Legal Matters®

Consumer Safety
fall 2022

Building code violations on premises can boost your personal injury case

A "premises liability" case is one where you have been injured by a dangerous condition on someone else's property and you seek to hold that person accountable for your injuries. Generally, to win a premises liability case, you need to prove that the property owner knew or should have known of the hazard, that they failed to take reasonable steps to either fix the condition or warn of it, and that you were hurt as a result.

Evidence that the property owner has failed to follow established state and local building codes — for example, maintaining defective wiring and plumbing, insufficient lighting, unsafe scaffolds, balconies or platforms, malfunctioning elevators and escalators and/or a lack of guards or handrails in places where people could fall — can help you win your case.

Take, for example, a recent case from Virginia. A disabled man with rheumatoid arthritis was walking in the outdoor courtyard of a local retail establishment when he tripped over a displaced cement slab, striking his left elbow.

The man suffered a fracture, which became infected, necessitating elbow replacement surgery. Although the displaced slab caused an elevation change of less than an inch, this apparently violated Virginia's statewide building code. The store owner might have thought about arguing that the man should have noticed the displaced slab or that a one-inch elevation change does not constitute an unreasonably dangerous condition. However, the owner clearly believed the code

violation might not resonate so well with a jury and opted to settle the case for a substantial amount.

In Massachusetts, a woman was dancing on a bar's elevated dance platform when she fell, tearing the anterior cruciate ligament in her right knee. The injury forced her to go through knee reconstruction and physical therapy. But even despite those measures, she continued to experience pain and difficulty moving her knee.

She sought to hold the establishment accountable, asserting that its owners didn't install equipment that would prevent people from falling, that the premises weren't properly lit and that the owners violated applicable Massachusetts building codes. As in the Virginia

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Should you sell your structured settlement?

When settling an injury claim, many people arrange for a "structured settlement" where, instead of receiving their settlement as a single, lump-sum payment, they take a series of regular, periodic payments over a number of years or even over their lifetime.

This is often to ensure that a recipient who may be too young or lack the capacity to manage their economic affairs doesn't mismanage the settlement proceeds, use them for bad investments or simply spend them right away. Instead, the idea is that the money will be there for their ongoing medical or educational needs or to support them when their ability to work is limited.

However, in some instances someone who may have benefitted from a structured settlement in the past may now be better off having the cash, particularly if they have a sudden financial need that the periodic payments won't meet.

That's why people often "sell" either all or part of their settlements to "factoring companies." A factoring company provides immediate cash and, in return, assumes the right to receive your future payments.

This may sound tempting, but it's vital that you talk to an attorney first, because there's risk involved.

First, the factoring company expects to make a profit. That means the amount of cash they're offering for the right to receive your payments going forward may be substantially less than the present value of that income stream, when accounting for inflation and interest. To put it another way, you may be giving them a huge discount on the right to receive those payments. Some factoring companies may be less than ethical and not disclose the discount rates and terms.

Additionally, there could be tax implications. While the periodic payments you receive are not taxable as income (the Internal Revenue Code excludes damages paid "on account of" a physical injury), the cash payment you receive from the factoring company may count as taxable income, making the transaction even more costly.

Meanwhile, there's the risk that the insurance company that was paying out your structured settlement over time may refuse to send your future payments to the factoring company, in which case they may come after you, potentially landing you in court.

That's not to say that selling your structured settlement is always a bad idea. Everyone's circumstances are different. But it's critical that before agreeing to such a transaction you seek counsel from a good attorney.

We welcome your referrals.

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Injured at the dog park: Who's at fault?

Dog parks are popular places for pet owners to socialize outdoors while their dogs frolic around, often off leash, getting valuable socialization and burning off excess energy.

But dog parks can be fraught with risk, whether it it's a dog-bites-human, dog-bites-dog or dog-knocks-down-human situation. So when an accident happens, who's responsible?

In most cases, you can't hold the park itself responsible. Most are designated "use at own risk" and have strict rules posted that people must follow.

More likely, you would have to try and hold the owner of the offending animal responsible. So if you've been bitten or knocked down at a dog park, the first step is to get that person's contact and insurance information and file a claim for your injuries.

To help prove the other owner was at fault because they weren't properly supervising or controlling their pet or because their pet was unreasonably dangerous, you will want as much documentation as you can get. For example, get copies of witness statements, police reports, photos/videos and medical records. You should also contact an attorney who handles dog bite cases to help you through the process and negotiate with the insurance company.

