

DOOR INJURIES & “THE EGGSHELL PLAINTIFF”

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Every good attorney needs to consider the validity of a potential claim. As the most frequently retained door expert witness, working for both Plaintiff and Defense evenly, I have been retained on door injury and wrongful death claims that were not caused by malfunctioning doors or door hardware. As discovery has often shown, people in poor physical or mental condition who are left unattended or unassisted while moving through properly functioning doorways are often the genesis of their own injuries. All commercial venues have the responsibility to maintain their facilities to industry wide standards, seek proper routine maintenance, and provide daily inspections of their door systems. However, it is difficult to provide safe passage to every patron of their facilities when some of those patrons may include persons requiring diligent physical supervision, special assistance walking, or have special needs due to disease, mental incapacity, or other unknown infirmities.

Many door cases are the result of malfunctioning door components. Other cases are created by the inappropriate usage of door operator products that simply do not provide the needed services. However, one other critical factor continually plays a significant part in many door injury accidents - The overall physical condition of the user of any door system.

Attorneys representing either Plaintiff or Defendants have retained me as the designated expert witness to assess responsibility for door injury claims. It is often a clear cut case of poor maintenance, lack of appropriate service work, or some other deferred condition. Other times, there have been extraneous conditions that should have been examined before a piece of door equipment was chosen for the installation. Many automatic door injuries occur because of a lack of daily inspections, or the absence of a thorough understanding of the potential harm that a high energy door system can cause. Low energy door systems have created severe injuries and death as well. When non-automatic manual or hydraulic door closers are installed they are often ignored and left to deteriorate. As discussed in some of my [previous articles](#), malfunctioning hydraulic manual door closers have been responsible for creating serious injuries including severe tearing of ligaments and muscles, head trauma, broken bones, and death

THE “EGGSHELL PLAINTIFF”

While most states observe the concept that the physical condition of an injured person prior to the subject lawsuit is not to be considered, it has been my experience that many door injury and wrongful death cases have involved an already debilitated person.

Some Plaintiff's attorneys seeking to establish a claim do not consider or prefer to overlook the fact that the injured party may have had an existing condition prior to the accident. The potential plaintiff is sometimes brought to the property by an attendant or caregiver, and that physically or mentally debilitated person makes the decision to enter a door (automated or manual) without the assistance of an aid or any attending supervision. This article does not pertain to the ADA

wheelchair population who have become accustomed to using ADA accessible doors. The focus of this article is on other common pedestrian traffic that includes senior citizens. In many cases, a person has been so frail and fragile that in outward appearance it seems that a mild wind could blow that person down. As often observed on video recordings that captured the incident; no physical contact was ever shown between the alleged defective door mechanism and the Plaintiff.

CASE EXAMPLES - Injuries or Death Involving the Elderly

1. Elderly woman injured while entering retail store - A woman that had multiple sclerosis, used a walker, and wore a helmet on her head to guard against fall injuries made the claim that a high energy swinging door had hit her as she attempted to enter a retail outlet. There was video footage showing that the door never got within a foot of making contact with the woman. A witness using a parallel entry door stated that the woman fell down before she ever reached the door. The elderly woman had a caregiver with her, however, that caregiver entered the store approximately twenty feet in front of the woman she was supposed to be attending.

2. Woman loses balance entering hotel - An elderly woman with severe lower back problems, using a cane, tried to enter a building by pulling on a door that did not operate after she had pushed what she believed was the door activation button. According to the video footage, the woman had pushed another activation plate that controlled an adjacent doorway. The doorway that she tried to enter had a self-energizing door control motor which activated when she pulled on the handle. Becoming startled, the woman backed up, lost her balance, and fell to the floor breaking her hip.

3. Man forgets his cane - An elderly gentleman approached a big box store to do some shopping. He inappropriately used the store shopping cart as a walking assistance (walker). He approached the entry door, and for some reason decided to discard the shopping cart as he was entering the store. Apparently, he did not let go of the shopping cart handle in time and fell over a dividing guard rail as he released the cart. The man severely injured his shoulder and arm, and filed a lawsuit against the store claiming that the automatic entry door struck him.

4. Medical patient injured at dialysis center - A seriously ill man was dropped off to undergo dialysis treatment. The man could barely walk, and should have been met at the curb by an attendant from the treatment facility. The person that dropped off the man was in a hurry, became distracted with an incoming phone call as her father was exiting her car and failed to notify the dialysis service that her father was seated on a bench in front of the building. The man, being left at the curb by his daughter, waited a couple of minutes for someone to help him enter the building and then decided that he would walk to the treatment center, open the door himself and go in. The door was not automatic, but had a manual hydraulic door closer. As the man was entering, another patient leaving the building, in an attempt to help the man enter, pulled the door inward and he fell forward into the treatment center. Due to his poor physical condition he sustained life threatening injuries and later died of impact trauma related issues.

5. Casino patron injured in revolving door - A woman in a motorized cart decided to enter a revolving automatic doorway, lost control of the cart and crashed into the revolving door panel in front of her, breaking her leg. There were two adjacent cart accessible doorways that were designed to allow entry using an electric scooter, but the woman chose to use the revolving door. The incident was caught on video and clearly showed the woman recklessly operating the cart and entering the wrong door system.

6. Automatic sliding door injury - A man was leaving a store where automatic sliding doors were properly operating. He interpreted the movement of the doorway incorrectly and believed that the doors swung away from him as he was leaving. He pushed into the sliding doorway as the device was beginning to open, and due to the weight of his body, he broke out the properly functioning emergency egress mechanism and became entangled in the doorway, breaking his hip.

