Legal Matters®

Personal Injury
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Tips for maximizing the value of your injury case

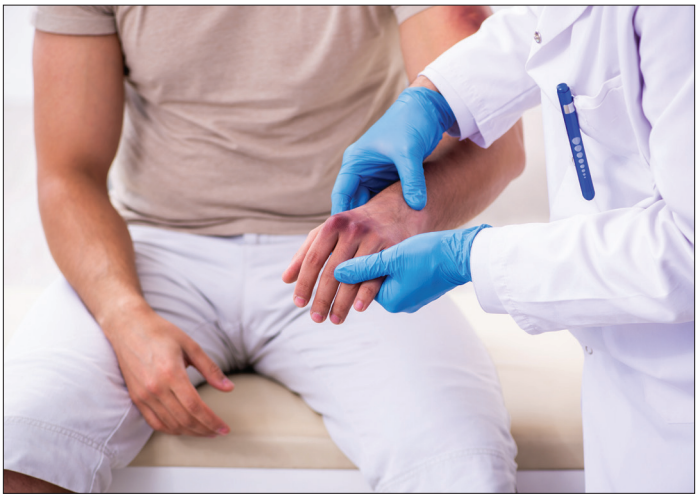
If you or a loved one has been hurt and you think it was someone else's fault, a good attorney with experience in personal injury cases can help you obtain what you are entitled to, so it's important to contact a lawyer as soon as you can.

However, there are other things that you should be doing to maximize the value of your case so your attorney is in as strong a position to obtain as complete a recovery as possible.

For example, you should preserve evidence from the outset. That means doing things like taking photos of the accident scene and the immediate injuries you suffered. It will be a lot harder for the party at fault to blame the accident on, say, the weather as opposed to their own careless driving if you can establish that it was a clear day with ideal road conditions. They'll have a similarly tough time claiming you were faking your injuries and were actually unhurt at the scene of the accident if you have pictures that prove otherwise.

You should also seek medical treatment immediately. That way health care professionals can document your injuries and the treatment you require. Medical expenses and the amount of pain you've suffered are a critical component of the damages you're seeking, and having a thorough and specific medical record will put you in a stronger position in court. It also may give you additional leverage in making settlement demands.

Along similar lines, if your doctor prescribes a course of treatment, be sure to follow it. If you skip appointments or treatment sessions, the other side is in a good position to argue that your injuries can't possibly be as serious as you claim they are, undermining the strength of your case.



As far as proving pain and suffering, keeping a daily journal describing what is hurting you and how badly on a given day can be a useful piece of evidence for your attorney.

Meanwhile, in the aftermath of an accident, you should avoid posting on social media. That's because the insurance company on the other side and its attorneys could use comments and photos you post to undermine your claim. For instance, if you claim your injury has made it difficult for you to work or even get out of bed in the morning, pictures of you frolicking with your grandchildren or enjoying a day at Six Flags will be devastating to your case.

Perhaps most importantly, do not sign anything or discuss your situation without speaking to an attorney first. In fact, don't discuss

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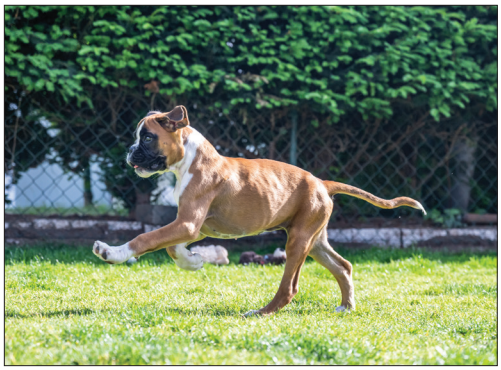
Dog deemed dangerous 'condition on the land'



The Michigan Court of Appeals recently ruled that the victim of a dog bite should have been able to seek compensation from a property owner under a theory that the owner's dog was a "dangerous condition on the land."

The incident occurred when victim Chester Tripp was visiting his mother.

A neighboring backyard that abutted Tripp's mother's backyard was enclosed by a chain-link fence. Meanwhile, the neighbor's landlord put up a wooden privacy fence along the part of the backyard facing the property of Tripp's mother.

The day of the incident, the neighbor was playing with her dog in the backyard. The neighbor went inside, leaving the dog alone in the back. Tripp, who was trimming bushes in his mother's backyard, put his hand on top of the chain link fence for support, upon which the dog reached its head through a broken part of the wooden privacy fence and allegedly bit Tripp's hand.

Tripp, who suffered a severe infection from the bite, brought a claim against the landlord, alleging that he failed to maintain the property in reasonable repair.

The landlord countered that Tripp was trespassing by putting his hand on the tenant's fence and that the danger posed by the dog was "open and obvious," and, therefore, the landlord had no duty to protect Tripp from the hazard.

A trial judge — while rejecting the trespassing argument — threw out Tripp's claim based on the "open and obvious" defense.

But the Court of Appeals reversed the decision. According to the court, the dog could constitute an actual dangerous condition on the property that the landlord had an obligation to take reasonable steps to protect against regardless of whether it was open and obvious. The court also found that the landlord hadn't, in fact, shown that the dog was an open and obvious danger in the first place.

Tripp now has an opportunity to take the case to trial if it doesn't settle out of court first.

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Hair straighteners and relaxers linked to reproductive issues, cancer

For a long time, hair straighteners and relaxers have been a profitable part of the personal beauty product market, particularly within the Black community.

