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Legal Matters®

Watch out for hazardous products

We all anticipate that the products we purchase — such as medicine, toys, household cleaners, sports and recreational equipment, food, and cars — will be fit for their intended use. But some products can turn out to be badly designed, dishonestly marketed or simply dangerous in a way the manufacturer or seller didn't realize at the time. In many instances, they can injure or even kill unsuspecting users.

That's why you should keep up on safety issues with everyday products and make note of those that have been recalled. That's also why we give periodic updates on products that, even if not recalled, may be unsafe.

Here are some that have been in the news recently:

- **Window regulators on Kia automobiles**

A window regulator is a mechanical system that makes power windows on automobiles function.

In recent months, owners of Kia Optima and Kia Sportage vehicles have been complaining to dealerships, the Kia Corporation and the National Highway Traffic Safety Administration about possibly defective window regulator units. Specifically, customers have complained that their front windows either don't roll up, get stuck midway or close in a crooked position. Kia itself has reported that this issue relates to drum gears separating or breaking.

This alleged defect is not only annoying for Kia owners, it can be dangerous, since it can distract a driver and create the risk of an accident.



Kia has issued a "technical service bulletin" to dealers and mechanics to help them fix the problem. But the company hasn't recalled the affected vehicles, which means owners either need to pay for the repairs themselves or drive with an annoying, distracting feature.

In the meantime, customers do have the right to take legal action and it's possible that a class action could be filed. If you own a 2016 or 2017 Optima or Sportage and are interested in discussing what next steps may be taken, talk to an attorney near you.

- **Samsung electric cooktops**

A number of electric ranges made by Samsung contain defective front-mounted burner control knobs. The defect causes burners to ignite from minor, inadvertent contact with the knobs, creating a burn hazard

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'Needlestick' injuries on the rise



Complex regional pain syndrome (CRPS) is a condition caused by nerve injury that usually affects an arm or a leg. Over time, the texture, color and temperature of the affected limb can change. In the most extreme cases, muscle and bone atrophy may even make it hard for an individual to move the limb at all.

CRPS can occur as a result of many things, but a lot of cases have piled up in recent years where the person suffering the condition thinks it was triggered by a needlestick injury caused by a blood draw or injection given carelessly by a doctor, nurse or lab technician. Often this can be due to the provider moving the needle

point under the skin to find a vein, failing to locate the right vein or misreading the right dosage.

If you believe you've suffered a needlestick injury resulting in nerve damage, it's critical that you document the injury, alert the provider and demand it be entered into your medical file. It is also very important to see a doctor right away, since the sooner you have it checked out, the more likely you are to be able to relieve CRPS symptoms.

Meanwhile, you should also contact a local attorney who handles medical malpractice claims to discuss what rights you may have. If it can be shown that your injury is due to a procedure that wasn't administered with the care it should have been, you may be entitled to compensation for the harm you suffered.

Drinking establishments held accountable for car crashes

You're probably aware that if you are injured in an accident caused by a drunk driver, you can seek to hold the wrongdoer accountable in court. But did you know you also may be able to sue the bar, restaurant or club where they were drinking before the accident?

This is what is known as a "dram shop" case. The key factor is being able to establish that the establishment continued to serve alcohol to the individual who caused the accident after it knew or should have known the patron was intoxicated. In some states, this even extends beyond drinking establishments to private individuals who serve alcohol to guests in their home.

A pair of recent cases from South Carolina underscores that the courts take dram shop liability very seriously.

In the first case, a man spent more than six hours drinking at two Charleston-area bars before heading off in his car toward North Charleston a little after 11 p.m. Shortly after, he struck and killed a bicyclist in the crosswalk of an intersection. The driver fled but was arrested a week later. Though it was too late to

measure his blood/alcohol content, an expert was able to use security video footage from the first bar to help determine that his BAC was likely more than twice the legal limit by the time he left the first bar and three times the legal limit when he left the second bar.

The victim's estate sought to hold both bars accountable. They argued that the driver had showed no visible signs of intoxication and that the victim's autopsy revealed that he too had a high BAC when he was killed and also had THC in his system.

The bars ultimately settled, however, for a sizable amount of damages, likely because they feared a jury might award even more.

The second case involved two men who died when a drunk driver broadsided their car at a speed of 70 miles per hour as they were backing into a driveway near Spartanburg. Both men were married. One left behind five children and another left behind three.

The drunk driver in this case, who was out drinking with co-workers before the crash, apparently had two beers at one bar and had beer, whiskey and other hard liquor at another one.

