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‘No-fault’ law provides recovery for ATV accident

If you are hurt in an accident and the other person doesn’t have significant insurance coverage, it’s important to talk to an attorney anyway, because you never know what other sources of recovery could be out there, as a case from Michigan tells us.

The case involved two Detroit men engaging in a risky (and, in many places, illegal) activity: driving all-terrain vehicles on a city street. They were going at least 45 mph in a 25-mph zone as motorist Beryl Fletcher was backing her car out of a driveway. Both ATV riders applied their brakes quickly and tried to avoid the car, but their tires sideswiped one another, causing both to lose control. They veered off in opposite directions and both were ejected from their ATVs, suffering injuries. One of the men later died.

Though nobody claimed Fletcher was at fault, the surviving ATV rider and the estate of the other rider pursued personal injury protection (PIP) benefits from Fletcher’s insurance company under Michigan’s “no-fault” law, which entitles a party injured in an accident to recover personal-injury benefits from the insurer of any motor vehicle involved. Fletcher’s insurer, however, argued that the plaintiffs were not entitled to no-fault benefits under her policy because the accident did not involve her vehicle, and an ATV is not considered a motor vehicle for no-fault purposes.

The Michigan Court of Appeals disagreed, pointing out that under the no-fault law, while an ATV indeed is not a motor vehicle, an ATV driver is still entitled to insurance benefits for injuries arising from the “ownership, operation, maintenance, or use” of a motor vehicle, and there was enough evidence that the ATV crash resulted from the operation and use of Fletcher’s vehicle for a jury to decide the question.

Only certain states are “no-fault” states, and other relevant laws may differ. Still, if you get hurt, it’s worth calling a lawyer who can help uncover every possible source of recovery.

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Things to consider before renting a party bus

Renting a “party bus” can be a great idea for a bachelor or bachelorette party, for teenagers headed to the prom, for friends headed to a concert or for coworkers playing hard after working hard. But if you’re considering chartering a party bus for a big night out, there’s a lot to think about before providing your credit card number and signing the contract.

While party buses generally provide a safe experience, things can and do go wrong, sometimes with tragic results. In some instances, you may be able to hold an operator legally accountable if you or a loved one is injured on a party bus.

Take the case of Jamie Frecks, a 26-year-old Kansas City woman who was celebrating a friend’s bachelorette party when the party bus she was riding hit a bump rounding a curve on Interstate 35. As the bus lurched, Frecks, the mother of a six-week-old child, fell through a set of double side doors that opened unexpectedly. She landed on the highway and was fatally struck by three cars.

An investigation suggested that the driver had unlatched the doors, which had been installed by a previous operator to accommodate wheelchairs, to make way for a large cooler, and that the driver had failed to properly relatch them. Frecks’ family sought to hold the bus company responsible in court and secured a significant settlement.

In another example, two Illinois college students were standing on the roof deck of a double-decker party bus when their heads struck a highway overpass. They both died. In that case, the driver apparently did not warn passengers to stay seated. The families took the bus company to court and, as in Frecks’ case, obtained a settlement before trial.

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In most states, a party bus operator, as a “common carrier,” would have a legal obligation to take the utmost steps to protect people from predictable harm, and in both instances, the victims’ families were able to make enough of a showing that the operators had failed to take even reasonable steps to do so.

In most states, party bus operators also are expected to make sure minors do not drink. If an operator permits underage drinking and a young guest gets alcohol poisoning or is otherwise injured, the operator might be deemed at fault. Additionally, operators that serve or sell alcohol to adults are expected to follow the same rules as bars

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or restaurants. If the operator serves a visibly drunk passenger who then causes injury to someone else, the injured party may have a case against the operator.

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Still, the ability to hold a party bus operator legally responsible for your injuries is far from certain. For example, an operator may require you to sign a waiver assuming all risks of injury. There are good arguments asserting that such waivers should not be enforced. But if a court does enforce one, you may have little recourse unless you can show the operator's conduct rose to the level of "gross negligence."

Another consideration is your own potential liability for harm that could occur. What if, for example, you rent the party bus to transport your kids and their friends on prom night and someone else's child gets hurt? If the parents can't hold the operator responsible, they may come after you. After all, your name is on the rental contract. Along similar lines, if a kid damages the bus, the contract may hold you accountable. And if someone else's kid suffers an alcohol-related injury, "social host liability" laws may hold you responsible for providing alcohol to minors even if you weren't there. Don't assume that your homeowner's insurance will cover claims brought against you in any of these situations.

Before chartering a party bus, consult with an attorney and your insurance agent to review the contract. And if you or someone close to you has been injured on a party bus, call an attorney to discuss your rights.

