

LAW NOTES

from David M. Landay, Attorney At Law

VOLUME II

Brought to you by
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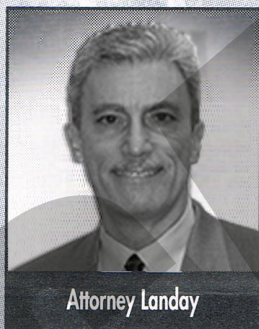
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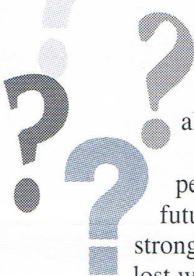


Attorney Landay

PERSONAL INJURY PRACTICE

- Free consultation
- Home and hospital appointments available
- 24-hour emergency service
- No recovery. No fee. We do not get paid unless you do.
- Trial attorney

Should I hire an attorney?



After an automobile accident, many ask, "Should I hire an attorney?" Some answer, "No, I can work a good deal with the other driver's insurance company." Others talk to friends or relatives they trust. Still others go on the Internet or buy best-selling books on how to handle claims themselves. Occasionally this works...but all too often it doesn't. **Here's why anyone should think twice about going it alone.**

Accident cases are complicated and are rife with pitfalls. Many inexperienced people sign innocent-looking releases and give away precious rights to collect on future medical and other bills, even though some injuries take months to appear. Under strong pressure to settle, the unknowing make big mistakes about property damage claims, lost wages, or the right to go to court for settlement.

An experienced attorney will put your mind at ease and obtain a fair settlement of claims by

- investigating the accident.
 - managing all paperwork.
 - evaluating injuries.
 - communicating with insurance company representatives.
 - handling damage claims.
 - dealing with all complex legal issues.
- Please call us with any questions.

One insurer's approach

Here's another reason why you should rethink going it alone. Allstate Insurance Company has created a clever system to decrease auto claim costs. Its representatives contact and negotiate directly with people injured in accidents with Allstate policyholders. Claims workers seem to be improperly influencing consumers to accept less than full recovery for their injuries and improperly persuading them to surrender their right to counsel. Several states, including Pennsylvania, have taken action against Allstate for this seeming conflict of interest in representing both sides in an adversarial situation and having their claims representatives practice law in an unauthorized manner.

Serving alcohol—who's liable?

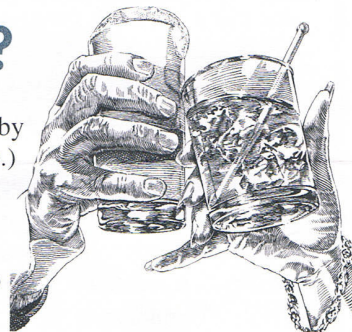
Many accidents, particularly motor vehicle accidents, are caused by alcohol. In Pennsylvania, a liquor licensee (bar, hotel, restaurant, etc.) may be liable when it serves someone who is visibly drunk and that person then injures himself or someone else. Additionally, both a liquor licensee and any adult (over 21 years of age) may be liable if they serve or furnish alcohol to a minor (under 21 years of age) who then injures himself or someone else.

Two examples can help illustrate these situations

1. A bar continues to serve alcohol to its patron, even though he is loud, obnoxious, and begins slurring his speech. The patron then leaves the bar, stumbles in the street and falls. The bar may be liable to its patron for his injuries. The bar's liquor liability insurance, if any, should cover the claim.

2. Parents decide to host a high school graduation party in their home. They buy a keg of beer, but insist that the minor guests stay overnight so that no one is drinking and driving. Unknown to the parents, one of the guests, who is drunk, leaves the party, gets in her car and crashes. The parents may be liable both for the guest's injuries and the injuries to anyone else involved in the crash. The parents' homeowner's insurance will probably cover this claim.

Note: It is important to promptly investigate alcohol-related claims. Witnesses must be located to verify the necessary facts. This is particularly true when witnesses are needed to establish that a bar or other liquor licensee continued to serve alcohol after the patron appeared drunk.



SAFE DRIVING TIPS

Everyone can drive more safely and confidently, in all driving conditions, by reviewing some basics:

Your car

- Keep it in tiptop shape. Have tires, wipers, lights, and battery checked.
- Clean windows and lights.
- Be visible. Turn on headlights at dusk and in rainy or low-visibility conditions.
- Insist everyone wear seat belts.
- Tune your radio to local weather updates.

