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Potentially dangerous drugs and medical devices in the news

We rely on doctors and hospitals to give us the best treatment possible. This includes the decisions they make about the type of medicine they prescribe or the types of medical devices they use. But despite our doctors' best efforts, implants, artificial joints, artificial heart valves or other devices sometimes cause complications ranging from unpleasant side effects to serious harm or even death.

Here are some drugs and medical devices that have been in the news recently for allegedly posing unreasonable risks to consumers:

► *Textured breast implants*

Many women decide to have artificial breast implants for cosmetic reasons. Others do so because they've undergone a mastectomy due to breast cancer. But a new study by French researchers suggests that breast implants can be particularly dangerous for women who have undergone multiple implants or had breast cancer in the past. The study indicates that women who fall into this category have a heightened risk of a rare cancer known as BIA-ALCL (which stands for "breast implant-associated anaplastic large cell lymphoma") which develops in the tissue that surrounds an artificial breast. The study indicates that textured breast implants, as



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opposed to smooth breast implants, pose the highest risk.

Knowledge of this risk isn't totally new: the Food and Drug Administration released a report suggesting a possible link between breast implants and ALCL in 2011. But recent studies like the French one indicate that the risk is more serious than we thought. So if you or someone you love has had implants, particularly textured ones, or

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Visitor's status is key in premises liability cases

If you're on someone else's property and get hurt because of a dangerous condition, you may be able to hold the property owner responsible. The key is whether they knew of or should have known about the condition and didn't take reasonable steps to take care of it. But an important question to ask is why you were on the property in the first place. Were you an invited social guest? Were you there to provide a service for the owner? Or were you there for some other reason? Your status can make a difference in the case.

For example, in a recent Michigan case Jacob Meinke was at his friend Brian Williams's new house. Williams went up to the roof to try and repair a small hole and asked Meinke to help him by going into the attic and performing a task from below. Meinke didn't realize that except for a small area, most of the attic floor wasn't weight-bearing. As he walked through the dark attic toward the hole, the floor gave way and he fell into the room below, sustaining injury.

Later, Meinke sued Williams. In his defense, Williams argued that the plaintiff was a "licensee" — someone who is on the premises for his own purposes, usually social (i.e., a party guest, a visiting relative or a family friend). Given that, Williams only had an obligation to take "reasonable care" to protect Meinke from harm. In other words, he was only responsible if he knew how dangerous the attic floor was and failed to warn his friend, and he had no duty to inspect the attic floor for such conditions ahead of time.

Meinke, on the other hand, argued that he was an "invitee" asked onto the property to provide the owner with a benefit. Therefore, he argued, Williams had an obligation to inspect the premises and address the hazard before asking him up to the attic.

The trial judge agreed with Williams and threw out the case. But the Michigan Court of Appeals reversed the decision, ruling that there was enough of a factual dispute over Meinke's status to bring the case before a jury to decide.

Parents responsible for 'negligent entrustment' of boat

When someone's carelessness causes an auto or boating accident that hurts or kills someone else, it's understood that the careless (or "negligent") person should be held responsible. But what if that person borrowed the car or boat from someone who knew of his or her history of risky behavior? Can they be held responsible too? A recent Virginia case indicates that the answer is "Yes."

The careless person in that case was 31-year-old Rand Hooper, whose wealthy parents let him take

an old college buddy, Graham McCormick, out for a spin in their 21-foot motorboat late on a summer night despite knowing of Rand's past history of reckless behavior. That night on a dark waterway, Rand crashed the boat. He made it to safety, but Graham drowned. Rand didn't report the accident, which he claimed he didn't remember, and later told Graham's parents that Graham must have fallen off the dock.

However investigators pieced together evidence that the boat collided with a shoreline bulkhead right at the spot where Graham's body was found.

Graham's parents took the Hoopers to court, claiming they "negligently entrusted" the boat to their son despite their knowledge of past alcohol-fueled misdeeds. The Hoopers settled the case out of court for a sizeable sum.

The lesson from this case is to be very careful about who you let borrow any type of vehicle, because even if you're not the one who causes the accident you could still be held responsible if you knew the risk.



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Potentially dangerous drugs and medical devices in the news

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you're considering getting implants for any reason, be sure to discuss these risks with your physician. If you have been diagnosed with BIA-ALCL, be sure to talk to an attorney to find out what rights you may have.

► *DePuy Synthes Attune knee implants*

This system is a commonly used implant for people who need knee replacements. The implant was approved by the FDA in 2010 and orthopedic surgeons have been using it widely for the last five years. Unfortunately, there have been reports of nearly 1,500 incidents of "mechanical loosening" caused by the failure of the implant to properly bond with the patient's tibial baseplate, causing severe pain, loss of knee function and removal surgery.

