Legal Matters®

Consumer Safety
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Injuries from agritourism increase

Fall is here. For many of us that means hours in front of the TV watching football. But for others, it means apple-picking, hayrides, corn mazes, cider and donuts. In other words, "agritourism."

There's a good chance you've never heard that term, but it's defined as agriculturally based recreational activities that bring paying visitors to a farm or a ranch. It provides a profitable revenue stream for smaller family farms that struggle to compete with large-scale corporate farming operations.

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Tourist farms can make for a great family outing, but it's important to know that farms can be deceptively dangerous places. If you're not alert and aware of the risks, you or a family member could get injured or worse.

Take the case of Cassidy Charette, a 17-year-old high school student who suffered fatal injuries in 2014 while on a "haunted hayride" at Harvest Hills Farm in Maine when a Jeep that was towing a wagon flipped over.

Investigations after the crash showed that the Jeep's rear brakes didn't work right, and that the Jeep was hauling more than double its towing capacity.

Cassidy's family sought to hold the farm accountable, arguing that its negligence (in other words, its failure to be as careful as it should have been under the circumstances) wrongfully resulted in her death. The family appeared to have a strong case. The farm agreed to settle the case for an undisclosed amount, enough for Cassidy's family to fund a charity in her name.

While Cassidy's case sounds like an extreme example, it's not the only one.

Two-year-old Ella Feuhring was killed and her mother injured in 2014 while attending the annual harvest festival at a popular New Jersey tourist farm.

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Julie A. Rice, Attorney at Law, & Affiliates
Offices in Georgia, Florida, and Nationwide
www.juliericelaw.com

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Injuries on the increase as farms embrace agritourism

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Somehow mother and child became trapped between two shuttle buses in a busy loading area. The farm settled in that case as well.

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Less severe injuries have included animal bites and falls from ladders while climbing for high-hanging fruit, and kids suffering scrapes, bruises and bone breaks from rough play in bouncy houses or from climbing on tractors and haystacks.

Tourists have even been injured at farm stands by tripping over produce that fell from overloaded pallets and baskets onto the floor.

Many states, seeking to protect the economic boost agritourism provides to rural regions, have passed laws making it harder for tourists to hold farms responsible for injuries.

For example, in North Carolina, the law limits the liability of agritourism businesses for customers' harm as long as the farm posts a warning with large letters in a conspicuous location. The law specifically prevents customers from suing over any injury or death from a risk "inherent" to an agritourism activity.

Ohio provides farms with similar immunity from suit for agritourism-related injuries, defining "inherent risks" as those related to the condition of the land itself, the behavior of farm animals, the dangers of farm equipment and the risk of disease from contact with animals, their feed and their waste. In fact, more than half of states have enacted agritourism immunity laws of one type of another.

Meanwhile, even in states that haven't passed such laws, it can be hard to hold a farm fully accountable for agritourism injuries if the farm's liability insurance policy doesn't cover such injuries. In that instance, the farm may not have sufficient resources to pay out of pocket for serious harm.

But even if you're in a state with laws that protect the agritourism industry, it is important to call an attorney to discuss your options if you or a loved is hurt visiting a tourist farm. In many cases, such laws do not apply when a farm has engaged in "gross" (extreme) negligence. The law in your state may have other exceptions as well.

Manufacturer responsible for not making optional safety features standard

A "product liability" case is one in which an injured person claims the manufacturer designed and sold a dangerously defective product and did not take reasonable steps to protect users from harm.

In many such cases, the manufacturer will try to put the blame back on the injured person for deciding not to pay extra for optional safety features that could have prevented the injury.

This often works when a manufacturer can show that the product isn't unreasonably dangerous without the feature in question and that the particular purchaser was in a strong position to make a good, educated decision about the risks and benefits. But it does not always work, as a recent New York case shows.

In that case, an equipment rental center bought a skid steer loader with a bucket attachment. A customer named Elias Fasolas rented the loader, which was made by Bobcat, planning to use it to knock down a 9-foot tree. But when Fasolas was seated in the cab operating the loader, the tree somehow entered the open cab and killed him.

As it turns out, Bobcat had offered an optional "special applications kit" designed to keep objects out of the cab, protecting the operator, but it wasn't recommended for use with the bucket attachment, which itself wasn't designed to knock down trees.

Still, Fasolas's family sought to hold Bobcat accountable, arguing that because the product was sold into the rental market, where it would be rented to untrained end users, it was defective without the safety feature. A jury ruled in the family's favor.

Bobcat appealed, arguing that the buyer (the rental yard) was knowledgeable enough to decide for itself whether the feature was necessary.

But the New York Court of Appeals upheld the verdict, emphasizing that while an employer, for example, would be in such a position since it would have control over how the product was ultimately used, a rental yard is different and has less incentive and ability to fairly decide on behalf of its customers whether the feature is necessary.