Your driving

- Stay calm and alert at all times.
- Concentrate and drive defensively.
- Go slower, especially under adverse weather and other poor-visibility conditions. You can see only as far as your headlights' beams in the dark.

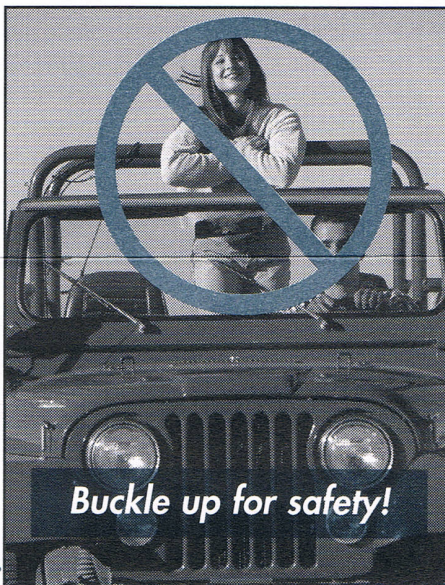
• Accelerate and brake more slowly in bad weather, and always signal before turning or changing lanes.

• Maintain a safe distance from cars in front of you. Braking distances increase dramatically as slippery

conditions increase.

• Get used to your car's anti-lock braking system.

• Refrain from braking in skids. Instead, remove your foot from the gas and steer your car to safety.



Accidents happen

No matter how safely you drive, you can be the victim of other drivers' errors. When a driver was killed by an 11-pound rock flung from the wheels of a truck, his wife and estate sued the construction company which owned the vehicle. Their lawyer negotiated a structured settlement for the wife and estate based on the company's negligence in failing to inspect for objects stuck in wheels and not teaching drivers to stop and dislodge potential missiles.

Prescription for error

Busy pharmacies fill 300 to 500 prescriptions daily, with pharmacists spending a minute or two per prescription. Each one filled has three parts: a Drug Utilization Review (DUR), pill counting, and patient counseling. The federal government and many states mandate DURs to improve care quality, reduce injury risk, and optimize medications' effects.

What are DURs? For every new prescription, pharmacists must obtain, record, and update a "patient profile." This includes patient ID; prescription and over-the-counter medications; allergies, illnesses, and disabilities; and cross-medication reactions. DURs also consider drug duplication; overuse or underuse; medication/disease contra-indications; incorrect dosages or duration of medications; and much more. Pharmacies use computer programs to compare new medications with patient profiles to identify potential problems.

Many pharmacies hire technicians. Pharmacists complete five-year degree programs, but technicians only need high-school degrees. Although many states have eased regulations to permit technicians to count and pour medications and apply labels "under a pharmacist's supervision," they may not perform DURs.

Litigation reveals that pharmacies may take shortcuts to maintain sales volume. Some corporate pharmacies train

technicians to generate labels and fill prescriptions by *bypassing computer DUR alerts with override codes*. Other companies let technicians phone doctors' offices. They usually speak with clerks or nurses, and neither pharmacist nor prescribing physician is involved in a DUR.

To protect your family

1. **If you cannot read your doctor's handwriting, it is possible that your pharmacist cannot read it either.** Ask your doctor to rewrite it legibly.
2. **Ask the pharmacist to perform a DUR.** Understand cross-reactions, medication duplication, contra-indications, and other information which will help protect you from harm.
3. **Inspect the medication.** If the pills look different from what you expect—or if you find some tablets that look different—don't take any.
4. **Read the label carefully.** Ensure that the prescription is yours. Find your name, your doctor's name, and dosage instructions. Check the manufacturer's name, drug designation, number of milligrams per tablet, and total supply. If anything seems wrong, talk to your pharmacist or contact your doctor immediately. If you think you're a victim of wrongdoing, contact us.

FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have at home or at work.

The U.S. Consumer Product Safety Commission (CPSC) cautions that many thrift stores sell hazardous products that have been recalled, banned, or do not meet current safety standards. Last year, the CPSC visited 301 randomly selected thrift stores nationwide and found that 69 percent sold at least one hazardous product. The top three products found were children's jackets and sweatshirts with drawstrings that presented a strangulation hazard, hair dryers that do not protect against electrocution, and cribs that do not meet current safety standards.

- ☒ Gateway Inc., a computer marketer, has recalled one million foam, black-and-white rubber toy cows because small foam rubber pieces can tear away and choke children.
- ☒ Perfecto Manufacturing, Inc., aquarium SHOlights has sharp edges that can cut wiring insulation and cause fire, shocks, or electrocution.
- ☒ Montgomery Ward, Inc., North West Blue boys' hooded jackets and sweatshirts with drawstrings at the neck that can strangle children.

