Legal Matters®
Consumer Safety
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Always consult with a lawyer before you sign a release

Insurance companies and other businesses often try to get injured consumers to sign a release right away, before they talk with a lawyer. Sometimes they actually say that they're trying to protect or take care of the consumer, and that there's "no need to get lawyers involved."

Beware! There's a reason they don't want consumers to talk with a lawyer, which is that they don't want consumers to understand all their rights.

The truth is that you should always talk with an attorney before signing a release (or any other important legal document). Don't even think of signing away your rights before you fully understand what your rights are.

Take the case of a Nebraska woman who claimed that she suffered a ruptured appendix after a hospital's emergency-room physicians, who were employed by an outside urgent-care company, failed to diagnose her appendicitis.

Before filing suit – and without first speaking to an attorney – she settled her malpractice claims against the hospital. As part of the settlement, she signed a document giving up her right to sue the hospital and "all others liable."

Later, she hired a lawyer to sue the urgent-care company. But the urgent-care company argued that it couldn't be sued because the woman had given up her right to sue "all others liable."

Ultimately, the state supreme court allowed the case to go before a jury to determine whether the urgent-care company was protected by the release.

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So the woman *might* eventually have her day in court – but even if she does, she will have had to go through a lengthy and expensive legal process to get there, one that probably could have been easily avoided if she had spoken to an attorney before signing the release against the hospital.

It's always advisable to speak with an attorney before signing any releases. And the best advice is to speak to a lawyer as soon as possible after an injury occurs.

Arnold & Smith PLLC
ATTORNEYS AT LAW
The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.NCInjuryLawyer.pro

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‘Weekend warriors’ can sometimes sue for injuries

If you’re the type of person who likes to climb mountains, run marathons, jump out of planes or explore the undersea world – or you know someone who is – you should be aware that the groups that organize these activities can sometimes be held responsible for injuries if things go wrong.

Of course, to some extent you’re responsible for what happens to you if you knowingly undertake a dangerous activity. On the other hand, organizers are expected to do everything they reasonably can to keep you safe – and if they don’t, they may be liable for the consequences.

For instance, in a recent case in Arizona, the organizers of a bicycle road race agreed to pay damages to a bicyclist who suffered brain damage after being hit by a car while competing in the race.

The bicyclist claimed that a sheriff’s deputy who was working at the race had removed a traffic cone that was intended to keep traffic from turning onto a road that was part of the race course. As a result, a 91-year-old motorist turned onto the course and collided with the rider.

Racing a bicycle is a dangerous activity, and generally a rider assumes some of the risk in choosing to participate in such a sport. On the other hand, a rider shouldn’t have to assume that there will be automobile traffic on the course. If that extra, unexpected danger was caused by the organizers’ carelessness, then the organizers could be held responsible.

Another example occurred in California, where a jury ordered a scuba-diving tour operator to pay damages to a diver who was accidentally abandoned 12 miles off the coast. The dive master had mistakenly marked the diver as “present” before returning the boat to shore.

The diver – who was stranded for several hours before being rescued by a tall ship carrying a troop of Boy Scouts – claimed he suffered post-traumatic stress disorder from the incident.

Again, it’s one thing to assume the ordinary risks of scuba diving – and quite another to be abandoned in the middle of the ocean!

Acne drug Accutane can have harmful side effects

Accutane is a drug that’s been highly effective in treating severe acne. But many Accutane users claim they’ve suffered severe side effects, such as Crohn’s disease, ulcerative colitis, and inflammatory bowel disease. A growing number of successful lawsuits claim that the manufacturer, Roche, should have warned about these possibilities.

For example, Accutane user Andrew McCarrell of Alabama, who is now suffering from inflammatory bowel disease, recently received a sizeable jury verdict in a lawsuit against Roche.

Six other Accutane cases have gone to trial, and in all six cases the jury found in favor of the plaintiff.

Several hundred more lawsuits have now been filed. And with an estimated 13 million consumers across the country who’ve taken the drug, more suits are likely in the future.

Roche withdrew Accutane from the market last June, but so far the company hasn’t engaged in any settlement talks with consumers.

Restaurant liable for injury caused by broken stool

In some cases, a business may be held responsible for injuries caused by unsafe conditions on the premises, even if it was unaware that the hazard existed.

Take the case of Michael Howe, who was injured when a stool he was sitting on at an IHOP restaurant in California fell off its base.

Later examination showed that the wood screws holding the seat in place had fallen off.

IHOP argued that it shouldn’t be held responsible because it didn’t know about the problem with the stool, it had never experienced such an incident in the past, and it conducted regular safety inspections.