What if your dog was injured? Some states allow you to sue for personal injury damages (such as pain and suffering and emotional distress), along with medical expenses, just as if the injury involved a person. Other states treat dogs as personal property. In those cases, damages are limited to the difference in the dog's market value before and after the injury (if your dog is a rare and valuable breed, this can be significant) or simply the cost of the dog's veterinary treatment.

In either case, you might have to prove the other owner knew or should have known their animal was dangerous.

Meanwhile, if you know your own dog has a propensity to lunge at or bite people or other dogs, keep it leashed or risk liability yourself.

Woman struck by flying puck gets substantial verdict

We all know youth hockey tournaments can be dangerous to participants. What some may not realize, however, is that youth hockey tournaments can also endanger spectators. In some circumstances, a recent case teaches us, the injured spectator can hold the venue accountable.

In that case, Sally Laurenzi traveled to suburban Boston for her son's hockey tournament at a for-profit sports complex with onsite bars and restaurants.

During one of her son's games, Laurenzi was struck in the head with a flying puck, suffering a concussion and lingering post-concussion syndrome.

She sought to hold the arena accountable, arguing that the spectator area was dangerously designed, putting the audience both closer to the ice than at other arenas and elevated above the protective shield around the skating surface.

The arena argued it was shielded from suit by the state recreational use statute, which keeps people from suing property owners who open their land to the public for recreational purposes.

But the trial judge disagreed, pointing out that Laurenzi was there to supervise her son, who had special needs requiring attention beyond what his coach could provide, and not merely there as a spectator. The judge also emphasized that though Laurenzi didn't pay admission to the facility, she did contribute to the team's registration fee. He further pointed out that the recreational use statute is more applicable to public parks or community rinks, not private sports complexes.

The case proceeded to trial, where Laurenzi secured a significant verdict. But recreational use statutes apply differently from state to state, so check with an attorney where you live.

Homeowner's policy doesn't cover ATV accident

If you own an all-terrain vehicle or other type of recreational vehicle, make sure you have the right kind of insurance instead of just assuming your homeowner's or auto policy will cover it. If you don't, you could find yourself in the same situation as a Virginia resident.

In that case, a couple's daughter was driving their ATV with her friend riding on the back. A tree branch struck the friend, causing injuries.

The friend sued for her harm. The couple sought coverage from their homeowner's policy, arguing that the ATV was covered as a "farm -type" vehicle.

The insurance company rejected the claim, asserting that the policy excluded injuries from "any recreational land motor vehicle."

The Virginia Supreme Court agreed with the insurer, noting that while an ATV can potentially be used either for recreation or on a farm, it wasn't designed primarily for farm use the way a tractor might be.

This means the owners likely will have to cover any damages award or settlement themselves.

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case, the owners opted not to risk a potentially bigger award at trial and agreed to settle.

In addition to building codes, workplace safety codes can be helpful, as they were in an Illinois case where a construction worker fell 20 feet from scaffolding at his jobsite. The fall rendered him a paraplegic and he sought to hold the general contractor responsible for failing to enforce federal safety regulations put out by the Occupational Safety and Health Administration and for failing to properly inspect the site. After mediation, the contractor agreed to pay millions of dollars to cover costs the worker would incur for his injuries going forward.

If you or someone close to you have been hurt as a result of an unreasonably dangerous condition either on someone else's property or at work, a good lawyer can investigate the situation and let you know what rights you may have.

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Passenger can hold airline responsible for fall

People injured in an airport or on a flight can generally seek recovery from the airline under the Federal Aviation Act and would typically need to prove their injury was because of the airline's negligence. But if it's an international flight, they would proceed under the international Montreal Convention, which requires the passenger to prove there was an "accident," defined as an "unexpected or unusual event" that is "external to the passenger."

Although this is a difficult standard, it's still worth a call to a lawyer because it's far from insurmountable.

For example, Jennifer Moore sought to hold British Airways responsible for an ankle injury she suffered while disembarking from her flight in London. The last step of the portable staircase was unexpectedly higher than the previous steps, causing her to trip.

A federal district court judge tossed out her suit, finding that it wasn't an unexpected event because such stairs are common in the industry.

But a federal appeals court reversed, finding that an event is unexpected when a reasonable passenger with typical air travel experience wouldn't expect the incident to occur. Here, the court said, there was sufficient question as to what the typical passenger would have expected. Now Moore will have the opportunity to prove her case in court, if the airline doesn't settle first.