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Personal Injury
summer 2024

Legal Matters®

4th of July: a time for celebration, but also nation's most dangerous holiday

Getting together with friends and family to enjoy cookouts, parades and fireworks — often enjoyed with an adult beverage or two — makes the 4th of July many people's favorite holiday. However, statistics also show that it's the nation's most dangerous holiday.

According to data from the National Safety Council, more than 600 people are killed in automobile accidents and more than 70,000 people typically suffer nonfatal injuries on the road each 4th of July, which shouldn't be too surprising given how many cars are on the road and how many people get behind the wheel after one or more drinks too many.

Additionally, 4th of July tends to feature an explosion (no pun intended) in the number of inexperienced people handling fireworks, with the risks being compounded by alcohol, which leads to overconfidence and less regard for safety. That's why in 2020 the Consumer Product Safety Commission estimated more than 3,100 injuries to hands and fingers occurred between late June and early July that year.

Meanwhile, July 4 is a peak grilling day. And according to the U.S. Fire Administration, thousands of grill fires occur each year. These fires, which tend to occur as a result of unattended grills, leaking propane lines, and grease buildup from lack of cleaning, result in hundreds of injuries and even scattered fatalities.

Then there's liquor-related injuries. Data from Mothers Against Drunk Driving reports the 4th of July as one of the deadliest days of the year for driving while intoxicated.

So what happens when someone is injured as a result of someone else's careless celebration or even their own? It depends on the situation.



For example, if you are hurt as a result of someone else's use of fireworks, you may be able to hold the property owner or organizer of the fireworks display accountable if it can be shown that they knowingly purchased unsafe products, didn't take reasonable safety measures in setting them off, or set off the fireworks in an illegal space. And if you are injured setting off fireworks yourself, you might be able to hold the manufacturer responsible if it can be established that the fireworks were defective (for example, if they ignited too quickly or powerfully).

Parades, while fun, can also pose hazards. For example, driving a

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Elderly shopper recovers for tripping over electric cord



Shopkeepers have a legal obligation to protect customers from conditions in their store that could foreseeably result in injury. If they fail to remedy the dangerous condition or they fail to adequately warn customers about the hazard, the customer may be able to hold the store accountable for their harm.

That happened recently at a store in Massachusetts.

While an elderly woman was waiting in line to check out, one of the store's employees directed her to walk to another register. The customer didn't realize, however, that the store was under renovation and she tripped and fell over a raised electrical cord that was running from the wall to the register and which was not secured on the torn carpet.

The shopper fell and could not move, though she recalled seeing the raised area and silver metallic tape while she was on the ground before being taken to the hospital, where she was diagnosed with a hip fracture.

She ended up having to undergo rehabilitation and physical therapy.

When the shopper sought to hold the store responsible for her injuries, the store countered that the danger was "open and obvious," and, accordingly, the customer was the primary cause of her own injuries.

However, two eyewitnesses rebutted those arguments. Additionally, the customer quickly obtained photos of the dangerous condition that showed that it blended in with the floor, and she pointed out that the store employee specifically invited her to travel through that area of the floor when they knew or should have known of the hazard.

Ultimately, rather than risking a potentially bigger jury verdict, the store opted to pay the shopper a substantial settlement.

If you or someone close to you has suffered harm from a dangerous condition in a store or other place of business, call a personal injury attorney near you who can discuss what rights you may have.

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!

Class action over defective flooring doesn't bar wrongful death case

A "class action" is a single lawsuit brought by a large group of people — sometimes thousands — who have been injured by the same wrongdoer the same way. They're particularly common in cases brought against manufacturers of defective drugs or dangerous products.

Once the class prevails in court or obtains a settlement, the proceeds are split among the class members.

A recent case from Virginia, however, shows that if you have already joined a class action (possibly by filling out a form or by not "opting out" of the

class when you receive an email informing you of the case), it's not necessarily your only avenue to recovery. You should still contact a personal injury attorney to see if you have individual rights you can assert against the company as well.

In the Virginia case, Ozan Tarbus purchased laminate flooring from LL

Flooring and installed it in his residence. He soon experienced severe breathing issues requiring him to use a CPAP machine. Within a couple of years, he was diagnosed with liver and pancreatic cancer. He died a year later at age 48.

Two days after Tarbus entered hospice care, LL Flooring sent him an email notice advising him of a settlement agreement of which he was a class member. The settlement stemmed from a class action related to the sale and marketing of the unsafe flooring.

Tarbus did not opt out of the class in the 19 days before he died.

Following his death, Tarbus' ex-wife filed a wrongful death claim against LL Flooring on behalf of their children, asserting that a known carcinogen in the flooring caused his death.

A federal District Court dismissed the lawsuit, finding that his claims were settled through the class action.