But an appeals court allowed Howe to sue.

According to the court, “a counter stool does not ordinarily fall off its base when used normally unless someone is negligent.” We might never know exactly what caused the stool to collapse, but the court said that Howe should be able to be compensated for his injuries if a jury decides that it was more likely than not that IHOP was in some way careless.

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!

Toxic exposure victims collect cost of medical monitoring

If someone is exposed to toxic substances as a result of someone else's carelessness, and they become sick as a result, then they should be able to collect damages for the illness.

That seems pretty clear. But what if a person is exposed to toxic substances and hasn't yet gotten sick…but might get sick in the future?

Recently, some courts have decided that such people should be able to collect the costs of medical care to monitor their health and make sure they don't get sick – or that if they do, their illness can be treated as quickly and effectively as possible.

This is a very unusual kind of lawsuit, because defendants are being required to pay money even though there's no proof that anyone was actually injured as a result of their conduct, or ever will be.

However, these claims are still fair, because the defendants' carelessness caused the victims to have to obtain – and pay for – additional medical care. Since the defendants caused this problem, they should have to pay for it.

In one recent example, a New Jersey real estate firm purchased a former thermometer factory and leased it to a day-care center. The firm wrongly assumed that the facility had been cleaned up prior to purchase. It hadn't – and as a result, more than 100 children were exposed to mercury vapors in the building.

Exposure to mercury vapors can cause a variety of brain and kidney problems.

None of the children has any symptoms of such problems yet, but a judge ordered the building owner – as well as state, county and local officials who were also responsible – to pay $1.5 million into a fund to cover medical monitoring of the children in the future.

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Job-training school sued for exaggerating its reputation

In this economy, it's not unusual for people to seek training for new, more marketable careers. As a result, there's been an explosion of private education companies offering certificates and degrees in everything from computer programming to sportscasting.

Many of these companies are reputable and successful. But it's a good idea to thoroughly investigate any such program, its reputation, and its track record before handing over your hard-earned tuition. Some companies have been known to promise more than they can deliver.

In some cases, an education company can be held liable in court if it misrepresents its reputation and job-placement results.

Something like this happened recently when 37 aspiring chefs sued a California culinary school for exaggerating the job prospects of its graduates.

The graduates claimed that they had been deceived about the school's ability to prepare them for a successful career, and the school settled the case out of court for a significant amount.

'Emotional distress' damages for mold in home

Water damage can lead to toxic mold that makes a home uninhabitable. And in some cases, a person responsible for the mold can be held liable not only for the property damage, but also for the psychological trauma suffered by the homeowners.

For example, two Pennsylvania women found puddles in their driveway and cracks in their foundation shortly after a contractor completed a nearby road improvement project for the town. They also discovered that their lawn was permanently wet and impossible to mow.

An engineer discovered toxic mold, and a mold expert advised the women to move out and not return. The women sued, claiming that they suffered post-traumatic stress disorder and other psychological problems associated with losing their home.

Jurors found the town and the contractor responsible, and although the women suffered no physical problems from the mold, the jury ordered the defendants to pay them a significant sum for their emotional distress.

A person responsible for mold in a home could be liable not only for property damage, but also for psyhological trauma.

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Darvon, Darvocet side effects could be life-threatening

Doctors have been prescribing Darvon, Darvocet and other pain medications using the ingredient propoxyphene since the 1950s to treat everything from minor muscle aches to pain after surgery. However, it's now been pulled from the market amid allegations that it can lead to potentially fatal irregular heartbeats.

Several lawsuits have been filed against the manufacturer, and it's possible there could be thousands more.

For example, 31-year-old Kristine Esposito suffered a potentially life-threatening arrhythmic cardiac event after taking Darvocet for a week to treat abdominal pain. Now she's filed suit against the drug maker.

Meanwhile, two other suits, including a class action, have been filed in Louisiana.

And with an estimated 10 million Darvon and Darvocet prescriptions being processed across the country in 2009 alone, there could end up being many more cases.

The lawsuits claim that the manufacturers were negligent in producing the product and that they failed to warn doctors and patients about the risk of heart damage.

Arguably, the drug should never have been marketed in the first place, given the health risks and the fact that the medication allegedly didn't do anything that simple Tylenol couldn't have done just as well.

Consumers have been complaining about the drug since the 1970s, and in 2005, the British government ordered that it be phased out of the British market. Canada and Japan followed suit shortly afterward.

Xanodyne Pharmaceuticals, which has been the manufacturer of the drug since 2005, pulled it from the U.S. market in December following a recommendation by the Food and Drug Administration.