The bartender who served him at the second establishment admitted that she had no idea what his BAC might have been while he was at her bar. She also testified that she assumed the proof for bourbon was roughly that of wine, indicating a lack of training. Meanwhile, the other bartender admitted he didn't know it was illegal to serve an intoxicated patron.

The evidence that the bars didn't properly train their personnel about overserving patrons was sufficient to convince the two establishments to settle with the families of the victims.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!



Risk posed by wet cardboard on floor not ‘open and obvious’

In many states if you are injured on someone else’s property and seek to hold them responsible for your harm, they can escape accountability by showing that the hazard that caused the injury was open and obvious. In other words, the risk of harm was so apparent that any person or ordinary intelligence would have avoided it.

However, this theory has its limits. Take, for example, a recent Michigan case involving a slip-and-fall in a store on New Year’s Eve.

As customer Myra Stewart entered the store on a cold, wet night, she slipped and fell on a piece of wet cardboard under the floor mat, suffering injury.

A county circuit court judge rebuffed her attempt to hold the store responsible, describing the cardboard as an open and obvious hazard.

But the Michigan Court of Appeals reversed the decision. While the court acknowledged that the piece of cardboard itself might be an open and obvious hazard, the risk it posed was not. That’s because the cardboard was placed

near the doorway to keep customers from slipping and falling and Stewart used it as intended, and only slipped because it was wet after absorbing a lot of water from the weather. Now she will have an opportunity to bring her case to a jury if the store doesn’t settle first.



Watch out for hazardous products

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that can also cause fires. It’s particularly dangerous for small children.

As with the Kia automobiles, Samsung has acknowledged the problem but has not issued a recall. Instead the company is telling customers to put on different knobs or install locks to deal with the problem — solutions customers have to pay for themselves.

Not all Samsung electric ranges have this problem, but enough do to make this a serious issue. You can tell if your unit has this defect by listening for strange noises when you turn on your range, testing to see if the control knobs turn more easily than you’d expect or looking to see if the burners seem to suddenly heat up. If you’ve had to pay to repair your range or someone in your household has been injured by it, and you are wondering if you can seek legal recourse, speak with an attorney who handles product defect cases.

• Mamaroo swings and Rockaroo rockers

If you use either a Mamaroo swing or Rockaroo rocker to calm your crying baby, put away the product if your infant can crawl.

That’s because the U.S. Consumer Product Safety Commission issued a recall this summer due to reports of infants being strangled by the devices’ tension straps.

Specifically, the restraint harnesses on the product have been manufactured so that they dangle below the

seat when not in use. Crawling children can then become entangled in the straps. A 10-month old reportedly died as a result, while another 10-month-old suffered bruising to his neck before a caregiver pulled him to safety.

• Ford F-150 auto start-stop function

Many newer cars and trucks are equipped with stop-start systems that make the vehicle automatically shut down if it’s been idling for a short period of time, such as at a traffic light, and then starting up again when it’s time to move. This feature saves gas and reduces emissions.

However, owners of 2018, 2019 and 2020 Ford F-150 pickup trucks have reported that the system sometimes malfunctions, causing the vehicle to stall, shut off or completely lose power. Some owners have even reported their truck stalling in traffic after they’ve disabled the feature manually. Obviously this can be extremely dangerous.

Right now Ford hasn’t issued a recall, so owners are paying for repairs out of pocket. There may, however, be the potential of joining with other owners in a class action lawsuit. Talk to an attorney who handles auto defects to learn more.



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Condo association held accountable for fatal security lapse

A Massachusetts trial judge recently ruled that a condominium association had a duty to protect residents from foreseeable crimes committed by nonresidents who entered through common areas.

The nonresident in that case, Bampumim Teixeira, had previously worked for a short time as a concierge at the building and knew of its security vulnerabilities. He accessed the building by following a car that entered the garage, a move deployed by other intruders in the past.

He then summoned an elevator from the garage. Since he couldn't actually operate it without a special fob, he got on and waited for it to be called to a residential floor, from which he took the stairwell to access an 11th floor penthouse unit. Once he reached the unit, Teixeira stabbed residents Richard Field and Lina Bolanos to death.

Nine months earlier, Field had expressed concern to management that neighbors were accessing their floor via the unlocked stairwell despite his understanding



that the floor was supposed to be accessible only to penthouse residents.

The couple's estates brought wrongful death claims against the condo association, which argued in response that it had no duty to protect residents from the criminal activities of third persons.

But a Superior Court judge ruled that condo associations should be held to the same standard of care as a landlord.

The law may differ from state to state, so talk to a local attorney to find out the law where you live.