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# Legal Matters®

## Cities, states may not be immune from liability for trip-and-falls

**W**hen someone gets hurt because of the negligence of state or local governments and their employees — for example, by slipping and falling on public property — it can sometimes be challenging to recover. This is because most states have laws in place protecting public authorities from negligence suits. In some instances, an injured person's recovery is capped at a certain amount. In other instances, the lawsuit may be barred altogether. But this isn't always the case, so if you have been injured in a trip-and-fall on state or municipally-owned premises, it's very important to call an attorney and discuss your rights.

For example, Betty Williams, an elderly Michigan woman, was hurt when she tripped and fell over an uneven portion of a public sidewalk. Her adult granddaughter took several photos showing a 3-inch height difference between the sidewalk slabs where she fell. Williams took the city to court, asserting that it knew or should have known of the defect and repaired it.

The city moved to have the suit dismissed. Its argument was that it was entitled to governmental immunity and that the defect was open and obvious, so Williams should have been able to avoid it. A judge disagreed and the city appealed.

The Michigan Court of Appeals agreed with the lower court. As the appeals court pointed out, the plaintiffs had photos showing the uneven sidewalk as well as a sworn affidavit from the granddaughter that a large tree was next to the sidewalk and that its roots pushed the slab to a dangerous height



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over time. The granddaughter also testified that because the two slabs were the same color, it was difficult to see the height difference unless “you were staring down [at] your feet as you walk.”

The court pointed out that public immunity does not apply where the city has failed to maintain premises in reasonable repair and that Williams's

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# Cities, states may not be immune from liability for trip-and-falls

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evidence was enough to suggest the city hadn't done so.

In another Michigan case, Kerry Nyenhuis parked in the parking lot in the rear of a Kroger supermarket. As she left the store, her shopping cart stopped suddenly on an uneven portion of pavement and she fell over it. The cart landed on top of her, causing her injuries.

Nyenhuis originally filed suit against Kroger but amended her complaint to add the city as a defendant because the city owned the stretch of pavement she fell on. The one-way passageway for vehicles ran the entire length of the store and served as a means of entrance and exit to the parking lot and as an unloading zone for trucks.

Although under Michigan law there's a "highway exception" to governmental immunity for accidents on public roadways, the city argued that immunity applied because this was an alley and not a roadway. The trial judge disagreed, ruling that Nyenhuis's suit could proceed.

The Michigan Court of Appeals affirmed the ruling, noting that the passageway connected two city roads and featured painted loading zones, angled parking spaces with meters, control signage, directional signals and storm sewers. The court said these were all features one would find on a city street.

Finally, the ability to seek recovery in a recent South Carolina case hinged on the difference between an "invitee" and a "licensee." In that case, Christine LeFont was in Myrtle Beach promoting products at a trade show in the city convention center. LeFont, who was not a city employee, asked for permission to park for a few minutes in the gated employee lot behind the facility while she ran inside to check something out. On her way in, she tripped over a pothole in the parking lot, breaking her wrist, forearm and both elbows.

When she sought to hold the city responsible, a trial judge tossed her case out. According to the judge, LeFont was a mere "licensee" because she was on city property for her own benefit and, as a result, the city had only a general duty to protect her known dangerous conditions.

The South Carolina Court of Appeals reversed the decision, finding evidence that LeFont may have been an "invitee" on the property for the city's benefit, which would give the city a heightened duty to inspect the property and repair any dangerous defects. As the court noted, LeFont paid the trade show host a fee that was passed along to the city for use of the facility. Additionally, dirt and debris in the pothole suggested that it was there long enough for city employees to notice it and fix it.

The injured parties in these three cases have not collected damages for their harm yet, but in each instance an appeals court found that they made a sufficient showing to bring their cases before a jury to decide.

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## Car accidents down, bike injuries up during pandemic

During the pandemic most of us have been driving less. With fewer drivers on the road, fewer car accidents have occurred. At the same time, however, bicycle accidents have been on the upswing for a variety of reasons.

In large cities where people typically rely on mass transit to get from place to place, many have been avoiding subways and buses and taking their bikes instead. Additionally, many people have looked to their bicycles for exercise because health clubs and gyms have been closed. With more bikes on the road, bike collisions or vehicles crashing into bicycles are more likely to occur. New York City statistics bear this out: Bicycle injuries increased nearly 50 percent between March 2019 and March 2020.

If you've been riding your bike a lot more than in the past, your mathematical odds of an accident are

on the increase. It's also a bad time to need to go to the hospital, especially if you live in a state where COVID-19 cases are on the upswing and medical centers are taxed. So it is important to take steps to avoid accidents that result in bodily injury. For example, if you are riding your bike for recreational purposes, try and ride on quieter streets, designated bike paths and even sidewalks instead of busy main roads. Be sure to have reflective strips on your bicycle, helmet and clothes if you absolutely have to ride after dark, make sure you have identification and obey all the rules of the road that automobile drivers must follow.