However, recent studies published in the Journal of the National Cancer Institute indicate that certain chemicals used in these products, which include popular brands like Motions, Dark & Lovely, Soft & Beautiful, Optimum Care, Crème of Nature, Just for Me, Olive Oil and Brazilian Blow Out, could be linked to an increased risk of uterine cancer, breast cancer, endometriosis and assorted reproductive problems.

These types of products apparently heighten the risk of chemical exposure because the toxins in question are more easily absorbed through the scalp than through other parts of the skin. Additionally, hair straighteners and relaxers can cause scalp burns and lesions, which makes it even easier for the harmful chemicals to enter the body.

Meanwhile, there is strong evidence that the manufacturers of the products knew about the potential safety risks but opted not to warn consumers of the risks through a warning label.

Because the government categorizes these types of products as cosmetics, they are not required to receive approval from the federal Food & Drug Administration before being sold. However, other federal laws require companies to warn customers of risks that may be associated with their products, and it is also illegal for companies to put harmful ingredients in their products, so it's entirely possible the manufacturers of the products in question have run afoul of the law.

If you or someone in your family is a user of these products, you should be aware of the risk and avoid using them in the near future. Meanwhile, if you believe you or someone close to you has been hurt by one of these products, it is important to get in touch with an attorney who can explore with you what rights you might have.

How might ‘assumption of risk’ affect your injury case?

In many personal injury cases, the injured party, in seeking to hold someone else accountable for their injuries, may find themselves blocked by a rule called “assumption of risk.”

Under this doctrine, if someone encounters a known hazard — perhaps even one they’ve been warned about — and proceeds anyway and gets hurt, the property owner isn’t legally responsible. This is true even if the property owner could have done a better job of keeping the premises safe.

A lot of people associate assumption of risk cases with “beware of dog” or “swim at your own risk” or “I sign this waiver” scenarios. But a recent California case shows that it may apply when the risk isn’t even all that obvious.

In that case, recreational golfer Walter Wellsfry was golfing on a course near scenic Half Moon Bay on the California coast. He claims he was walking back to his golf cart from the tee box when he stepped on a small tree root hidden in the grass, which caused an ankle injury.

Wellsfry then tried to take the golf course owner to court over his injury, saying the root was a “hidden obstruction” that created an unreasonable risk of harm to anyone who might come across it. But the course owner argued that Wellsfry assumed the risk of such as occurrence by playing golf in the first place.

According to the owner, the risk of stepping on a small tree root or similar hazard is inherent to the sport of golf, and therefore it owed Wellsfry no duty to prevent the risk. It supplemented its argument by asserting that to hold a golf course accountable in such circumstances would change the golf industry altogether. The course owner further emphasized

that it had never received a prior complaint about injuries at the spot where Wellsfry tripped.

A trial judge agreed and threw out the case.

Wellsfry appealed but lost again, as the California Court of Appeal said navigating the natural obstacles of the course — whether they be slopes, trees, leaves, water, sand or tree roots — is fundamental to the sport, particularly given the uniqueness of each course.

Still, the case may be a bit of an outlier, and courts in other states might come to a different conclusion under similar circumstances, depending on how they interpret the law and the facts.

Additionally, a property owner or business operator still generally cannot use the assumption of risk defense successfully without showing that the injured person actually knew of the risk involved and voluntarily accepted that risk through their words or conduct.

So, if you are injured on someone else’s premises and think they might have an assumption of risk defense, it’s still a good idea to call an attorney to discuss if such a defense can be defeated on the facts.

Tips for maximizing the value of your injury case

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your injuries or your case with anyone but your doctors and your attorney — particularly the other side’s insurance company. The insurer’s first priority is avoiding paying out a claim, and they will invariably push you to delay your treatment, which could reduce the value of your case, or string you along for a couple of years until the clock has run out on your ability to hold the other side accountable.

By engaging a competent attorney to deal with the insurance company on your behalf, you’re much less vulnerable to such tactics.

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Nursing home held accountable for dropping patient from mechanical lift

Having a close family member in a nursing home can be worrisome. Most likely they are receiving high-quality care from people who are conscientiously devoted to their well-being. However, not all nursing homes are well run. And even in facilities that are well run, things can sometimes go wrong due to staffing issues and intense needs of patients. Sometimes bad outcomes can happen through no fault of the facility. Other times, however, the facility is absolutely at fault. If you have a loved one who has been hurt while under a nursing home's care, you should speak to an attorney who can investigate the situation and help determine which category your case falls into.

Take a recent case from Massachusetts. A resident of a skilled nursing facility was dropped from a mechanical lift onto her knees, causing her to suffer bilateral fractures. Though the lift was a two-person assist device, evidence shows that only one person was operating the lift at the time.

To make matters worse, the facility did not inform the resident's physician or her family of the full extent of her injuries, resulting in a 22-hour delay in her obtaining acute medical care and hospitalization.

The resident ultimately died from complications due to blunt force trauma to her lower extremities. Her family sought to hold the facility responsible on grounds of poor quality of care, short staffing, and failure to maintain a safe environment with appropriate procedures in place for obtaining emergency care. Those failures, according to the family, resulted in the wrongful death of their loved one.

The nursing home ultimately agreed to settle the case for a seven-figure sum, presumably deciding they were better off resolving the case out of court than risking an even more severe result before a jury.