

PAZER, EPSTEIN & JAFFE, P.C.

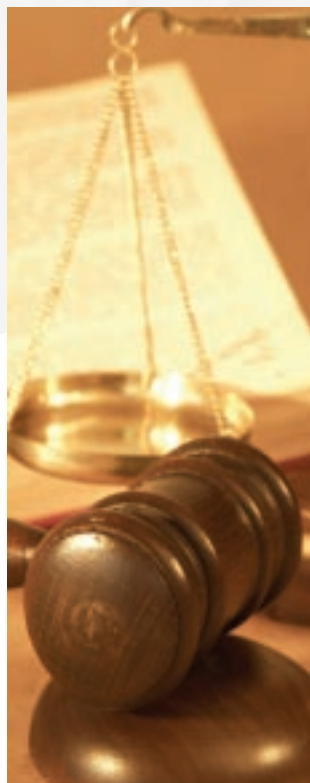
Attorneys At Law



SUMMER
2011

Firm NEWS

- Congratulations to managing partner **Mark J. Epstein** on his election as chair of the Long Island Rail Road Commuters Council, a legislatively mandated council representing commuters from Nassau, Suffolk, Queens, and Brooklyn.
- Congratulations to partner **Michael Jaffe** on his election as president-elect of the New York State Trial Lawyers Association, the largest statewide plaintiff attorneys association in New York.
- Congratulations to associate **Eugene Gozenput** on the birth of his daughter.
- Welcome to our newest associate, **Matthew Haicken**, an experienced plaintiff's attorney whose fluency in Spanish will be an asset to our firm.



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Summer camp liability



As parents and guardians prepare to send youngsters off to summer camps, either day camps or overnight facilities, signing the camp's waiver of liability is usually on the checklist of things to do. Typically, this document requires parents to agree not to hold the camp or its employees liable for injuries their camper might sustain while in the camp's care.

These waivers generally do not hold up in court, so if your child is hurt during a camp activity, do not automatically assume that because you signed the waiver you have no legal recourse.

A camp is responsible for making provisions for general camper safety. The camp needs to provide a safe environment and grounds, with enough safety personnel on staff to handle small injuries and supervise children.

A camp typically is liable if negligence on its part or on the part of a staff member causes an injury. A camp also can be held liable if the camper was hurt intentionally.



While a parent may sign a waiver of liability, in many states, it will not hold up in court if the camp is proven not to have maintained the camp premises or allowed poorly supervised or unsafe activities to take place.

In states and cities across the United States, there can be subtle differences in how the laws and regulations are written. For example, in Florida, liability waivers can be enforced even in cases of negligence, but not if the injury was intentional, or if the activity was known to be potentially hazardous.

Check out a camp's facility, safety measures, emergency plans, and history of accidents before signing up, and contact our office if you have questions about your rights in the event of a mishap.

We take your family's safety and security personally.

Ruling keeps justice out of reach for many Americans

The 2009 U.S. Supreme Court ruling, *Ashcroft v. Iqbal*, combined with a 2007 decision, *Bell Atlantic v. Twombly*, makes it much harder for Americans to exercise their legal rights.

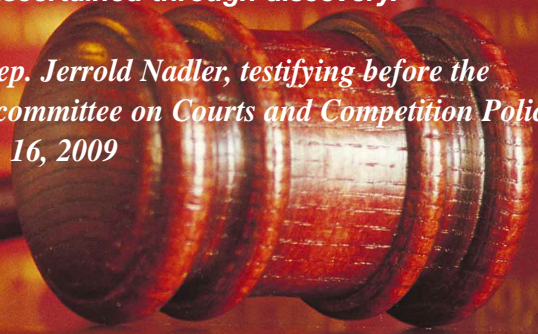
For more than 50 years, the first step in bringing a civil lawsuit has been to file an official “complaint” describing the case. The next stage in the process is “discovery,” when the plaintiff gains access to evidence needed to build their case. For example, if you file a wrongful-termination suit against your employer, the discovery phase is when you would obtain the company documents connected to the dismissal.

Under the new rules, the plaintiff must provide detailed evidence in order to even get to the discovery phase. Since the plaintiff wouldn't yet have all of the evidence at this point, getting in front of a judge is much more difficult. At the same time, the new standard gives cover to those wrongdoers who go out of their way to conceal evidence.

Our firm is opposed to these rulings and supports efforts in Congress to restore the system to the previous standard. Please feel free to contact us to find out what you can do to protect your rights.

“This rule will reward defendants who succeed in concealing evidence of wrongdoing, since claims will be dismissed before discovery can proceed, whether it is government officials who violate people’s rights, polluters who poison the drinking water, or employers who engage in blatant discrimination. Often, evidence of wrongdoing is in the hands of the defendants, and the facts necessary to prove a valid claim can only be ascertained through discovery.”

—Rep. Jerrold Nadler, testifying before the Subcommittee on Courts and Competition Policy, Dec. 16, 2009



Drug recalls

Avandia[®], the type-2 diabetes medication, has had its use severely restricted in the United States, and the drug has been withdrawn from the market in Europe due to concerns over severe side effects. The U.S. Food and Drug Administration (FDA) concluded there is significant evidence that Avandia, also known as rosiglitazone, increases the risk of heart attack, stroke, and congestive heart failure in those taking it.

