Legal Matters®

Consumer Safety

You may have a good slip-and-fall case

Many people who are injured in a slip-and-fall don't know their rights. Often, they'll simply think it was their own fault and therefore they have no case. In a lot of instances this may be true. But if you've been hurt in a fall, it's still a good idea to consult with a lawyer who handles personal- injury cases. That's because it may be easier to get compensated than you realize — even if you've encountered an "open and obvious" danger.

Take for example a recent case in New York City. A theatergoer named John Sada slipped and fell on a wet staircase during intermission, then sued the theater for his injuries.

The theater owners argued that they couldn't be held accountable because they'd been maintaining the theater responsibly and had no realistic opportunity to discover the hazard and address it in time to pre- vent the injury. To back up their argument, the owners even presented evidence of their maintenance schedule.

However, a New York judge concluded that the case could proceed to trial. According to the judge, evidence of the maintenance schedule wasn't enough to show the owners weren't negligent (unreasonably care- less). For that, they would have had to show they stuck to the schedule on the day of the accident. Sada also presented evidence that he told an usher about the water on the stairs before he left for intermission, 15 minutes before his fall occurred. While you might think this would hurt his case — after all, he knew of the hazard well before he decided to navigate it, making it an "open and obvious danger" — the court felt he showed enough to be able to bring a claim against the owners.

In another case, this one from Massachusetts, a woman who tripped and fell while encountering a supposedly obvious hazard got a significant recovery at trial.

Pamela Matckie was working as a volunteer chef at a food festival being held in Gillette Stadium, home of the New England Patriots. She tripped on warped plywood placed around the perimeter of the field and shattered her left arm bone.

Matckie, who had graduated from the renowned Le Cordon Bleu cooking school, suffered permanent

damage and could no longer pursue her dream of working as a professional chef. She sought to hold several parties accountable: the stadium's owners, its developers, the security and event staffing company that handled the festival and the stadium owner's insurer.

continued on page 3

LIEBERMAN INJURY LAW

137 West Royal Palm Road
Boca Raton, FL 33432
(954) 596-9944
Toll Free: (800) 973-5331
www.yourinjuryfirm.com
message@yourinjuryfirm.com

Be aware of new risks associated with some products

Manufacturers generally try to put the best, safest products on the market. Usually they succeed. But sometimes a product is not properly designed and can pose a risk of harm to users. Sometimes this harm can be very serious. Here are a few products that have recently been in the news for risks they pose. If you use or have been exposed to any of these products, you should be aware of these risks. And if you believe you've been harmed in the manner described, you should talk to a lawyer to see if you might have a legitimate claim. These products include:

▶ The 2015 Jeep Grand Cherokee

An apparent design flaw in the 2015 Jeep Cherokee has been connected to hundreds of accidents. One of these accidents caused the death of actor Anton Yelchin, who played Chekov in the updated *Star Trek*. The 27-year-old got out of his vehicle after he thought he'd put it in "park" and it suddenly rolled down his driveway, pinned him against a brick pillar and crushed him to death.

As it turns out, a defect in the electronic shifter apparently failed to provide an automatic warning that the driver door was open while the vehicle was in gear. It also turned out that this defect apparently affects hundreds of thousands of vehicles and puts drivers in serious danger if they leave the vehicle while the engine is running and the emergency brake isn't engaged.

In response, Jeep's parent company, Fiat Chrysler, has issued a recall for 2014 and 2015 Jeep Cherokees and for Dodge Chargers and Chrysler 300s from the years 2012 to 2014. If you drive one of these cars, be aware of the risk and contact your dealer once a fix becomes available.

▶ Proton Pump Inhibitors

Proton pump inhibitors (PPIs) are pills that millions of people use to treat symptoms of acid reflux, like heart- burn. But they've been linked to serious side effects and now they may be linked to severe problems when people discontinue the medication, like the risk of bone fractures, heart attacks, brain dementia and kidney disease. The pills include brands like Prilosec, Nexium and Prevacid.

If you believe you've suffered complications from the use of PPIs, you should talk to an attorney to discuss potential legal options.

▶ Toxic Exposure

The link between asbestos exposure and deadly diseases like mesothelioma and lung cancer is old news. So is the link between other toxic substances and other deadly diseases. But there have been some recent developments on the issue of "take home" or "secondary" exposure. These cases involve people who got seriously ill after exposure to asbestos and other toxic materials from family members who were themselves exposed to such materials at work.

One such case arose in New Jersey. The wife, Brenda Ann Schwartz, was diagnosed with irreversible lung disease. She claimed her disease was caused by secondary asbestos exposure years earlier when her husband Paul was exposed to beryllium while working at a ceramics facility. Paul allegedly brought the substance home in his clothes, which Brenda often handled.

Brenda argued in court that Accuratus Corp., which owned the facility, should be held responsible for her condition.

While the company claimed it had no duty of care to the spouse of an employee, the New Jersey Supreme Court found that it was foreseeable that an employee's spouse would be handling and laundering his clothes and thus the company could be held liable.

Playful punch results in serious harm

Many of us have given friends playful punches, taps and shoves while horsing around. Usually nobody gets hurt. But what if the recipient is unusually fragile and what seems like harmless fun results in severe injury?

Under the so-called “eggshell skull” doctrine, you “take your victim as you find him.” In other words, you are responsible for the full extent of any harm, not just the level of the harm you may have foreseen.

An interesting twist on this issue came up in a recent case out of Lincoln, Nebraska.

There, a sheriff’s deputy playfully hit a Lincoln police officer on the left shoulder as he greeted her, not knowing she’d recently had rotator cuff surgery. The punch caused her serious injury.