If you do get injured in a bicycle accident and believe it's the fault of another biker, a driver or even a pedestrian, make sure you get all their information at the scene and contact a personal injury attorney who can determine if you have a claim.

## Handicap transport vehicles can pose injury hazards

Van service offered by local transport companies is critical for people with disabilities who want to participate in society. As important as these services are, however, accidents can happen and people can get hurt. If you or someone you care about has been injured while riding in a handicap transport vehicle, don't hesitate to call an attorney, because you may be entitled to compensation.

This happened in Missouri recently, where a St. Louis nursing home resident with multiple sclerosis broke both legs tumbling from her wheelchair while returning home from a doctor's appointment at a local hospital.

The patient filed suit against the transport company, alleging that the driver failed to buckle her seat belt, causing her to fall when the driver slammed on the brakes. She fell forward, landing on the floor, and suffered injuries that required treatment at the hospital she had just left. The transport company initially claimed the driver had secured the woman's seatbelt, and the driver testified in depositions to that effect, but the company ultimately opted to

settle the case out of court for a significant amount.

At the same time, a Michigan case shows that it will be harder to hold someone else responsible if you don't follow the driver's safety recommendations. In that case, a rider was ejected from her wheelchair when the van driver braked at a yellow light. The rider filed suit,

arguing that the driver stopped the van unsafely and the force of the stop knocked her from her chair. But the court dismissed the case, crediting the driver's deposition testimony that he had secured her chair and the passenger had refused to wear a seatbelt.

But even in that situation you shouldn't assume you have no rights. A good attorney will investigate and find out if there's other evidence to indicate you have a case.



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## Walmart held accountable to man hurt by falling dog food display

Supermarkets like to display merchandise in ways that maximize efficiency while catching the customer's eye. But sometimes storekeepers will set up displays without thinking through all the safety issues. When this happens, unsuspecting customers can get hurt. If you or someone close to you has been injured as a result of a store's negligence in displaying items, you may be able to hold the store accountable for your harm. Just make sure you see an attorney quickly before you lose important rights, as a North Carolina case demonstrates.

In that case, John Cain was shopping for dog food at a Walmart. The store had laid out two piles of 50-pound bags. One pile was stacked seven feet high, while the other was much shorter. When Cain bent over to pick up a bag from the shorter pile, several bags toppled off the taller pile, knocking him to the floor.

He was treated at the hospital and released that day, but once he got home he was unable to get out of bed for the next three weeks. Before his injury he had been very active, helping his son in his concrete business while horseback riding every weekend with friends. After the injury he stopped all physical activity.

Cain didn't see a lawyer until shortly before the deadline for filing a lawsuit had passed, and he apparently received limited treatment before that point. But once his case against Walmart was filed, he was diagnosed with a back injury that would keep him from lifting more than five pounds and would cause him permanent physical pain.

Walmart initially claimed Cain was not careful enough in picking up the bag, so the injuries were his own fault, but it dropped that defense before trial and admitted responsibility. The only issue at trial was how much compensation Cain was owed.

Relying on video surveillance footage of the incident and testimony from Cain's children as to how much their lives had been impacted by their father's injuries, a jury decided on a large damage award, nearly five times the amount of Walmart's highest pre-trial settlement offer.



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## Burns from exploding percolator lead to large recovery

Some of us with childhood memories of watching coffee brew in a percolator may be surprised to learn that, in a world of programmable coffeemakers and Keurig machines, percolators are still around and still make great coffee. But they can pose burn hazards if not designed or used properly.

Take a recent case in New Jersey. Mary Polese kept her Medelco stovetop percolator on the back burner of her stove. One day she turned on the burner by mistake. 20 minutes later, she lifted the pot off the burner to place it elsewhere, but when she put it down, its internal parts erupted and caused second- and third-degree burns to her right hand. Her injuries necessitated three surgeries and she permanently lost certain functions in the hand.

Polese sought to hold Medelco responsible for

her injuries, arguing that the pot was improperly designed. Specifically, she said the lid, inside stem and grind basket were made of plastic that melted too easily when heated while empty. She also argued that the manufacturer failed to warn that the pot should be removed from the stove when not in use.

Medelco countered that it was Polese's fault for boiling the percolator when it was empty and that she caused the plastic parts to erupt when she removed it from the stove.

The company was clearly concerned that Polese had a good case, however, because it agreed to a settlement that was many times larger than her medical expenses. If you have been hurt by a product that may be defective, be sure to discuss your situation with an attorney.