LEGAL LEXICON

Clients find legal terms we use puzzling. From time to time, we'll offer some easy-to-understand definitions to help clear things up.

Deposition

At a deposition hearing, one party gets to question another, or a witness, about a case. The person deposed answers questions under oath, and a court reporter makes a transcript record of what is said. Attorneys can represent clients at depositions, and many depositions are videotaped. Lawyers use depositions in court trials to refresh witnesses' memories, prove or disprove statements, or cast doubt on a person's truthfulness.

Compensatory damages

Juries can award economic and non-economic damages to

compensate an individual who was wronged and incurred losses. Economic damages include lost wages, medical, and funeral expenses. Non-economic (sometimes trivialized as "pain and suffering") damages include gross disfigurement, loss of limbs, blindness, fertility loss, loss of a loved one, and diminished life expectancy. Compensatory or actual damages are sometimes known as *general damages*.

Punitive damages

Juries may award punitive damages against a wrongdoer as punishment for highly egregious misconduct, such as being aware that a product or behavior will cause injury or death. Punitive damages are also a deterrent to future misbehavior that might cause harm.

Small business liability

More than 23 million small businesses operate in the U.S. A majority are well-run and produce useful and safe products and services.

However, lobbyists are currently pressing Congress to pass H.R. 2366, the "Small Business Liability Reform Act." This legislation will prevent children and other injured consumers from recovering full costs from injuries caused by those rare businesses which engage in extremely harmful behavior by manufacturing dangerous products or services. This bill proposes placing a \$250,000 punitive damages liability limit on small businesses which employ 25 people or fewer. It also limits the legal rights of consumers injured by such companies.

A frightening example

National Marketing imported cigarette lighters from China. Although the Consumer Product Safety Commission (CPSC) had well-known lighter standards that required child-resistant features, National Marketing actually paid its six employees to remove these child-safety features before selling them to retailers. In July 1999, after closing his business, the company's owner pled guilty to one felony count of lying to CPSC investigators to conceal his sale of non-child-resistant lighters. He faces a maximum sentence of five years imprisonment and/or a fine of \$250,000.

His and his company's liability should not be limited by the small number of workers he employed. He should be fully accountable for recklessly endangering our children's health.

What can you do?

We can all help by promoting and buying from our concerned and ethical small businesses that want to grow by marketing products and services that are both effective and safe. Everyone should get informed and take a stand on products and companies which engage in improper behavior. Finally, we can tell our elected officials that our current liability system is working and that punitive awards can deter businesses from selling dangerous products to consumers. We can urge our U.S. Senators and Representatives not to pass H.R. 2366, the "Small Business Liability Reform Act."

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Beware! Online legal information may be off base

Commercial online services and the Internet now make it possible for computer users to communicate instantly with people all over the world. *There is good news and bad news about the legal information available from online sources.*

The good news? Web surfers can find people in newsgroups, locate information on listservs, and access Web site research that can be very valuable for anyone with specific legal problems.

The bad news? Although a lot of online legal information may be worth reading, some of it may be false, misleading, and even dangerous. Anyone can put information online, and some of it is opinion thinly disguised as law.

It's different when you come to us for counsel. Our firm is a local business that you can trust. That's not always the case with anonymous online sources.

If you find legal advice online that you wonder about, download the information, then call and talk about it with us. The best response to any legal situation is that given by a concerned legal professional.

THRILL RIDES

How to keep your family safer

Everyone—especially children—loves amusement parks and thrill rides. But they can be dangerous.

In 1999, six people died on amusement park rides, and about 9,000 more were injured on them. With rides being designed to be faster and more exciting, injuries are increasing.

Don't let your family take chances.

- Get a park ride brochure, if available.
- Comply with age or height restrictions.
- Chaperone youngsters.
- Don't get on if you're afraid.
- Buckle all safety harnesses and restraints.
- Keep hands inside, and hold on.
- Don't wear loose-fitting clothing, especially baggy sleeves.
- Avoid alcoholic beverages.
- Know where first aid or EMT service is.

A roller-coaster incident

A child received severe scalp injuries when her hair caught in a roller-coaster car's motor. When her parents sued, their lawyer obtained a settlement after demonstrating that operators failed to inspect the car and discover a dangerous space between the child's seat and the motor's cover.

