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Exceptional Representation For the Injured

Could Your Fitbit Be a Witness?

Fitness trackers, like the Fitbit, can keep a record of your heartbeat and activity level while worn. For those who want to track their steps, sleep, and activity level, these devices offer a convenient way to do so. Should the need arise, the information might also help support your testimony in the legal arena, but collected data could also be used against you.

For example, a Canadian law firm used information collected from a Fitbit to help prove an injury claim by showing a sudden decrease in the client's level of activity after an accident. While someone's level of activity is debatable,



the claimant was a fitness instructor; it would be unlikely she was inactive before the accident.

On the flip side, a Fitbit or similar monitoring device can be used against you. A Florida woman was wearing a Fitbit when she claimed to be asleep, awakened, and sexually assaulted. Police found her Fitbit at the scene, received permission to access the account, and discovered that the woman was awake and walking around when she claimed to be asleep.

Technology is constantly changing, and it is always interesting to see how it finds its way into the legal arena.

Tailgating

Tailgating before the big game is sometimes more fun than the game itself...cookouts, camaraderie, adult beverages...what could go wrong? Luckily, usually nothing; however, the mix of alcohol, excitement, and extreme fandom presents many problems and can result in fights, damaged property, and auto accidents. Tailgaters have been shot, hit by moving vehicles, hit by flying tents and falling tables, and burned by exploding grills.

If a tailgater gets injured and needs to recover damages, who would be named in a lawsuit? Stadium owners and universities that allow tailgating in parking lots can be

held responsible if they didn't take reasonable measures to protect tailgaters. For example, providing no or little security in an area where consumption of alcohol is permitted would likely be considered unreasonable and negligent. Likewise, if you are at a tailgate hosted by a business or fraternity, the organization may be considered a social host and be reasonably responsible for protecting guests. Individuals can also be sued for injury.

Before attending your next tailgate, keep these things in mind: Forgo glass bottles and dishes, store food properly, keep your space free of clutter and debris, never provide alcohol to someone underage, take a fire extinguisher if you grill, and consider purchasing one-day event liability insurance to protect yourself.



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HEADS UP

Concussions and Student Athletes



More than 38 million boys and girls, ages 5–18, participate in organized sports across the country. Playing a sport is a fun way to socialize and reinforce values such as teamwork and perseverance, but it also means potential injuries.

Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. It is caused by a blow to the head or body that causes the brain to slam against the interior of the skull. Even seemingly mild bumps to the head can cause a concussion.

When schools and athletic associations don't have or follow concussion-management plans, players can sustain life-altering injuries. In 2014, a former Illinois high school football player filed a class-action lawsuit against the Illinois High School Association, claiming that he suffers serious memory loss and migraines due to the many concussions he incurred as a high school football player. The suit, though later dropped, sought to reform policy and did not seek damages.

To help raise awareness of concussions and proper concussion protocol, the CDC has developed the Heads Up: Concussion in Youth Sports campaign. It includes practical, easy-to-use information for coaches, sports administrators, athletes, and parents. For more information, visit cdc.gov/ConcussionInYouthSports.

Signs of a Concussion Include:

- One pupil larger than the other.
- Drowsiness or inability to wake up.
- A headache that gets worse and does not go away.
- Slurred speech, weakness, numbness, or decreased coordination.
- Repeated vomiting, nausea, convulsions, or seizures (shaking or twitching).
- Unusual behavior, increased confusion, restlessness, or agitation.
- Loss of consciousness (passed out/knocked out).

Source: CDC Newsroom

JUMP! Trampoline and Jump Park Injuries on the RISE



If you're a kid (or a kid at heart), the idea of wall-to-wall trampolines is a dream come true. Trampoline and jump parks are popping up all over the country, providing entertainment and exercise. Corresponding with the increased number of jump facilities, the number of injuries is also on the rise. According to a recent CNN report, almost 100,000 people visit emergency rooms each year with trampoline-related injuries. Most injuries still occur at home, but between 2010 and 2014, injuries at trampoline parks rose from 581 to 6,932.

Before you can jump, you must sign a waiver that releases the facility and its employees from liability for injury. But are you signing away all your rights? The short answer is that it depends.

While a liability release is still valid, the court will want to know how you were injured. Did you twist your ankle while jumping? If the answer is yes, a judge will likely rule that you assumed responsibility for the dangers of jumping when you signed the waiver to participate. On the other hand, if you sustained an injury when a trampoline broke or because the staff wasn't properly managing jumping areas (if there were too many people bouncing or aggressive bouncers, for example), a judge may say that the facility owners/managers—or the trampoline manufacturer—were negligent. In this case, a claimant may still be able to recover for their injuries.



Keep Your Kids Safe on the Road

According to the National Highway Traffic Safety Administration (NHTSA), a child under 13 is involved in a car crash every 33 seconds. These crashes are a leading cause of death for children in the United States. To raise awareness, the NHTSA sponsors Child Passenger Safety Week each year during a week in September, culminating with Seat Check Saturday.

Here are guidelines for choosing a seat that fits your child:

Rear-facing car seat, birth–approximately 3 years

Keep your child rear-facing as long as possible. Your child should remain in a rear-facing car seat until he or she reaches the top height or weight limit allowed by your car seat's manufacturer. Once your child outgrows the rear-facing car seat, they are ready to travel in a forward-facing car seat with a harness and tether.