But the 4th U.S. Circuit Court of Appeals reversed. According to the court, the claims for bodily injury and death were "materially distinct" from the claims in the settlement agreement, which focused on the quality of the flooring and how it was marketed.



I got hurt playing pickleball. Who's responsible?

Pickleball has exploded in popularity in recent years. This paddle racquet sport — kind of a hybrid between tennis (and it's often played on a converted tennis court), ping-pong and paddleball — involves two players for games of singles and four players for doubles, who use a paddle to whack a small plastic wiffle-type ball back and forth over a net.

The game, which can be played indoors or outdoors, has caught fire because it's fun, social and accessible to people of all ages and physical abilities.

Pickleball has also seen a rise in sports-related injuries. Many such injuries are from strain and overuse of muscles and tendons that occur in people who quickly become avid players after years of a sedentary lifestyle.

Additionally, the ball is small and lighter and airier than a tennis ball, which requires players to lunge more going after it, leading to slips, trips and falls. Players have suffered facial and orbital traumas and torn rotator cuffs, among other injuries.

Some pickleball injuries can arise that may even be someone else's fault. For example, players can get hurt on courts that are poorly designed and maintained, with bad lighting or uneven surfaces that create tripping hazards. Similarly, if a court isn't cleaned between uses, including the clearing of any water, debris and spills from the floor, a slipping



hazard can result.

People can also be injured by poorly made or designed equipment, such as paddles that become delaminated too easily and quickly, resulting in an increased amount of power when striking the ball and creating a safety hazard for other players in close proximity.

Depending on the circumstances, you may be able to hold another person accountable for your pickleball injury, whether it's the owner or operator of the court, a paddle manufacturer, or even an out-of-control player.

Your ability to recover, however, would depend on the facts of your case and the laws where you live. If you think you may have a case, call us to review your potential claim.

4th of July: a time for celebration, but also dangerous holiday

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parade float can be difficult to do safely, since many lack windshields and the driver is relying on small television screens and instructions from a spotter. If an injury occurs because of a driver's carelessness or the failure of parade organizers to properly vet the driver, the organization that sponsored the float or the parade could potentially be held accountable.

Similarly, if parade organizers fail to properly train parade workers tossing beads, candy and other swag into the crowd and you get struck in the eye, you might be able to hold organizers accountable as well.

As for backyard BBQs, if a party guest is injured due to a cooking-fire-related accident, the homeowner might potentially be responsible (and hopefully they have enough insurance coverage to pay for your medi-

cal expenses and other harm you might suffer).

Finally, if you're hosting a party, it's critical to monitor the alcohol consumption of your guests and take steps to prevent them from getting behind the wheel if they drink too much.

It's even more critical to ensure that party guests who are minors are not drinking. That's because "social host liability" laws in your state might hold you accountable for an accident caused by someone who became intoxicated at your party.

Of course, the results of each potential case depend heavily on the unique factual circumstances and the laws of the state where you live.

Interested in learning more? Talk to an injury lawyer where you live.

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Primary home insurance policy covers dog bite injury at second home

The Appellate Division of the New Jersey Superior Court recently decided that the insurer of a couple's primary residence could be responsible for covering a dog bite injury sustained at their separately insured vacation home.

The couple, Anthony and Janet Berardi, own a primary residence in upstate New York and a second home in Montauk, on Long Island.

The Berardis retained a cleaning service for their Montauk property and typically kept their Tibetan Mountain dog locked away when the house cleaner was there.

However, one summer day in 2021, a new employee of the cleaning service arrived two hours earlier than expected. The dog, which was not secured at that time, attacked the cleaner, allegedly causing her injuries.

The house cleaner sought to hold the Berardis responsible for her alleged pain and suffering, lost wages and medical expenses. The Montauk home where the injury occurred was insured by a policy with Scottsdale Insurance that limited coverage for dog bites to \$10,000.

On the other hand, their primary home in Sparta was insured by a policy with Franklin Mutual Insurance (FMI) that provided up to \$10,000 in

medical payments to others as well as up to \$1 million in liability coverage, plus a \$5 million excess coverage endorsement.

When FMI questioned its responsibility to cover an injury sustained at the Montauk home, the Berardis filed suit against the insurer alleging that FMI was violating their contract.

A trial judge ordered FMI to defend them in the lawsuit, and the Appellate Division affirmed.

According to the appeals court, a "locations not insured" provision in that policy provided coverage for bodily injury to residence employees performing duties at other premises.

Meanwhile, the court found that language in the policy regarding medical payments to others clearly allowed for payment of medical bills stemming from an accident at another premises if caused by animals owned by in or in the care of the Berardis.

If you're injured at someone else's house, the key takeaway here is to call an attorney right away and not assume that the homeowner has insufficient insurance to cover your harm. A good attorney can investigate, read the insurance policy carefully, and in some instances find coverage that wasn't clear at the outset.