The officer, who worked for the city, filed for worker’s compensation and was awarded more than $63,000. The city in turn sought to recover from the county, which employed the sheriff’s deputy who caused the harm. Ultimately, the court found that the incident constituted “battery” rather than negligence. As a result, under a quirk in state law, the county was immune from responsibility. But theoretically, if the county wasn’t immune on a technicality, it could have been found responsible for the entire $63,000 even though the deputy had no idea the cop was in such a delicate state.

LIEBERMAN INJURY LAW

137 West Royal Palm Beach Road
Boca Raton, FL 33432
(954) 596-9944
Toll Free: (800) 973-5331
www.yourinjuryfirm.com
message@yourinjuryfirm.com

You may have a good slip-and-fall case

continued from page 1

All the defendants pointed fingers at each other before pointing out that Matckie and other volunteers could have simply avoided walking on the plywood boards, which they characterized as an "open and obvious danger."

A jury, however, disagreed and awarded substantial damages to the estate of Matckie, who had passed away a few weeks before the trial.

Finally, in another Massachusetts case the highest court in the state expanded what's known as the "mode of operation" doctrine in a way that could make it easier for slip-and-fall victims to recover, even where the hazard is arguably open and obvious.

Generally, when an injury victim sues a storekeeper over a slip-and- fall, the victim has to show that the owner had some kind of notice of the condition that caused the accident.

But under the mode of operation rule — which is recognized in a number of states — a storekeeper's negligence is almost implied if there's a "substantial risk of injury" inherent in how he or she runs the business. So if, say, a grocery store customer slips and falls on a piece of fruit in a self-serve produce aisle, the customer doesn't have to show the shopkeeper knew or should have known of the condition. Instead, in order to avoid responsibility, the shopkeeper has to show it did everything a reasonable shopkeeper in the same situation would have done.

Initially, Massachusetts only applied this rule to cases that involved "spillage and breakage" of items intended to be sold on the premises or carried about the store.

If you have suffered an injury in a fall, it's very important to talk to an attorney instead of assuming you have no recourse.

But more recently, the state's highest court ruled that under the mode of operation rule a woman who broke her leg slipping on a spilled drink on a dance floor could sue the nightclub where the accident took place. And even more recently, the court gave the go-ahead for a woman to sue a gardening store after she fell on a small stone that had migrated from a landscaped gravel area onto a concrete walkway.

Of course, the results in any personal-injury case depend on the specific circumstances. But if you have suffered an injury in a fall, it's very important to talk to an attorney instead of assuming you have no recourse.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

‘Pill mill’ doctor responsible for patient’s opioid consumption

The opioid crisis has been sweeping the nation, leaving human wreckage in its wake. This crisis can be blamed at least in part on doctors who over-prescribe pain pills without taking proper precautions against the risk of addiction.

A jury in Missouri recently said “enough” and held a St. Louis doctor liable for malpractice for prescribing more than 37,000 pain pills over a 4-year period to a patient with a back injury.

The case involved a city maintenance worker who was in his thirties when he sought treatment for chronic lower back pain a decade ago. According to the lawsuit, his primary care physician Henry Walden immediately began opioid therapy of “unfixed duration” rather than seeking other treatment options.

The dosage steadily increased over the next four years. When the patient began this treatment in 2008, he was taking 54 milligrams of narcotics per day. By 2012, he was taking more than 1,500 milligrams per day. These drugs included OxyContin, Oxycodone and Vicodin.

The doctor also apparently did not monitor the patient’s treatment. According to the patient, he suf- fered severe addiction as a result, which cost him his marriage and permanently destroyed his other family relationships.

This case may represent an extreme situation, but opioid addiction is increasingly common. And it doesn’t take a “pill mill” physician like Walden to trigger severe addiction. Well-meaning physicians can easily fall into the trap of overprescribing opioids too. If they violate standards of professional care in doing so, they can also be held accountable just like the doctor in St. Louis. So if you or a loved one is showing signs of opioid addiction and you have questions about the treatment plan, you should talk to an attorney to see what kinds of rights you might have.

LIEBERMAN INJURY LAW

137 West Royal Palm Beach Road
Boca Raton, FL 33432
(954) 596-9944
Toll Free: (800) 973-5331
www.yourinjuryfirm.com
message@yourinjuryfirm.com

Adults responsible for accidents caused by underage drinkers

Some parents of teenagers let their kids and their friends consume alcohol on their property thinking, "Well, kids are going to drink anyway, so they're better off doing it here where they're safer than doing it elsewhere."

But that kind of thinking is a huge mistake. As a recent decision from the Maryland Court of Ap- peals illustrates, the mistake can be tragic, resulting in significant liability for the homeowner.

The ruling arose from two separate cases that ended up being heard together.

In the first case, a 26-year-old homeowner served drinks to an 18-year-old. The homeowner supposedly knew the minor was intoxicated and told him he could drive away but not until he felt okay to do so. The driver waited about six hours, leaving in the early morning and striking and killing a pedestrian. He had an elevated blood alcohol count at the time of the accident.

The other case involved a woman who came home to find her underage son having a party with his underage friends. Guests apparently told the homeowner that a 22-year-old who was about to drive away was intoxicated, but she did nothing to stop him. A 17-year-old who got drunk at the party was riding in the back of the 22-year-old's pickup truck. When he wrecked the truck, the 17-year-old died.

The court found that the adults in both of the combined cases could be held responsible for the respective deaths. In reaching its conclusion, the court pointed to a state criminal law barring adults from serving alcohol to minors in their home. The panel decided that any adult that breaks this law is responsible for any harm that ensues, as long as allowing the consumption of alcohol contributed to that harm.

LIEBERMAN INJURY LAW

137 West Royal Palm Beach Road
Boca Raton, FL 33432
(954) 596-9944
Toll Free: (800) 973-5331
www.yourinjuryfirm.com
message@yourinjuryfirm.com