Legal Matters®

Personal Injury
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Determining fault in a food delivery driver accident

Food delivery drivers have always posed a risk of accidents. After all, they're under pressure to get the food to the customer quickly to increase their tips and to keep the boss happy.

While this risk is nothing new, it has ballooned in recent years with the proliferation of food delivery smartphone apps such as DoorDash, Grubhub and Uber Eats. The apps have put thousands of "gig" drivers on the road who face even more pressure to make quick deliveries because they rely on higher customer ratings to secure more jobs. They're also more likely to be driving in bad weather when more people are ordering in, heightening the risk further.

So, if you're injured in an accident caused by a food delivery driver, who can you recover from for your injuries? That's actually a complicated question that depends on the circumstances.

If you are injured by a gig driver, you probably have to seek compensation from the driver individually, since he or she isn't employed by the food outlet or the delivery app company. In that case, insurance coverage may be an issue.

For example, let's say someone uses an app to order from a local sushi bar. The driver accepts the job through the driver-facing side of the app. If the driver hits you on the way to the customer's house, your recovery may be affected by which company's app the customer used. That's because the different app companies vary in terms of how they handle drivers' insurance. Some may insure each driver up to a certain amount. Others may not insure drivers at all, meaning you would have to pursue

compensation under the driver's personal policy, which may have low coverage limits. Still others may require you to make a claim under the driver's policy, and then they'll cover some of the excess.

On the other hand, the best-case scenario is when the driver is directly employed by the restaurant or food delivery company. Because employers are held responsible for the on-the-job negligence of their employees, you can file a claim against them directly.

For example, several years ago, a pizza chain in South Carolina hired a delivery driver who said in his job interview that he had a seizure disorder.

The company didn't inquire further into the frequency of his seizures

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Waiver doesn't stop injury lawsuit against trampoline park

If you've ever taken your kids to an indoor playground, visited a water park, or accessed any other type of recreational facility, you've probably signed a liability waiver as a condition of entry. In other words, you've agreed that if you get hurt, you can't hold the facility or the operator responsible.

But courts will not always enforce such waivers, so if you or a loved one does get hurt after signing a waiver, be sure you talk to an attorney instead of assuming you're out of luck.

Take the case of Christina Kelly from North Carolina. A few years ago, when she was 18, she visited Sky High, a local trampoline park, and suffered a severe "crush" injury from tremendous force to her foot and ankle. Kelly, who needed surgery and will likely require further surgeries, said it happened because the trampoline she was on was "hard as concrete" when she landed.

When Kelly sought to hold the park responsible, its owners cited a waiver she signed that stated she was giving up her right to sue and further promising to pay the park's attorneys' fees should she sue anyway.

However, the trial judge — describing the waiver as "over the top" given Kelly's age and its provisions — found that the evidence suggested it was invalid.

Sky High, presumably concerned that now there was a good chance the case could go to trial, decided not to risk the unpredictability of a jury verdict and agreed to a settlement that satisfied Kelly and her family.

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We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Packing your car may be deemed 'use of vehicle' for insurance purposes

Most auto insurance policies will not cover property damage or physical injuries that do not arise out of the use of the insured vehicle.

However, a recent decision from the Court of Appeals of Virginia suggests that the definition of "use of a motor vehicle" may be broader than many people would think.

The case arose when traveler Bruce Estep and his wife checked out of a hotel in Fairfax County to return home.

Estep brought their luggage out to his SUV in a luggage cart, which he planned to return to the lobby once he was done packing the vehicle.

After loading items into the rear seats, Estep began putting the rest of the luggage through the rear and into the trunk. In doing so, he was apparently leaning into the vehicle, bent over at the waist to reach the trunk, such that his body was in the vehicle from the waist up.

A sudden gust of wind propelled the cart into Estep, hitting him on the right side and causing him to fall and incur serious injuries.

But when he made a claim for medical benefits under his auto policy, insurer USAA wouldn't pay. It said his injury didn't arise "out of the ownership, maintenance or use of a motor vehicle as a motor vehicle" as required by the policy.

Estep took USAA to court, alleging that it violated the policy by refusing to pay the claim. A judge ruled in Estep's favor and ordered USAA to pay part of what he claimed he was owed.

The Court of Appeals affirmed the decision. Specifically, it found there was a "tangible nexus" between Estep getting knocked down and his use of his SUV as a motor vehicle.

In so finding, the court rejected USAA's argument that it was merely an unrelated incident that could have happened anywhere.

