



thanksgiving greetings

All of us at Donahoe Kearney would like to wish you and your family a very happy and safe Thanksgiving. During this busy time of year, we hope that you can find a few quiet moments to reflect on what you have to be thankful for, and we encourage you to share those thoughts with those closest to you.

We're thankful for our clients – a diverse, hardworking and loyal group of people we are privileged to represent. Not only do you keep us going, many of our clients inspire us. Here are just a few:

The mom of a 23 year old man with cerebral palsy who bathes and changes her son every day of his life and provides him with such care, love and attention that he's never been hospitalized for an illness, despite his disability.

The dad who recently found happiness after becoming a widow 12 years ago. He may struggle with his own injury and a young son's illness, but always has a smile on his face.

The construction worker who learned to walk again after his legs were crushed but never gave up – fighting the insurance company for 3 years to win his case.

And there are too many inspiring stories to list. We are thankful for the opportunity to serve each one of our clients.

veteran's day

One of the best holidays we have in this country is here. Originally called Armistice Day following the end of World War I, Veteran's Day includes all of our men and women who served in our Armed Forces.

To paraphrase a bumper sticker – If you are free and can vote, speak freely, worship where you want, serve on a jury – thank a veteran. ■

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pedestrian safety

It's probably something that has happened to you (especially right outside our office at 17th and I Street) – you're crossing the street in a crosswalk and with the light but have to jump out of the way of an oncoming car going too fast or running a red light.

Pedestrian safety is a serious issue in America, in cities and congested suburban areas. According to the Centers for Disease Control and Prevention (CDC), there were nearly 4,400 pedestrians killed in 2008 and another 69,000 were injured. On average, there is one crash-related pedestrian death every two hours and a pedestrian injury every eight minutes.

According to the CDC, the oldest and youngest among us are at greatest risk for pedestrian accidents. As with many driving accidents alcohol often plays a major role:

Older adults

Pedestrians over the age of 65 accounted for 18 percent of all pedestrian deaths and an estimated 10 percent of all pedestrians injured in 2008.

Children

In 2008, one in every five children between the ages of 5 and 9 who were killed in traffic crashes as a pedestrian.

Drivers and pedestrians who are alcohol-impaired

Alcohol-impairment—either for the driver or for the pedestrian—was reported in 48 percent of the traffic crashes that resulted in pedestrian death.

Just like your mother told you, be extra careful at intersections. Look left – right – left before crossing and be alert for drivers who fail to yield the right-of-way when they are turning. Carry a flashlight and wear reflective clothing when walking at night. And always use the sidewalk. Don't stand in the street thinking a driver will do the right thing—that driver may not see you, may be drunk, may be on his cell phone, may be in a hurry. ■

strict liability

IN INJURY CASES

In most of our cases, we have to prove that a person was injured or killed because another person (or company, HMO, doctor, hospital, etc.) didn't use proper care and violated established rules or standards. There are a few types of cases where we can hold corporate wrongdoers accountable without proving they were negligent if the law allows for strict liability. Strict liability applies in several areas, and can include:

- Owing animals, particularly farm animals or wild animals. If one of these animals injures someone, the owner can be held liable even if they used proper care and had no ill intent.
- Companies involved in very dangerous activities. If a construction company uses explosives and someone is injured or a property is damaged, they could be liable without proof of carelessness or negligence.
- Statutory offenses such as speeding or sexual contact with a minor. Speeding tickets can be issued whether or not you intended to speed. Sexual contact with a minor is a criminal offense, even if the victim lied about his or her age. Intent is irrelevant in these cases.
- Product liability. Manufacturers and distributors can be held liable if a consumer is injured while using a defective product, without having to prove intent or negligence or malicious intent by the corporation. This could apply if there was a defect in the design or manufacture of the product, or if the company did not properly warn users of the dangers.