As a door expert who has been designated and retained on hundreds of lawsuits across the country and internationally, I am frequently contacted by the Plaintiffs attorney who is about to file his first case involving a door injury or wrongful death. Frequently, the potential claim is made that the store or facility was negligent in maintaining the doorway and its related hardware systems. Claims are made that the venue has a duty to provide a safe environment for its patrons, or that improper notifications or warnings were given regarding the doorways, etc. However, in the above referenced cases, the responsible parties for the injuries incurred were the users of the doorways themselves. The people that were involved in these cases, and dozens of other cases similar to these, simply should not have been left unattended by their caregivers or partners.

WHAT HAPPENED THROUGH DISCOVERY AS THESE CASES DEVELOPED?

Case 1 - A caregiver was sent to escort the elderly woman while shopping. It was discovered in depositions that followed the claim that the elderly woman and her caregiver had gotten into an argument in the parking lot. The caregiver left the elderly woman outside the store, and went into the store without her. They simply were mad at one another, and the caregiver admitted during a deposition that she was responsible for the woman's injuries. The negligent party was the caregiver, not the many named defendants.

Case 2 - A husband had dropped off his wife at the entrance to the medical building and told her to wait in the lobby until he could park the car and return to assist her. The woman was either confused or did not understand what his intentions were, and became injured when she attempted to enter the facility. The low energy door was not malfunctioning, the user of the door simply was in need of assistance when walking and never should have attempted to enter the building alone.

Case 3 - This incident occurred in much the same way as Case #2. The gentleman's wife dropped her husband off near the entrance to the store. He saw a loose shopping cart outside the store and she told him to hold on to the cart until she could park the car. It seems that he had forgotten his cane at home, and they had forgotten their ADA parking pass. Instead of waiting for his wife, the man proceeded into the store before his wife could get back to his side to assist him. When the man made the wrong decision to discard the cart by attempting to throw it off to his side, he simply tripped himself, and was injured without ever activating the automatic door system.

Case 4 - The daughter of the elderly man was ultimately responsible for her father's fall. She was the person that was charged with delivering and picking up her father and negligently left him unattended at the curb of the dialysis treatment center.

Case 5 - The woman who drove her motorized cart into a revolving door was in such a hurry to enter the building, she never paid any attention to the other ways that she could enter more safely. Her husband had dropped her as close to the entrance as possible, had given her instructions to wait for him while he parked their car. She decided that he was taking too long. She was so impatient to enter the building that during the time she was waiting (video shows) she drove her cart between three openings outside of the building. During discovery, her testimony revealed that she wanted to get to her favorite slot machine before someone else did.

Case 6 - The man that pushed through a sliding door system apparently did not understand what should have been obvious. Through discovery, it was shown that the man suffered from dementia and early stages of Alzheimer's disease. He simply should not have been unattended and he literally forced an emergency function of a properly operating automatic door system to create his injury.

I have been involved in many automatic and manual door cases where opposing expert opinions have attempted to cite all kinds of regulations and standards that simply do not apply to these types of physically or mentally compromised door users. In a recent case, another severely debilitated person claims to have been struck by an improperly operating low energy door. I made a visit to examine the doorway a few days after the incident occurred and found that the door was operating within all of the parameters that are required by industry and manufacturers standards. Yet, a retained opposing expert thought that citing a regulation about door warning labels would have made this door function differently.

WHAT IF ?

What if the door did not have a power operated control?

What if the door had a simple manual hydraulically controlled type of door closer?

What if the door had no operator or closer of any type?

Would the elderly debilitated pedestrian have been able to safely negotiate the doorway?

In this example and many others, the door functions were not improper. The doors had been adequately maintained, and the overall adjacent surface factors such as the coefficient of friction (a very popular ploy to place blame on a property owner) was indisputably adequate. There had been no adverse weather conditions such as wind, rain, or snow build up. And, it was a reasonably warm, sunny day when the incident occurred. The person using the doorway was simply in very poor physical condition, and needed constant assistance when walking anywhere. The man was being taken home from a doctor office visit by his son, and was told to wait inside seated until his son could bring the car around. The elderly man, on his own volition, decided to try and walk outside to wait for the son returning with the car. All anybody knows for certain about this incident is that the man was found face down on the pavement outside the building with a broken hip. He was taken to an emergency room nearby, and upon examination, no bruising, blunt force trauma or other signs of being hit by a door were noticed. The man regularly took blood thinners, and would routinely bruise or bleed from the slightest touch or impact. So, if he had been struck by a malfunctioning door, the physical evidence should have been plainly visible when he was examined by the emergency room doctors.

There are dozens of other cases where inappropriately supervised elderly people have sustain alleged injuries caused by all types of “malfunctioning doors”. There is certainly the requirement that all doors be appropriately maintained on a routine basis. Improperly maintained door systems injure and kill many people every year, and there is no excuse for lack of inspection and service when needed. However, there is a significant personal responsibility on the part of any debilitated person, caregiver or assistant to make certain that proper and adequate supervision and care is given at all times when a person is out in a public venue.

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Mike Panish is the nation’s leading expert and most frequently retained automatic and manual door consultant. He has been involved in over 650 cases representing both plaintiff and defense evenly. Mike has a thorough working knowledge of door hardware and components. He has personally serviced, installed, and maintained major brand door products for many years. He is the author of many articles that cover most aspects of door components, door hardware and door injury claims. Visit his website at www.constructionwitness.com for a list of relevant articles and to view all of his expert and consulting services.