Zicam Cold Remedy nasal gel, swabs, and swabs for children may cause loss of smell. Anosmia, the official term for loss of the sense of smell, may be long-lasting or even permanent. The FDA, which does not regulate this product, is advising consumers to avoid it after receiving over 100 complaints of anosmia. Some complainants reported losing their sense of smell after just one dose; others said it occurred after several doses. The company denied that its products are unsafe, but recalled them anyway.

Meridia (sibutramine), a weight-loss drug from Abbott Laboratories, has been recalled by the FDA due to reports that it causes heart attack and stroke. Some groups believe that the recall was past due. The drug was first approved in 1997, and concerns over its safety have been expressed since 2002. A 2009 study showed that Meridia increased the risk of a serious heart event by 16 percent.

Hydroxycut, the weight-loss/bodybuilding drug, has been linked to one death and numerous cases of liver damage. Hydroxycut is not tightly regulated by the government, since it is a dietary supplement. Still, FDA officials are warning dieters to stop taking the supplement right away. Health officials are having trouble determining what makes Hydroxycut toxic, since the formulation of the product has changed many times over the years.





HOME POISON CONTROL

Young children are curious and may place everything in their mouths. To minimize potential risk, you can take several preventive steps:

- Keep all toxic substances and medications locked and out of reach. Household cleaners, paints, insecticides, and other dangerous products may be everywhere—in kitchens, baths, basements, and garages.
- Keep emergency medical service numbers and the poison control center number (800-222-1222) near a telephone.

- Purchase ipecac syrup for use only with the approval of a poison control center or your physician.
- Ask for childproof caps and keep prescriptions and over-the-counter medications out of the sight and reach of children.
- Use children's medications only as prescribed.
- Investigate your residence for lead-based paint exposure if it was built before 1978.
- Install carbon-monoxide detectors and have furnaces, fireplaces, and woodburning stoves inspected and cleaned annually.

Debunking myths

MYTH—

Insurance premiums are skyrocketing due to lawsuits.

Premiums may be going up, but lawsuits have nothing to do with it. The more likely culprits are rising medical costs and insurance-industry profits that get bigger every year. In 2004, the insurance industry recorded a \$38.7 billion profit, an all-time record. By 2007, that number shot up to \$61.9 billion.

Meanwhile, even those in favor of “tort reform” can’t promise that limiting damages will lower premiums. For example, American Insurance Association spokesman Dennis Kelly told the *Chicago Tribune* in 2005 that “we have not promised price reductions with tort reform.”

MYTH—

Big awards line the pockets of attorneys and leave nothing for the victim.

Civil justice attorneys rarely charge an hourly fee like other attorneys. Instead, they work on a “contingency fee basis.” This means if they win, they get a percentage of the damages.

This contingency fee system has allowed Americans a level of access to justice that is simply unimaginable in many countries. Every American, no matter how much money they have, can stand up for their rights in court, with legal representation. That’s a big deal!

MYTH—

Lawsuits are preventing people from volunteering for Scouts, Little League, and other children’s programs.

This is just flat-out wrong. This myth, like so many others, has been spread by special-interest groups dead set on restricting Americans’ legal rights.

In truth, the Volunteer Protection Act of 1997 provides immunity to volunteers at nonprofits during the course of their charity work.



Referrals

Thanks to all of you who have recommended our firm to your relatives, friends, and neighbors. We appreciate your vote of confidence and pledge to care for these "VIPs" as well as we care for you.

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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

When the dog



Who is liable when a dog bites?

Typically, the dog owner is responsible for severe personal injuries caused by a dog. The owner or his/her insurance company usually must compensate the victim for injuries. Owners and dog-bite victims should note the following:

- State dog-bite statutes are known as "strict liability" statutes. This means that the victim does not have to prove negligence on the part of the owner, just that she/he owns the dog that bit the victim.
- Where there is no statute, the "one bite" rule often applies. Basically, this means that if the dog bit anyone before, the owner is on notice that the dog is a bite risk and the owner must take appropriate precautions—for example, making sure the dog is fenced, on a leash, and restrained from running free. In these cases, the victim must prove that the dog owner knew about the dog's bite history.
- Dog fighting is illegal, but if the dog is a fighter and known to be so, the owner must protect the public from him.

About 4.7 million people suffer dog bites every year, and approximately 800,000 require medical attention.

Protect your rights and understand your liability in the event of a dog bite by contacting our office.

Auto accidents and injuries

VICTIMS

In a devastating instant, a driver and passengers can become victims of another driver's negligence in an auto accident.

Seriously injured victims suffer large and worrisome medical bills. Since many cannot work, they have difficulty supporting their families while recovering.



RESTITUTION

Victims should be entitled to recover restitution for property damage and loss, lost wages, medical costs, pain and suffering, and mental anguish.

ATTORNEYS

A qualified vehicle accident attorney can protect victims' rights and help recover fair and complete compensation for physical injuries and damages. Accident attorneys, who know how a crushing impact can harm a human body, recommend a physician's examination since unseen or overlooked injuries can later turn into major health challenges.

INSURANCE

Insurers want to minimize payouts to accident victims. An experienced accident lawyer, who is well aware of insurance company tactics, can negotiate an optimum settlement outcome. Attorneys usually advise victims to discuss their situations before signing documents or accepting offers.