If you've had a knee replacement, check with your surgeon to determine whether it's a DePuy Attune. If you and your doctor have discussed the need for a knee replacement, be sure to discuss the risks of this type of implant.

► *MRI contrast dyes*

When a doctor needs to diagnose a condition, he or she may order you to undergo an MRI (magnetic resonance imaging) procedure where a magnetic image of the inside of your body is created to give him or her a better look. Sometimes the radiologist performing the MRI will inject a "contrast agent" into your bloodstream to make the image more clear and easy to read.

Generally an MRI is a safe procedure, but recent studies indicate that a metal called gadolinium, found in many contrast dyes, can cause a condition called "gadolinium toxicity," resulting in symptoms like tremors, confusion, weakness, fatigue, muscle cramps and

even kidney damage. While contrast dyes are safe for many patients, others (like pregnant women, children and patients with kidney conditions) may have a higher risk of complications.

If you or a family member fall in this category, it's important to let your physician know before undergoing an MRI. If you think you may be experiencing these types of complications in connection with an MRI, talk to your doctor as soon as possible and ask an attorney what kinds of rights you might have.

► *Invokana*

Invokana is the first in a new series of diabetes drugs that change a patient's kidney function to excrete sugar through the patient's urine. It has become a popular and profitable medication over the last five years. But during this time, it's also been linked to reports of kidney damage, urinary tract infections, weight loss and even kidney failure. The FDA has also warned that Invokana carries an increased risk of leg and foot amputations.

There are allegations that the drug maker failed to properly warn patients and doctors about the risk of these side effects and the FDA is now requiring the manufacturer to include a "boxed warning" about the risk of amputations, which is the strongest warning there is. This means that if you're taking Invokana, you need to talk to your doctor right away about the risks. If you've suffered any complications that could be linked to this drug, you should also talk to an attorney.



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Bar responsible for fatal tent collapse

Lots of bars, restaurants and entertainment venues like to take advantage of nice weather during the summer and set up big tents where patrons can mingle and drink. But these tents can collapse, causing injury or even death if they're not set up properly or used during bad weather. If that happens, the property owner can be held liable.

This happened recently in downtown St. Louis, where Kilroy's Sports Bar, a popular watering hole, set up a tent to accommodate a big crowd after a Cardinals' game. High winds accompanying a thunderstorm loosened the tent, which broke free from its moorings, killed Alfred Goodman and injured

several others.

Goodman's wife and the injured people sued Kilroy's and secured a significant judgment. Kilroy's appealed, arguing that there wasn't sufficient evidence that it knew or should have known the tent was unsafe or that it didn't comply with city ordinances requiring it to be able to withstand 90 mile-per-hour winds.

But an appeals court pointed to evidence presented at trial of warnings on the tent's sidewalls and flaps that it shouldn't be used in bad weather and that staff hadn't properly monitored the weather for news of the oncoming storm.



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Gas station/convenience store liable for car-strike death of customer

Gas station/convenience stores are useful places to fuel up with gas and coffee on the way to work. But in many cases, their layout can be treacherous. Specifically, they may be situated in such a way that cars can enter from the road without slowing down, and they don't always have guardrails or barriers in the right places to protect people at the fuel pump or the store entrances from vehicle strikes.

Yet as a tragic Massachusetts case shows, if you're hit by a car in such a situation you or your family can sometimes hold the business accountable for your harm.

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Kimmy Dubuque, a married mother of a teenage girl, was fatally struck by an out-of-control SUV as she entered a Cumberland Farms convenience store. The vehicle, driven by an elderly man who'd suffered a stroke, careened into

the parking lot through its "apex" entrance, which vehicles could enter straight-on at full speed from the road without making a turn.

Cumberland Farms claimed this was a freak occurrence it couldn't possibly have protected against. But Dubuque's husband, who sought to hold the business responsible, provided evidence that the company knew of nearly 500 similar strikes causing injury or property damage over the previous 10 years at other Cumberland Farms locations, that the company's own risk manager had urged that protective barriers be installed between the parking lot and the store at all locations to protect against such risks and that authorities had actually asked Cumberland Farms to close the "apex" entrance at this particular location, but the chain stalled because it knew the state would be closing it as part of a future road project.

A jury agreed that Cumberland Farms could be held responsible for Dubuque's death and awarded a substantial judgment that was upheld on appeal. Of course, circumstances differ from case to case, so talk to a lawyer where you live to learn more.