Even with strict liability, any case involving a product or medical device is likely to be complex. And unfortunately, more and more courts and legislators often seem to protect corporate interests instead of individual consumers and patients. But if you or a loved one has been hurt by a product or medical device, strict liability can help hold the manufacturer or distributor accountable. ■

the McDonald's hot coffee lawsuit

SEPARATING MYTH FROM REALITY

In February of 1992, an incident occurred that soon became a flashpoint for insurance companies and corporate interests lobbying to limit the rights of Americans to recover the harms and losses these corporations caused. The news coverage sure made it seem like a “frivolous” lawsuit. And it was portrayed as evidence that “the system” was out of control.



Stella Liebeck, a 72-year-old grandmother had stopped at a local McDonald's for a cup of coffee with her grandson. While attempting to add cream and sugar to the cup, she accidentally dumped the coffee in her lap and suffered burns. Liebeck eventually filed a personal injury lawsuit against the fast food franchise, claiming that the coffee was too hot and caused serious injuries.

ABC News referred to her case as “the poster child of excessive lawsuits”.

Most of us have heard this story, but how many of us know what really happened? (I sure hadn't.) Here are some important facts about the case that were not reported at the time.

- Mrs. Liebeck was a passenger in the car, not the driver as initially reported. She had been portrayed as an unsafe driver trying to fix her coffee while driving.

- The car was not moving. Her grandson had stopped the car so that Mrs. Liebeck could safely add cream and sugar to her cup.
- Mrs. Liebeck's injuries were very serious. She was hospitalized for eight days with third degree burns over six percent of her body that required debridement and skin graft surgeries. She went through two years of medical treatment for the burns.

- McDonald's knew of the danger and that the temperature of the coffee could cause burns. More than 700 people had previously filed claims of burns, many similar to Mrs. Liebeck's.
- McDonald's corporate representatives acknowledged they knew of the burn risks, but had no intention of lowering the temperature of their coffee, typically served at 185 degrees, to a safer temperature.

The jury sided with Mrs. Liebeck, awarding her \$200,000 in compensatory damages and \$2.7 million in punitive damages. The judge reduced the combined amount to \$640,000, at which point both parties appealed. They later settled out of court for an undisclosed amount believed to be less than \$600,000. ■

November Important Dates

Nov 1 – All Saints' Day Nov 7 – Daylight Saving Time Ends Nov 11 – Veterans Day Nov 25 – Thanksgiving

FAQ



I was recently hurt in a car accident that was caused by the other driver. Unfortunately, my auto insurance had lapsed before the accident. Can I still receive compensation for my injuries?

Whether or not you had auto insurance at the time of the accident doesn't impact your ability to recover damages for harms and losses caused by another driver. If the other driver was at fault, his or her insurance company should step in to pay for the damages he caused. You may be able to obtain compensation for your medical expenses, lost income, and other damages associated with the collision.

But remember, if the other driver didn't have insurance either, you may be out of luck. That's why its important to review your insurance coverage and make sure you have uninsured motorist coverage to protect you against uninsured drivers. ■

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who really ends up paying

THOSE MEDICAL BILLS? BE ALERT FOR UNSCRUPULOUS INSURANCE ADJUSTERS AND THEIR MISINFORMATION



Here's a scam we're starting to hear more about. After you're hurt in a car accident, the other driver's insurance adjuster tells you that the insurance company

doesn't have to pay your medical bills as part of your damages because your health insurance policy paid the expenses.

There's only one problem – it's not true. Even though your health insurance company may have covered the bills, the

insurance company of the driver who caused the accident shouldn't profit from that. You're the one who paid the health insurance premiums, not them. In fact, your health insurance company may be entitled to be repaid if there is any recovery for your injury claim.

As we've said many times before, insurance adjusters are not on your side. They are trained to limit the amount of money paid out on any claims, and they are very good at what they do.

If you've been in an accident and feel you are being misled by an insurance adjuster, call us and we'll talk it over to make sure you are protecting your rights. ■

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