Though everyone's case turns on the unique facts, if you've suffered an injury related to your use of your vehicle, even if it wasn't in motion at the time, don't assume you don't have coverage. Talk to an attorney who can help determine your rights and, if necessary, fight on your behalf.

Court allows 'bystander' recovery by grandparents, grandchildren

"Bystander" recovery refers to someone who wasn't physically injured in an accident but who can hold the at-fault party responsible for the emotional harm suffered from witnessing the incident.

While most states allow bystander recovery, or negligent infliction of emotional distress as it's often called, they generally require the bystander to prove they were "closely related" to the victim.

So, what does "closely related" actually mean? In some states, courts require that the injury victim be an "immediate family member": a spouse, sibling, parent or child of the bystander. But a ruling issued in the fall by the Michigan Court of Appeals shows that other states may have a more flexible view of who an immediate family member might be.

In that case, grandmother Carol Peasley was riding in a vehicle driven by another individual, Maureen Glemboski (the record doesn't indicate Glemboski's relationship to Peasley). Glemboski ran a red light, causing a crash. Peasley was severely injured and died a few weeks later.

Peasley's granddaughters, Hanna and Makena, were in a car following directly behind and saw the entire incident.

Traumatized by witnessing their grandmother's death, they brought a claim against Glemboski for bystander recovery based on negligent infliction of emotional distress.

A state circuit court judge threw out the claim, agreeing with Glemboski that under Michigan law, bystander recovery was available only to immediate family members, defined as spouses, children, parents and siblings.

But the Court of Appeals reversed the decision. Though a previous Court of Appeals ruling had suggested that bystander recovery in Michigan was indeed limited to Glemboski's definition, the court stated that in light of evolving social norms and the number of children being raised by grandparents, a "hard and fast rule" for limiting bystander recovery was impracticable.

Interested in learning how this issue might be handled where you live? Call a local personal injury attorney.

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or medication he took, mistakenly believing that federal disability law barred it from doing so. The company just asked for a copy of his driver's license and proof of insurance and hired him.

Five months later, the driver had a seizure on the job and rear-ended a 70-year-old man, causing serious injuries.

Knowing it was responsible for the negligence of its employees and perhaps conceding that it was negligent in its own hiring practices, the company ended up agreeing to pay the victim a sizeable settlement rather than risking trial and having to pay even more.

But even if the driver works directly for the food outlet, complications can still occur. For instance, a lot of chain pizza parlors that hire their own drivers are franchises. In other words, the store itself is owned by a local businessperson who bought a license from, say, Domino's, that allows them to operate as a Domino's. In return, the franchise owner shares a portion of the profits with Domino's.

If a driver employed by the Domino's franchise causes a serious accident, the chain itself may be a more desirable source of recovery because of its sizeable assets. But depending on the nature of the franchising agreement, the victim may be limited to recovery from the franchise owner. The key question would be how much control Domino's exercises over franchise operations. The more control, the more likely you'll be able to proceed against the chain.

Of course, this is a developing area of the law, so don't make assumptions about the value of your case without talking to an attorney first.

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Things to avoid when bringing a medical malpractice case

If you have been treated by a doctor or other medical provider and believe they did not provide the level of care that a reasonably competent professional in their position would have provided, and you suffered harm as a result, you may have a medical malpractice claim.

In such circumstances, a good medical malpractice lawyer can help you seek compensation for the injuries and trauma you've incurred, while protecting your rights along the way.

You can also help your attorney by making sure you do certain things that can strengthen your case.

For example, you should keep good records. This means doing things like taking photos of your injuries, keeping a daily journal of how you are feeling physically and emotionally every day, and maintaining a record of all treatments, prescriptions and conversations with medical professionals. Such records will help you establish damages (the harm you've suffered), particularly the "non-economic" type such as pain and suffering, which can otherwise be difficult to quantify.

You should also contact an attorney as soon as possible. That's because your state has a "statute of limitations," which means if you don't file your court case in a certain amount of time after the alleged malpractice occurs (typically two or three years, but it varies), you lose the right to file forever. There may be exceptions that can give you more time, but you don't want to risk it.

Additionally, once you've filed a case, you want to be completely honest with your lawyer so he or she can determine a good strategy. Withholding important information from your attorney out of lack of trust or embarrassment or any other reason can lead to surprises further down the line that can harm your case.

Finally, it's a good idea to stay off social media while you have a case pending. Otherwise, you risk posting things that can potentially be twisted and used against you in court.