Escalator Injuries and Deaths on the Rise, and Why Lawyers May Be Overlooking Many of the Cases
By Benjamin Fields, Esq.

For every accident that happens on an elevator, there will be 18 accidents suffered on escalators. Escalator-related injuries and deaths have been steadily rising every year in the U.S. In 1990, there were 4,900 reported escalator-related injuries and deaths. Each of the next several years saw about ten percent more injuries and deaths than the year before and, by 2000, there were over 10,100 injuries and deaths. During calendar year 2013, a total of 12,260 escalator-related injuries and deaths were reported.

Sadly, children and senior citizens suffer a disproportionately high number of these injuries. Children 14 and under and those 65 and over, collectively, averaged 60% of the injuries reported between 1990 and 1994. There were an estimated 26,000 escalator-related injuries among children 0 to 19 years of age in the United States from 1990 to 2002. In 2011, there were 4,900 patients over the age of 65 treated in emergency rooms for escalator injuries.

So, what is causing all these injuries?
When most people hear “escalator injury,” they probably think of crocs shoes being pulled into the step-to-skirt gap or other entanglement-related injuries, primarily to hands and feet as the most common injury mode.

Instead, over three-quarters of all hospital treated escalator injuries in the U.S. result from falls. Falls are “the most common mechanism of [escalator-related] injury for all age groups” between 0 and 19 years of age. Falls are also overwhelmingly responsible for deaths suffered while using escalators. Out of 27 escalator-related deaths reported to the CPSC from 1985 to 1999, fully 21 were due to falls.

Given that the number and significance of fall incidents are so much higher than entrapment related injuries, it is apparent fall cases have been historically underrepresented in litigation. There are several reasons why these cases may be missed or overlooked.

The escalator industry has been very successful convincing accident investigators and the media reporting incidents to the public that most falls are caused by horseplay, intoxication or some other seemingly gross misuse. Many times, because of this relatively successful media and lobbying campaign, the true cause of a fall is obscured or never discovered. Also, perhaps due to the relative lack of previous litigation in this area, the defect theories and available safer designs to prevent escalator falls have not been the subject of nearly as much discovery and are simply not as well known as with many other products and injury modes subject to wider litigation.

While the first hurdle in these cases is often overcoming at least a strong perception of comparative fault – do not despair. Success can be had in cases even where initial police or newspaper reports blamed the fall on attempts to “surf” the handrail or similar conduct, as well as where the victim was intoxicated at the time of the fall. Internal company documents and literature dating back decades prove industry recognition that, much of what the industry tries to paint as gross misuses, are in fact foreseeable, common uses resulting from well-known hazards in their products – including intoxication. More importantly, these documents and literature prove the industry has also known for decades how to virtually eliminate most of these hazards with safer designs that would protect the comparatively negligent and innocent alike.

An extensive library of documents and literature collected from various sources and produced in discovery in prior
escalator cases can be made available to assist those investigating and prosecuting other escalator cases.

**Common Injury Modes and Defects**

While falls can be caused by a number of different defects, human factors issues and maintenance or inspection problems, at their most simple they fall into two basic overarching categories: “falls from,” and “falls on” escalators. The former, also called falls “over-the-side” involve victims falling outside the escalator wellway – most often into adjacent open spaces and atriums, falling one or more stories. The latter, also called “falls down” escalators are, just as they sound, victims who remain inside the wellway of the escalator for the duration of their fall, tumbling down the moving steps below.

**The Escalator Industry and Standards**

Like many other industry groups, escalator manufacturers have been very successful in their lobbying and other efforts to avoid meaningful safety-related oversight or mandatory safety standards. In fact, escalator manufacturers have managed to avoid any meaningful government regulation altogether.

The CPSC briefly looked at whether to add escalators to its regulatory umbrella in response to a 1997 petition from the family of a 4-year-old boy who lost his foot from an entrapment injury. After three years of reviewing predominately industry-supplied information, a unanimous vote denied the petition seeking CPSC regulation.

Instead of meaningful regulation, the only standards published for this industry are those put out by the American Society of Mechanical Engineers (ASME), in its publication, *A17.1 Safety Code for Elevators and Escalators*. ASME’s Elevator and Escalator Code Committee and Escalator and Moving Walk Subcommittee wrote and adopted the provisions in A17.1. They usually publish revisions to A17.1 every three years.

