1.2 Million in 2002 Amusement Park Death

"A jury awarded \$1.2 million to a couple whose daughter was killed five years ago when an amusement park roof broke loose during a storm. The Allegheny County Common Pleas Court jury issued its verdict Friday in the case over the death of Stephanie Wilkerson, 29, of Monroeville, who was killed May 31, 2002, during the storm at Kennywood Park. Strong winds toppled a pavilion housing The Whip ride, and Wilkerson was struck by the collapsing roof and pinned against a metal fence. Judge R. Stanton Wettick Jr. divided the case into two parts, asking jurors to determine damages suffered by the Wilkersons. A later proceeding on punitive damages will determine liability on the part of Kennywood or the Landeau Building Co., which built the pavilion in 1994, and what percentage of the \$1.2 million is owed by each."

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## Simplicity, Graco Cribs Recalled After 3 Infant Deaths

About 1 million Simplicity and Graco cribs have been recalled after three children became entrapped and suffocated.

The recall was announced by the Consumer Product Safety Commission, more than two years after a California lawyer says he alerted the federal agency about a 9-month-old who died in a faulty crib.

"Two years and two deaths is not fast enough. It's inexcusable that it took that long," said Charles Kelly, who represents the parents of the 9-month-old. Liam Johns of Citrus Heights, Calif., died in April 2005.

In addition to the Johns baby, 6-month-old Edward Millwood died in November 2006 while in one of the Simplicity cribs. His parents filed suit against the manufacturer on Sept. 4.

A 1-year-old child died in a newer model of the cribs, which has not been recalled but is being investigated by the safety agency, commission officials said.

In all three deaths, consumers had installed the drop-rail side of the crib upside down, the agency said. This creates a gap in the crib that children can slide into and suffocate.

Seven other infants have been entrapped in the cribs, according to the commission. There have been 55 reports of the cribs' drop sides detaching or the hardware failing to hold the side to the crib.

Kelly said he alerted the Consumer Product Safety Commission about the faulty crib in June 2005 but didn't hear from the agency again until this week, when the commission sent someone to pickup the crib. The cribs were sold in stores nationwide through May 2007.

Commission spokesman Scott Wolfson said the agency has the crib, but he would not comment on the specific details of the case because it is under investigation.

The company is offering free repairs for cribs with older hardware. For more information, consumers can contact Simplicity at 888-593-9274.

## Bork v. Bork Editorial

There are many versions of the cliché that "a conservative is a liberal who has been mugged," and Robert Bork has just given rise to another. A tort plaintiff, it turns out, is a critic of tort lawsuits who has slipped and fallen at the Yale Club.

Mr. Bork, of course, is the former federal appeals court judge who was nominated to the Supreme Court in 1987 but not confirmed by the Senate. He has long been famous for his lack of sympathy for people who go to court with claims of race or sex discrimination, or other injustices. He has gotten particularly exercised about accident victims driving up the cost of business by filing lawsuits. In an op-ed article, he once complained that "juries dispense lottery-like windfalls," and compared the civil justice system to "Barbary pirates."

That was before Mr. Bork spoke at the Yale Club last year, and fell on his way to the dais, injuring his leg and bumping his head. Mr. Bork is not merely suing the club for failing to provide a set of stairs and a handrail between the floor and the dais. He has filed a suit that is so aggressive about the law that, if he had not filed it himself, we suspect he might regard it as, well, piratical.

Mr. Bork puts the actual damages for his apparently non-

life-threatening injuries (after his fall, he was reportedly able to go on and deliver his speech) at "in excess of \$1,000,000." He is also claiming punitive damages. And he is demanding that the Yale Club pay his attorney's fees.

We can imagine what Mr. Bork the legal scholar would ask if he had a chance to question Mr. Bork the plaintiff. If it was "reasonably foreseeable" that without stairs and a handrail, "a guest such as Mr. Bork" would be injured, why did Mr. Bork try to climb up to the dais? Where does personal responsibility enter in? And wouldn't \$1 million-plus punitive damages amount to a "lottery-like windfall"?

Since we believe in the tort system, when properly used, all we would ask is whether Mr. Bork's unfortunate experience at the Yale Club has led him to re-evaluate any of the harsh things he has said in the past about injured people, much like himself, who simply wanted their day in court.

