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Water park fun can mask hazards

Water parks can make for refreshing family fun on a hot summer day. After all, who doesn't love the thrill of speeding down a twisting slide and making that huge splash into the cool water at the end? That's why approximately 85 million people visited the nation's 1,300 water parks in 2015.

But in addition to being a huge source of summer fun, water parks can be a place of danger. While most visitors head to the parking lot at the end of the day wet and tired but intact, the lack of national safety oversight, the slipshod design and construction (and spotty inspection) of some park attractions, and the inconsistent enforcement of local and state safety codes inevitably mean that some visitors could get hurt or even killed. In fact, the U.S. Consumer Product Safety Commission estimates that more than 4,200 people are taken to emergency rooms each year for scrapes, concussions, broken limbs, spinal injuries and other serious injuries sustained at water parks each year.

Some visitors have even died from water park mishaps. So if you or a loved one is injured at a water park, it's important to speak with an attorney to see what kinds of rights you might have. Depending on the situation, you might be able to hold the park's operators (or the designer or builder of the ride) accountable.

Take the case of Caleb Schwab, a 10-year-old boy who was killed at Schlitterbahn Waterpark in Kansas City last summer while riding the

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"Verruckt" (the German word for "insane"). On this particular attraction, which the park advertised as the world's tallest water slide, riders sit in multi-person rafts and experience what the park boasts is a "jaw dropping" 17-story drop — taller than the Statue of Liberty or Niagara Falls — at speeds of up to 70 miles per hour before being blasted back up a second hill and dropped another 50 feet into a pool.

While specific details are sketchy, some observers say Caleb was ejected from his seat, possibly due to faulty harness straps, and an anonymous witness said he was decapitated in the accident. The ride

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Federal law may protect urgent-care center patients

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The Emergency Medical Treatment and Active Labor Act, or EMTALA, is a federal law that was put in place to make sure hospitals don't "dump" emergency patients who may be indigent or uninsured by refusing to examine or treat them or by sending them to other hospitals. Instead, EMTALA requires that hospitals thoroughly screen all patients who report to emergency rooms and, if they are found to have a serious medical condition, to properly stabilize them before transferring or releasing them.

Hospitals that fail to comply can be hit with significant fines. Additionally, the patient may be able to bring the hospital to court, obtain damages and have his or her attorney's fees paid. Plus, depending on the state, patients may have more time to bring a claim under EMTALA than they would have to bring a standard malpractice claim in state court.

Now a recent ruling by a federal judge in Rhode Island suggests that EMTALA covers not only emergency-room visits, but also off-campus urgent-care clinics that are affiliated with hospitals.

In that case, a 49-year-old woman reported to the urgent/walk-in care clinic at a local hospital complaining of severe chest pain and pain in her right arm. Shortly beforehand, she'd texted co-workers that she was going to the "ER" to get checked out for possible heart-attack symptoms. The doctor diagnosed her with reflux and she was sent home with a "gastrointestinal cocktail." She died the next day of cardiovascular disease.

Her estate sued the hospital that operated the clinic for both malpractice and for violation of EMTALA.

The hospital tried to get the case thrown out, arguing that EMTALA didn't apply because the clinic wasn't an "emergency care facility."

But the judge disagreed, finding that because it held itself out as treating emergency medical conditions on an urgent basis without a scheduled appointment, it fit the definition. In fact, the court said, this particular patient, based on her texts to co-workers, thought she was going to an ER when she visited the clinic. Thus her estate's claim could proceed.

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Insurer can be held responsible for delay in cancer treatment

If your health insurer denies coverage for a particular procedure or course of treatment, it's critically important to talk to an attorney. That's because in many states there's an official external review process in which the decision might be overturned. If a wrongful delay in treatment ends up causing you medical problems, you may be able to obtain damages in court as a result of the insurer's failure to honor its contract with you.

Take a recent case out of Minnesota.

In that case, a man was diagnosed with bone cancer in March 2014. After two surgeries, his physicians recommended that he receive proton-beam radiation therapy. But his insurance policy with Blue Cross Blue Shield Minnesota considered the procedure investigative when treating the thoracic spine, where the tumor was located, and under its contract BCSBM wouldn't pay for services that weren't medically necessary or that were related to "investigative care."

A radiation oncologist sent a letter to BCBSM describing the procedure as medically necessary, but the insurer still denied it.

The patient appealed the decision, but by this time nine months had already gone by and the tumor was wrapped around his spinal cord. Again, the insurer denied coverage.

The patient then requested external review pursuant to state law, and just over a year after the initial diagnosis the reviewing panel overturned the denial of coverage. BCBSM paid for the therapy.