City may be liable for property damage from leaky pipe

There's an old saying that you "can't fight City Hall." But if you've suffered damage to your property as a result of an "affirmative action" your city or town has taken, you may indeed be able to wage a fight.

Take a recent case from Rock Hill, South Carolina, where a 24-inch-diameter pipe running under Lucille Ray's property connected to a catch basin on the street in front of her house. The basin was used to channel storm water away from the street.

Ray's house was built in the 1920s, and it was unclear who installed the pipe or when the work was done. There also was no evidence that anyone had an "easement" (legal permission) to pipe water across the property. Ray bought the home in 1985 and soon began experiencing sinkholes in her yard and structural damage to her home, presumably because the pipe was leaking. By 2008, Ray knew of the pipe's existence. When she noticed her front steps appeared to be sinking, she asked the city to investigate and found out the pipe ran toward her steps.

The city's repairs to broken water pipes under the street allegedly made the situation worse. Ray asked the city not to reconnect the city pipes to the one under her property, but the city did so anyway.

Ray brought an "inverse condemnation" claim against the city. In other words, she claimed the city's actions amounted to a "taking" of her property without payment of fair compensation. A trial judge ruled in the city's favor, but the South Carolina Court of Appeals reversed.

Because Ray presented evidence that the city

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engaged in an "affirmative, positive and aggressive act" by reconnecting city pipes to the pipe at issue, the court decided her case should have been able to proceed. The court also said the case was different from a previous case in which they ruled against a landowner for similar harm. In that case, the court said, the city didn't take enough steps to prevent flooding but, in the Ray case, the city took affirmative steps that actually caused the flooding.

Now Ray will get a chance to convince a jury she's entitled to compensation. The case was decided under South Carolina law, so talk to an attorney to find out the situation where you live.

Defective coffee cup leads to recovery against store chain

If you paid attention to the news in the 1990s, you probably remember the McDonald's coffee-cup case, in which an elderly woman recovered $3 million after spilling coffee she had purchased from a drive-through. You may also recall that while the injured person, Stella Liebeck, became fodder for late-night comedians and newspaper columnists, this was no laughing matter. Not only was McDonald's coffee served hot enough to cause Liebeck third-degree burns that left her inner thighs and pelvic region charred and black, necessitating surgeries and a lengthy hospital stay, evidence showed that McDonald's knew the risk of serving coffee at that temperature, yet made a conscious decision to require franchises to serve it that hot anyway.

In light of that case, you'd think coffee sellers would be extra careful to serve it safely. But a recent case indicates that lessons from the McDonald's case fell on deaf ears. In the case, James Hall bought coffee from a Wawa convenience store in Philadelphia. While he was holding the cup, its sides buckled, causing scalding hot coffee to spill into his lap, causing burns similar to those Liebeck suffered.

Hall sought to hold Wawa, a large chain with locations throughout the Mid-Atlantic states, and the cup's manufacturer responsible. He alleged that the

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cupmaker knew the cup was defective, yet marketed it as a safe one anyway. With respect to Wawa, he charged that the chain continued to provide defective cups, despite knowledge of similar past incidents, while brewing and storing coffee at excessively high temperatures. The defendants agreed to settle the case out of court for an undisclosed sum, suggesting concerns about how their conduct might appear to a jury if they went to trial.

Acute care hospital held accountable for pressure sore

Pressure sores, often referred to as "bedsores," are painful ulcers that develop from staying in the same position for too long. They typically form at pressure points like ankles, elbows, heels, hips and backs, where the bones are very close to the skin. Hospital and nursing-home patients tend to develop them when they're bedridden or wheelchair-bound and unable to change their positions themselves, and their caretakers fail to do so for them on a regular basis.

If you or a family member is suffering from bedsores, it's important to talk to an attorney as soon as possible to determine if the caretaker is responsible. If so, you may able to seek recourse in court.

A relevant case happened recently in Georgia. Elizabeth Dickinson, 74, who was severely injured in a car crash, developed pressure ulcers on her sacrum just above her tailbone and on her buttocks while in the hospital. She was subsequently transferred to a long-term care facility where the sores worsened from stage II ulcers (abrasions or blisters) to a stage IV ulcer (full-thickness skin loss and muscle/bone damage) within a week. Dickinson had to undergo debridement (surgery to remove dead tissue from a wound) as well as a skin graft.

She sought to hold the facility accountable, and a jury agreed that staff failed to turn her every two hours or apply zinc oxide to her sores as reasonable caretakers would have done. As a result, the jury awarded a substantial sum to compensate Dickinson for her harm.

Each case is different, but if you suspect a family member is not receiving appropriate care in a nursing home or rehabilitation center, speak to an attorney where you live.

We welcome your referrals.

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