



October 2017 Newsletter

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Could Your Fitbit Be a Witness?



Fitness trackers, like the Fitbit, can keep a record of your heartbeat and activity level while worn. For those who want to track their steps, sleep, and activity level, these devices offer a convenient way to

do so. Should the need arise, the information might also help support your testimony in the legal arena, but collected data could also be used against you.

For example, a Canadian law firm used information collected from a Fitbit to help prove an injury claim by showing a sudden decrease in the client's level of activity after an accident. While someone's level of activity is debatable, the claimant was a fitness instructor; it would be unlikely she was inactive before the accident.

On the flip side, a Fitbit or similar monitoring device can be used against you. A Florida woman was wearing a Fitbit when she claimed to be asleep, awakened, and sexually assaulted. Police found her Fitbit at the scene, received permission to access the account, and discovered that the woman was awake and walking around when she claimed to be asleep.

Technology is constantly changing, and it is always interesting to see how it finds its way into the legal arena.

Phantom Crashes



When another vehicle causes you to crash without hitting you, how can you prove that the driver was at fault? It sounds a little crazy, but there are a lot of situations where one vehicle forces

another vehicle off the road or into another object or car without any contact whatsoever. One common scenario is when a car merges or turns onto a roadway haphazardly and cuts off another vehicle. That vehicle may then have to swerve into another vehicle, oncoming traffic, or off the road.

Property damage from single-car accidents is covered under a driver's collision insurance. However, if another driver causes bodily injuries and does not stop, you may be able to recover your damages from your own insurance company, under your uninsured motorist coverage.

To recover damages caused by a phantom driver under your uninsured motorist coverage, you will need to prove that the accident was the fault of the phantom driver. Insurance companies are skeptical, so the best thing to do is to immediately contact the police, which documents the accident and allows the police the opportunity to locate the phantom driver. Assuming the insurance company is convinced of the phantom driver, you must still prove that the accident was that driver's fault. While the phantom driver is unknown and will therefore not be able to contradict you, there may be other witnesses to the accident. In addition, any inconsistencies in your statements or testimony will raise red flags even more so than in other cases.

The best thing to do if you or a loved one is injured in a no-contact accident is to call our office immediately - before speaking with your insurance company - for a confidential case evaluation.

Haunted Attractions



Haunted attractions are thrilling but can be dangerous - dim (or no!) lights, narrow passages, confusing strobe lights and loud noises, obstacles in walkways, and scary characters that frighten

patrons. This pretty much breaks every rule stating that owners have a duty to provide a reasonably safe property. Every year, haunted-house goers sustain cuts, bruises, broken bones, and twisted ankles. Can those who get injured sue the property owner and production group for their losses?

Many injured thrill seekers have tried to sue, but courts often find that customers who voluntarily enter a haunted attraction assume the risks associated with doing so, including being startled, scared, bumped by other patrons, and chased by actors. However, haunted attractions will be found responsible and settle cases in instances where the injury was caused by something the patron could not reasonably have expected or consented to. While creating a frightening and difficult-to-navigate attraction isn't negligent, haunted attractions are still expected to provide a reasonably safe environment.

For example, in 2009, Glenda Dickson broke four vertebrae in her back when she fell out of a second-floor window in a dark room after being startled by an actor. Leaving a window open and scaring people standing in front of it is not reasonable - even for a haunted house. It is unknown whether Dickson filed a claim against the business, but most lawyers would agree that this would be considered negligence.

Fall Fires

A chill is in the air and fall festivities can't be far behind! For



many, this means candlelit jack-o'-lanterns and gatherings around the fire pit. Depending on your location, you may need to turn on a heater to keep the chill away or use a generator after a severe storm. While you are trying to stay warm, powering your home, or celebrating, keep the following fire-safety tips in mind:

Candles. The National Fire Protection Association (NFPA) has reported that approximately 25 home fires per day are caused by candles. If you have a fall centerpiece or display that includes candles, never leave it unattended. Or, use flameless candles.

Fire pits. Gathering family and friends around the fire pit on a chilly night is one of the best ways to enjoy the outdoors in the fall. Be sure to keep children away from the fire, and keep baggy clothing and blankets away from the flames. To help prevent sparks, avoid soft woods. Have a hose close by and be sure the fire is completely out before leaving. Moreover, our firm once represented a young boy who was tragically killed when someone attempted to pour kerosene onto an existing fire. Any fire is dangerous, but fall fires raise many risks.

Space heaters. According to the NFPA, space heaters account for 40 percent of home-heating fires and over 80 percent of home-heating fire deaths. The organization recommends keeping anything that could burn at least 3 feet from a space heater. Don't let children play around heaters, and never leave space heaters unattended.

Generators. Improper use of generators can result in electrocution, carbon-monoxide poisoning, and fire. Be sure to follow the manufacturer's instructions. Always operate generators in a ventilated area outside and at a location where the exhaust won't come into the house through open doors and windows. Generators are particularly dangerous because it can often be difficult to detect the risk of carbon-monoxide poisoning or electrocution.