Forward-facing car seat, approximately 4–7 years

Keep your child in a forward-facing car seat with a harness and tether until he or she reaches the top height or weight limit allowed by your car seat's manufacturer. Once your child outgrows the forward-facing car seat with a harness, it's time to travel in a booster seat, but still in the back seat.



Booster seat, approximately 8–12 years

Keep your child in a booster seat until he or she is big enough to fit in a seatbelt properly. For a seatbelt to fit properly, the lap belt must be positioned snugly across the upper thighs, not the stomach. The shoulder belt should fit snugly across the shoulder and chest and not cross the neck or face. Remember, your child should still ride in the back seat because it's safer there.

Seat belt, 8–12 years

When your child is ready to use a seatbelt without a booster, be sure that the belt fits properly. The lap belt should fit snugly across the upper thighs, and the shoulder belt should fit snugly across the shoulder and chest. The back seat is the safest spot for kids to ride.

Source: safercar.gov

Haunted Attractions

Haunted attractions are thrilling but can be dangerous—dim (or no!) lights, narrow passages, confusing strobe lights and loud noises, obstacles in walkways, and scary characters that frighten patrons. This pretty much breaks every rule stating that owners have a duty to provide a reasonably safe property. Every year, haunted-house goers sustain cuts, bruises, broken bones, and twisted ankles. Can those who get injured sue the property owner and production group for their losses?

Many injured thrill seekers have tried to sue, but most have failed. When entering a haunted attraction, customers assume the risks associated with it and with being startled, scared, pushed around by other patrons, and chased by actors. Occasionally, haunted attractions will settle cases, but it is rare.

While creating a frightening and difficult-to-navigate attraction isn't negligent, haunted attractions are still expected to provide a reasonably safe environment. For example, in 2009 Glenda Dickson broke four vertebrae in her back when she fell out of a second-floor window in a dark room after being startled by an actor. Leaving a window open and scaring people standing in front of the window is not reasonable—even for a haunted house. It is unknown whether Dickson filed a claim against the business, but most lawyers would agree that this would be considered negligence.

CONSTRUCTION ZONE *Roadway Safety Signage and Protocol*

Construction zones may not be open to public traffic but still require roadways and safety rules to control the flow of traffic and create a safe environment for workers. Like public roads, construction sites must have roadways with safety rules and signage. When they don't, injuries—and deaths—can occur. The National Institute for Occupational Safety and Health reported an average of 669 deaths in construction zones each year between 2007 and 2012, 69 percent from construction vehicles striking workers.

According to safety standards developed by the Occupational Safety and Health Administration, when establishing a construction zone, companies are responsible for ensuring the safety of workers by providing:

- **Traffic control:** Traffic patterns should be established by construction project managers and should be communicated with approved signs, cones, barrels, and barriers. Drivers and pedestrians must be able to see and understand the proper routes.
- **Work-zone protections:** Various concrete, water, sand, and collapsible barriers; crash cushions; and truck-mounted attenuators should be used to keep outside traffic away from construction work zones.
- **Lights:** Lighting for workers on foot and for equipment operators should be at least 5 foot-candles or greater (foot-candles are a measure of light intensity). Where available lighting is not sufficient, flares or chemical lighting should be used. Glare should be controlled or eliminated.
- **Safe vehicles:** Seatbelts and rollover protection should be used on equipment and vehicles as the manufacturer recommends.

Source: osha.gov

Phantom Crashes

When another vehicle causes you to crash without hitting you, how can you prove that the driver was at fault? It sounds a little crazy, but there are a lot of situations where one vehicle forces another vehicle off the road or into another object or car without any contact whatsoever. One common scenario is when a car merges or turns onto a roadway haphazardly and cuts off another vehicle. That vehicle may then have to swerve into another vehicle, oncoming traffic, or off the road.

Single-car accidents are covered under a driver's collision insurance and usually have a deductible. If someone else caused the accident, this seems unfair. Unfortunately, if you have a no-contact accident that causes damage, even if another person is at fault, you and your collision insurer will still be stuck with the bills for injury and damage.

If someone is injured in a no-contact crash, an at-fault driver could be held liable. This would depend heavily on the other driver admitting fault or eyewitness testimony. If the other driver is unknown, as is often the case, uninsured motorist coverage might cover the accident. In some states, an uninsured motorist claim can be filed, with the at-fault driver being a phantom driver.

If you or a loved one was injured in a no-contact accident, call our office for a confidential case evaluation.



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Vaping Explosions

People trying to wean themselves off traditional tobacco cigarettes who turn to electronic cigarettes, also known as e-cigarettes, could be in for a surprise. The lithium-ion batteries in the devices have been known to overheat, causing explosions leading to fires and, if the unit explodes during use, injuries to the face, eyes, hands, and neck. E-cigarettes have been reported to explode when not in use, while recharging, and while being used. Explosions have occurred in people's pockets and even in moving vehicles.

Quality batteries have little chance of defect, but cheap batteries don't always have mechanisms that keep the batteries from shorting and exploding. Although neither the Consumer Product Safety Commission nor the Food and Drug Administration has the authority to regulate the devices, the FDA does take complaints through its Safety Reporting Portal.

Unfortunately, the product packaging doesn't indicate the explosion risk, and most people are unaware of the possibility.