The industry has heavily populated the ASME A17.1 Code Committees with multiple executives from each of the major elevator and escalator manufacturers. These executives are paid generous salaries, of course, and attending the Code Committee meetings is just part of their job. Safety advocates and consultants, on the other hand, must travel to these meetings at their own expense and doubtless disruption of their own work and personal pursuits, leaving them – and their safety proposals – sorely outnumbered. Since the content of the published standards is decided by majority vote, most truly meaningful proposals to enhance safety requirements over the years were eventually tabled, no doubt due to the likelihood they would have increased costs and decreased profits for the manufacturers. Indeed, the basic design and configuration of escalators has changed very little since the 1920s!

Minutes from ASME A17.1 Code Committee meetings discussing proposed safety changes can be powerful evidence proving manufacturers’ notice and knowledge of hazards and feasible alternative designs (given the recorded attendance by their own executives). However, these documents can be very difficult to obtain. Defendant manufacturers will show the court ASME bylaws declaring meeting minutes the express property of ASME and agreements obligating Code Committee members to keep them strictly confidential. Unfortunately, ASME is also known to combat efforts to subpoena the records directly.

The point must be convincingly made that such private agreements do not suspend the rules of discovery and the scope of what is discoverable under the theories and defenses, nor do they disprove the defendant’s access or ability to obtain the records under the “control” portion of Rules 26 and 34, and state equivalents.

A collection of minutes from some meetings scattered throughout the mid-1990s have been pieced together from excerpts of the CPSC’s file regarding the CP-97-1 petition mentioned above. These documents are only included in the file because CPSC members were allowed to attend a few of these meetings – a part of the industry effort to convince the government that no regulatory action was needed by showing it was already self-regulating.

Local ordinances typically codify the ASME A17.1 standards and adopt them by reference giving rise to negligence per se liability for violations. However, with competing state, county and city ordinances, which are often one or more versions behind the most current A17.1, sorting out what was actually the applicable “law” at the time of injury can be a tedious and difficult process. This process is worth the effort, however, as experience shows sometimes-sloppy inspections and slow remediation of reported violations can lead to the discovery of far-too common code violations in these cases.

**Additional Non-Product Liability Theories of Recovery Available**

While the various legal issues common in escalator cases are another topic to themselves (common carrier liability, defenses of jurisdictional inspection immunity and statutes of repose, to name a few), it is worth
pointing out that these cases often proceed, at least in part, on negligence theories in addition to products liability causes of action.

All of the major escalator companies have contracts with premises owners to provide ongoing service and support, as well as perform the required annual inspections for escalators after they are initially installed. In fact, the costs involved suggest these service contracts may be more profitable than the sales of the escalators themselves. Many of the dangerous conditions in escalators can be maintenance related, or could be easily remedied by retrofitting readily available safety devices. In most jurisdictions such post-sale negligence claims against service providers are based on a negligent undertaking theory of liability – found in extensive common law and set out in Restatement of Torts (Second) § 324A. Many cases also can, or will, include premises liability claims against the property owner.

Internal documents and marketing efforts by the escalator companies to secure lucrative post-sale service contracts provide much of the evidence for proving the broad extent of their undertakings. Documents can be used to show the services escalator companies undertake to provide premises owners include being a special advisor on all safety related issues and developments for the escalators covered by the contracts, including keeping owners apprised of new advancements that become available years after the original installation of their escalators. Extensive documents showing admissions and representations related to these post-sale service contract undertakings by the four largest escalator manufacturers have been collected for prior litigation and can also be made available to assist in other cases.

This Industry in Need of Change Can be Tackled Through Cooperation

Unfortunately, for decades the escalator industry has carefully erected barriers to prevent injured victims and their attorneys from finding the truth that has kept so many injuries and deaths from the civil justice system in the past. While escalator cases, falls in particular, may have been underlitigated and finding a way through the industry’s smokescreen has been difficult in the past, members of this organization and other similar groups can, and should, work together to share information and build on prior discovery to make sure the cases of deserving victims aren’t going unnoticed. 

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Endnotes:

4 Id.
5 See Data Summary on Escalator-Related Injuries and Deaths, supra note 2.
7 Senior Hazard Sketch 2012, pg. 77, CPSC Report.
8 National Electronic Injury Surveillance System database, supra note 3.
9 See Data Summary on Escalator-Related Injuries and Deaths, supra note 2.