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Legal Matters®

Consumer Safety
summer 2019

Be on the lookout for dangerous products

We all should be able to expect products, from everyday household goods to drugs and medical devices, to be safe. But that's not always the case.

It doesn't matter if a dangerous product was poorly designed, deceptively marketed, or just presents hazards that weren't known at the time. What does matter is that a defective product can hurt you or even kill you.

It's important to stay informed about safety issues in common products and pay attention to those that have been recalled. That's why we like to give periodic updates on products that may pose safety issues. Here are some potentially hazardous products that have been in the news recently:

• IVC filters

An IVC blood filter ("IVC" stands for "inferior vena cava") is a cage-like device inserted into the largest vein in the body to capture blood clots that might otherwise reach the lungs and cause a potentially fatal blockage.

IVC filters are especially helpful to people who can't take blood thinners, but they can present dangerous side effects. For example, these filters can fracture, migrate, get stuck or get tilted, resulting in perforations of vessels, organs and tissues that can be fatal.

A recent case out of Texas highlights the heightened risk of these filters being left in too long. In that case, doctors planned to remove an IVC filter from a Houston firefighter seven weeks after it was implanted.

Though the FDA recommends removing the filter 29 to 54 days after implant, meaning his surgery was within the suggested range, it was apparently too long. During surgery to remove the filter, doctors couldn't find the implant, which had lodged in a vessel. A subsequent surgery also



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was unsuccessful, and now the patient will have to go through ongoing monitoring. A jury found the hospital accountable and ordered the patient to be compensated for his harm.

This isn't to say that IVC filters are dangerous in every case. That's an issue to discuss with your doctor, but beware of the risks and be advised that lifestyle changes can decrease the risks of blood clots too. In the meantime, if you or someone you love has suffered complications from an IVC filter, talk to a lawyer to find out what rights you have.

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• CVS nasal mist

Millions of people who suffer from sinus pain and pressure use nasal sprays for much-needed relief. Nasal mist users should be aware that CVS-brand nasal mist has been pulled from the shelves by its Florida-based manufacturer, Product Quest Manufacturing, in a voluntary recall announced by the FDA.

According to the manufacturer, a specific lot of the spray was contaminated with a bacteria that could result in infection. The infection from this particular strain of bacteria could even be life-threatening for those with immune-system problems or cystic fibrosis. If you have CVS-brand nasal mist in your medicine cabinet, be sure to check the side panel. If it's coded with "Lot 173089J" and "EXP 09/19," it's one of the more than 16,000 units that's been recalled.

• Zostavax

Anyone who's ever experienced the pain of shingles would probably view Zostavax, a drug intended to prevent it in adults, as a godsend. However there are indications that its side effects can result in viral infections, creating questions about how safe it is.

For example, a woman recently filed suit against the drug's manufacturer, Merck, claiming she developed a severe shingles outbreak, causing vision loss, after she received the Zostavax vaccine. It's the latest in a number

of lawsuits filed against Merck over Zostavax side effects. If you are thinking of getting the vaccine, it's very important to discuss these safety issues with a physician.

• 3M earplugs

For a couple of decades, 3M was selling a special kind of earplug with a "dual-ended" design enabling the plug to be flipped over for varying levels of protection. These earplugs have been used in the military to protect against exposure to the sounds of gunfire and explosions while still allowing the user to hear quieter sounds like approaching troops.

As it turns out, these earplugs may have been defectively designed. For example, users say they're too short to be inserted properly to provide the right level of protection, and they often dislodge from ear canals in such a way that users don't notice them. Additionally, they apparently aren't designed in a way to make a correct seal.

As a result, many servicemen and servicewomen who relied on them for protection have reported hearing loss. What's even more serious is that 3M allegedly covered up the risks in order to become the military's exclusive provider of earplugs. Though they were discontinued in 2015 and are no longer in use, it's estimated that millions of military personnel used these earplugs.

If you or a loved one served in the armed forces over the past 20 years and experienced hearing loss, tinnitus (persistent noise or ringing in your ears) or loss of balance that could be linked to these earplugs, contact an attorney where you live to discuss your options.



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Contractor can face lawsuit despite using customer's specs

A contractor who installs something exactly according to the customer's specifications is not necessarily off the hook if someone gets hurt, as a roofing contractor who did work at the Chicago White Sox's ballpark recently discovered.

In that case, a contractor installed a new roof at the stadium, historically known as the new Comiskey Park but officially known as "Guaranteed Rate Field." In 2013, a maintenance worker on the roof slipped and suffered serious muscle tears. The worker took the ballclub, the contractor and the manufacturer of the roofing product to court to get compensation for his injuries. A lower court judge tossed the case out, ruling that he had no claim.