The law, of course, can differ from state to state. Talk to a local lawyer to find out more.

How to avoid blowing your dog-bite case

While a lot of us love dogs and truly believe they are man's best friend, others, particularly those who have been bitten or attacked by canines, may see it differently.

If you are bitten or attacked by someone else's dog, you can often seek to hold the owner accountable for the injuries you've sustained. Unfortunately, too many people do not realize this soon enough and do not take the necessary steps in the aftermath of an attack that they should to preserve their case.

The first mistake people make after an animal attack is failing to see a doctor right away.

It's important to seek medical attention for a couple of reasons. An injury that is not treated properly can easily get infected, which can become very serious if the infection spreads. Transmission of the dog's saliva and all the germs inside it makes infection even more likely. Plus, a doctor or nurse treating the injury can help document it, which is very helpful to the attorney who is trying to seek compensation on your behalf.

Another common mistake is not reporting the injury. As with seeking medical attention, it is critical to report the injury to the police or animal-control authorities so they can document the incident. Without such documentation, it is possible for the owner to simply deny the attack occurred or deny that their dog was involved, and you would have very little to counter his or her version of the story.

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It is also very important to get photographs of the injury as soon as possible, before it starts to heal. Otherwise, if your case goes to trial, you will be missing powerful images that would communicate to a jury how serious your injury was and how painful your recovery has been.

Finally, perhaps the biggest mistake people make after a dog attack is failure to consult a personal injury lawyer who is experienced in these kinds of cases. Instead, they try to settle the dispute with the owner, or with his or her insurance company, themselves. When this happens, they're likely to accept less than an injury may actually be worth. A good attorney can help you determine how strong your case is and what the best approach is for protecting your rights.

Colorectal surgery carries risk of sepsis

Surgical procedures are a necessary part of medical care, but even the most minor procedures can have serious risks.

This is particularly true for colorectal procedures like colonoscopies (in which a doctor uses a scope to examine your colon or rectum) or colectomies (in which a diseased or inflamed portion of colon is removed). The bowel or another part of your gastrointestinal tract can become perforated, causing contents to spill into the abdomen, leading to serious infection. In some cases, this infection can even lead to a potentially fatal condition called "sepsis," in which toxins enter the bloodstream and spread throughout the body.

If this happens to you or a close family member, and evidence shows that this was due to a physician's failure to carry out the procedure according to professional standards, you may be able to hold the hospital accountable for the harm.

This happened in a particularly tragic case in New York. Cheryl Raefski, a 43-year-old mother of three, went to the hospital for a colonoscopy. Her physician removed part of a polyp during the procedure and then referred her to a surgeon, who recommended that she undergo a laparoscopy (in which a fiber-optic instrument is inserted into the abdominal wall to view organs) to remove the rest.

When the surgeon couldn't find the remnant of the polyp with the laparoscope, he ordered a more invasive procedure.

For several days afterward, Raefski felt serious abdominal pain. A CT scan showed she was suffering from sepsis, and she died less than a week later.

Raefski's husband and children sought to hold the surgeon accountable and presented evidence to the court that the surgeon burned part of her bowel during the laparoscopy. They also presented evidence that he could have removed the polyp with a less invasive procedure and could have prevented her death if he had ordered the CT scan sooner.

A jury agreed and awarded a substantial amount of damages.

Results can, of course, differ from case to case. But if you suspect you've been harmed as a result of a doctor's negligence, it is critical to talk to an experienced attorney as soon as possible.

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Pressure sores lead to liability for nursing home

Those of us with older loved ones in long-term care and skilled nursing facilities hope they're getting the best care possible. But this is not always the case. Understaffing and poor training can sometimes lead to negative, and even tragic, results.

In one case, an 88-year-old New Mexico woman was placed in a skilled nursing facility after surgery for a broken hip.

An employee who was neither a doctor nor nurse created a care plan that apparently disregarded her elevated risk of pressure ulcers (severe sores that can develop on bedridden or wheelchair-bound patients if their position isn't adjusted frequently enough) due to immobility and diabetes.

When the woman was discharged after a week, a home caregiver noticed that severe pressure sores had developed on her heels.

When the woman was admitted to a hospital, staff discovered that the sores had become infected and she had developed sepsis. She ultimately required a feeding tube and remained bedridden for a year until she died.

Her family took the nursing facility to court and a jury found that the complications were caused by substandard care. It awarded the family a significant sum in compensation for the woman's pain and suffering, as well as punitive damages (money that a jury awards in particularly egregious cases to deter similar conduct in the future).

If you have a family member in a nursing facility and you're concerned about the level of care they are receiving, it's a good idea to seek advice from an attorney about the best way to address the situation.