The patient then took BCBSM to court, alleging that the denials were a breach of his insurance contract. A lower court dismissed the case, finding that there was no breach because BCBSM ultimately paid. But the state court of appeals overturned the decision, deciding that because the external reviewer found that the procedure was, in fact, a medical necessity under the contract, the patient could bring a case accusing the insurer of violating it.

Water parks offer summer fun, but hazards lurk

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had been reengineered midway through construction when sandbags flew off during early tests, and after it opened riders had complained of shoulder straps breaking, forcing riders to grip handles with their legs to hold on. One of the park's owners also apparently admitted that he and the designer based their design calculations on roller coasters, which don't necessarily translate well to water slides. What's more, state regulators hadn't inspected the park since 2012, two years before the ride opened.

Caleb's family ultimately sued the park's Texas-based owner and the manufacturer of the raft. The case settled out of court for a confidential amount, but the family still may seek to hold other parties responsible, including the designer of the ride.

Another recent case involves a man who visited Sahara Sam's Oasis Indoor and Outdoor Water Park in New Jersey in 2010. The visitor, Roy Steinberg, fell off a simulated surfboard on the park's "FlowRider" attraction. When he fell, he struck his head on the bottom of the pool, causing a spinal cord injury that left him a partial paraplegic. When he sought to hold the park responsible, a trial court threw out his case because before entering the park Steinberg had apparently signed a liability waiver absolving the park of responsibility for any harm he might suffer as a result of its negligence.

But the New Jersey Supreme Court overturned the decision. According to the court, the park had committed "gross negligence" by failing to post updated safety instruction signs provided by the manufacturer that if followed might have prevented the injury. Further, patrons who sign a liability waiver are only waiving claims for "ordinary" negligence, not "gross" negligence, the court said.

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This provides an important lesson that even if you sign a waiver when you visit a water park, it's still worth talking to a lawyer.

Water parks without exotic, over-the-top attractions like Verruckt and FlowRider pose risks too. For example, while the water in most pools at water parks is shallower than three feet, there is still a risk of harm, particularly for weak swimmers or children. The risk is heightened in wave pools, where someone can be knocked over and suffer a concussion or even drown.

None of this is to suggest that you shouldn't be taking your family to a water park on a hot summer day. But you should know the risks and be ready to assess for yourself whether a particular feature seems safe for you or your kids. You might also want to look into who inspects the park and how frequently. If you do suffer an injury at a water park and you suspect it's related to park operation and design, absolutely talk to an attorney to find out how you can best proceed.

Homeowner may be liable despite 'open and obvious' drop-off

Under the so-called "open and obvious danger" doctrine, it's generally understood that if you encounter a hazard that was plainly visible, decide to proceed and then get hurt, you're responsible for your own injury and can't blame anyone else. But if you get hurt due to what may seem to be an open and obvious danger, it's important to talk to an attorney anyway. That's because what appears at first glance to be open and obvious may, in fact, not be.

For example, Susan Blackwell of Michigan was attending a dinner party in someone's home. She headed down the hall to put down her purse in the host's "mud room." The lights were off and Blackwell couldn't see that there was an eight-inch drop from the hallway into the darkened mud room. She fell and injured herself. When she tried to take the homeowner to court, the trial judge dismissed the case, calling the danger "open and obvious."

But the Michigan Court of Appeals reversed the ruling and reinstated the case, relying on testimony from other guests that they didn't realize there was a step down either and that the drop-off was hard to see, even with good lighting. This created a question as to the obviousness of the hazard — a question that should have been determined by the jury.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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Employer responsible for employee's theft of confidential info

A man could hold an insurance agency responsible after an employee with an arrest record allegedly took his contact information from a confidential database and shared it with her boyfriend, who used it to intimidate him, the Massachusetts Appeals Court recently ruled.

Two years before the incident, the employee, Danielle Burgos, had faced federal weapons charges that were resolved without a conviction after she completed a diversion program. At that time she had been working for a car insurance agency for several years, and she continued to work for the company afterward.

At some point, the employee's boyfriend, Daniel Thomas, was fleeing from the police in her vehicle and hit the vehicle of a man named Michael Adams.

Afterward, Burgos used her employee access to access her own insurer's database and discovered Adams had filed a claim. She then apparently shared Adams's contact information with her boyfriend, who called Adams and made violent threats in an effort to get him to drop the claim.

When the agency discovered what Burgos had done, it fired her. But Adams sued the agency for negligently hiring and retaining her and failing to properly supervise her.

A lower court judge tossed out his claim, ruling that the particular crime Burgos had been charged with (and for which she was never convicted) shouldn't have suggested to her employer that she was unfit to handle sensitive, confidential information.

But the Appeals Court reversed, finding that the employer's failure to investigate Burgos's assurances that the federal charges were just a misunderstanding that wouldn't affect her ability to do her job should have been enough to allow Adams's lawsuit to go to a jury.