The worker appealed and an Illinois appeals court found that both the manufacturer and

the team were in the clear. The manufacturer was off the hook because it gave the contractor sufficient warnings about the use of its product, and the White Sox were because they had sought the contractor's expertise on roofing and safety materials.

However, the appeals court found that there was a case against the contractor. In addition to the warnings the manufacturer provided, the team gave the contractor input on specs, plans and materials, unlike other projects on which the contractor is brought in after everything has been designed and planned.

Every case is different, but if you or someone close to you suffers injury that may be due to poor design or construction, talk to an attorney.

Couple trapped in car receives big jury award

A recent South Carolina case shows that you don't necessarily need serious physical injuries to hold someone else responsible for his or her misconduct.

In the case, Jean and Johnnie Corbett's vehicle overturned after hitting another vehicle that had suddenly pulled out in front of them at an intersection. The driver of the other car was drunk.

Johnnie only suffered \$4,000 worth of medical damage. Jean suffered more serious injuries, but that claim was settled without her filing a lawsuit.

However, the couple suffered a harrowing experience being trapped upside down in their car, and Johnnie witnessed his wife's injuries. Meanwhile, Jean claimed she suffered from "loss of consortium" (legalese for loss of companionship, love, affection or intimate relations) as a result of the accident's impact on her husband.

Despite limited physical harm to bring before a jury, the couple took the driver to court, where they got a judgment for nearly \$800,000. A

small portion represented the emotional distress the couple suffered; most of it was for "punitive damages," money intended to punish the wrongdoer for extremely bad behavior (in this case driving under the influence) and deter similar conduct.

Punitive damages are very rare, so they're not something an injured party should expect in every case. Still, this case shows that even if you don't have severe injuries, you may still have a strong claim if you have the right set of facts. That's why it's important to speak to a lawyer after any accident that could be someone else's fault.



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Airline potentially responsible for fall on staircase from tarmac

If you've ever felt a little bit uneasy climbing or descending the portable staircase (known as an "aircase") from the tarmac to an airplane, you're not alone. A case out of Michigan suggests that if you trip on these steps and get hurt, the airline could potentially be held responsible.

The injured person in that case, Darren Sensat, was boarding a Southwest flight in Punta Cana, Dominican Republic, when his foot apparently got stuck in the gap between the tread and riser of the steps. When he fell forward, his ankle rotated violently, tearing ligaments that required surgery and a cast.

A Michigan resident, he sued the airline in U.S. District Court in Michigan under the Montreal Convention, a law that holds airlines responsible for accidents that happen either on an international flight or when boarding or deplaning.

The airline tried to get the case thrown out, arguing that the facts showed Sensat's injuries didn't result from an "accident." According to the airline, the gap is a "normal" condition of the airstairs and the injuries were caused by Sensat's own "misstep."



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A federal judge disagreed, finding it plausible that Southwest expanded the airsteps enough to make the gap bigger than usual and that, with several passengers ascending ahead of him, Sensat may not have been able to see the gap well enough to assess the hazard.

The judge didn't find that the airline was definitely at fault; he just found there was enough of a question for the case to go to trial, and now a jury will decide.

If you get hurt boarding a flight, disembarking from a flight, or even on board a flight, and you think the airline may bear the blame, see an attorney to discuss your rights.



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Is a company carpool accident on ‘work time’?

Carpooling or ridesharing can be a great way to get to work. Everyone involved saves money on gas, it’s good for the environment, it reduces traffic, and you get the benefit of being able to use the faster commuter lanes to save time. The employer may benefit because carpooling can reduce worker stress, leading to improved productivity and happiness.

For this reason, a lot of employers offer incentives for workers who rideshare, including preferred parking spots, discounted parking rates, or even financial incentives.

What happens if you’re hurt in an accident while carpooling? Can the company be held responsible? A recent Texas case suggests that it can, at least under certain circumstances.

In that case, a drilling company paid an employee \$50 per day to drive three other workers back and forth between company-provided housing and a remote jobsite. After a shift, while

headed back to the bunkhouse, the employee caused an accident that killed two of the co-workers.

The families sought to hold the employer responsible. After all, the law generally holds an employer accountable for the actions of its employee as long as those actions are in the scope of employment.

The employer, however, argued that the “coming and going” rule, which says an employer is not responsible for a worker’s actions that don’t occur on company time (such as driving to and from work), meant there was no case.

The Texas Supreme Court disagreed. It found that because the company was paying the employee to drive others, even though he wasn’t driving a company car, he was using company time. Now, the case can proceed to trial. The law may differ from state to state, so talk to a lawyer where you live to find out more.