



Law Offices of Bornstein & Emanuel, P.C.

A Personal Injury Law Firm

Fall 2005 Newsletter

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PRACTICE AREA IN FOCUS

Reflex Sympathetic Dystrophy

Reflex Sympathetic Dystrophy (hereinafter referred to as "RSD") is a pain syndrome, also known as Complex Regional Pain Syndrome (hereinafter referred to as "CRPS"), which arises with a dysfunction of the autonomic nervous system. It is a chronic progressive neurological condition that affects skin, muscles, joints, and bones.

The disease normally begins in an extremity – a hand or a foot – and subsequently spreads to other parts of the body. Unlike other injuries, the disease becomes more painful as it progresses.

RSD is typically caused by trauma to the autonomic nervous system, including nerve injuries and/or fractures. Minor injuries, such as sprains from falls, are also frequent



causes. The symptoms may progress in three stages – acute, dystrophic, and atrophic – although this notion is subject to debate.

- **ACUTE:** burning pain, swelling, increased sensitivity to touch, increased hair and nail growth in affected region, joint pain, color and temperature changes.

- **DYSTROPHIC:** constant pain and swelling, limb feels cool and looks bluish, muscle stiffness and atrophy (wasting of the muscles), early osteoporosis (bone loss).

- **ATROPHIC:** cool and shiny skin, increased muscle stiffness and weakness, symptoms may spread to another limb.

RSD can be difficult to diagnose and often
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Kenneth Bornstein

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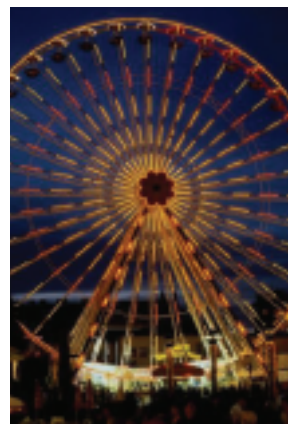
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IN THE NEWS

Amusement Park Incidents Are Frequent

Recent reports of deaths at area amusement parks remind us how a day of family fun can easily turn into tragedy. While these cases are fortunately rare, it is more common for injuries, including many that may be serious, to occur at amusement and entertainment venues. These venues have a responsibility of due care to their patrons. These types of cases require you to analyze whether the claim will be against the amusement park or provider of the ride, as well as analyzing whether a



product design defect claim should be made. In the event that the venue or operator of the ride has not acted reasonably, it may be possible to succeed in a case of negligence against them. In the event that the ride malfunctioned as the result of a defect, it may be possible to succeed in a case of products liability against the manufacturer. If an employee committed an intentional act, such as an assault, it may be possible to succeed in a case against the

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Suits Examine Commerce and Nature

For centuries, commerce has led a noisy coexistence with nature. In the 1940s, smoke and ash from steel factories blackened Pittsburgh afternoons, searing lungs and burning eyes across the Allegheny Valley. In 1979, an accident at the Three Mile Island nuclear power plant in Harrisburg threatened to dump radioactive water into the Susquehanna River and blanket the northeast with a plume of harmful emissions. In 1989, the Exxon Valdez struck a reef off the coast of Alaska, spilling 11 million gallons of crude oil.

Everyday, commerce and nature clash – be it with innocuous gusts of wind that blow away shopping carts or with major hurricanes that blow away casinos, malls and lives. When those clashes turn ugly, lawsuits are filed. Two recent cases explored the public use of privately-owned, publicly-accessed land; and the responsibility of a company when its business practices threaten the environment.

The Connecticut Supreme Court ruled last month in favor of the Metropolitan District Commission, a water company in the central part of the Nutmeg State, in a lawsuit filed by a former mountain biker who became paralyzed after he fell into a ravine on publicly-accessible property owned by the company.

According to an article by Thomas B. Scheffey in the Connecticut Law Tribune, the mountain biker, Douglas Martel, argued that officials from the water company (a government agency) should have realized a trail near a 15-to-20-foot ravine was dangerous and should have maintained it better.

The Court ruled in favor of the Met-

ropolitan District Commission based on a statute that gives government agencies immunity from damage caused by negligence in the maintenance of their own recreational or scenic property.

John B. Farley, an attorney with Halloran & Sage, the Hartford-based firm that represented the company, said the ruling was a victory for the public-use of privately-or-government-owned lands.

“If it had lost this case, the [Commission] could not open its lands for recreational use,” Farley said.



In Mississippi, a jury awarded \$14 million in actual damages to Glen Strong, an Oysterman who developed multiple myeloma as the apparent result of dioxins released from a DuPont factory near his home. Strong's was the first of 1,996 lawsuits filed in relation to illness and damages allegedly caused by the release of the dioxins – particularly titanium dioxide, which is used in the manufacture of paints, plastics and toothpaste. DuPont chose to defend each case individually.

“There's never been anything so egregious as it is here,” Al Hopkins, the attorney for Strong, said. “This chemical company cares nothing about the people of south Mississippi.”

IN THE NEWS

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venue or its operator, as well as the employee individually, if it can be shown that the employee acted within the scope of his or her employment.

Bornstein & Emanuel, P.C. is experienced in handling these types of cases. The firm is currently handling a case involving an infant boy who was hurt while on a spinning ride at a fair. He was not properly

and adequately strapped to the seat and sustained head injuries. The case is pending in Queens County.

In another case, in Nassau County, a young boy was injured on a spinning ride at a summer camp. After falling off the equipment, he suffered leg injuries when the ride came in contact with his body.

The case resulted in a significant recovery for the injured boy.

PRACTICE AREA IN FOCUS

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requires excluding other conditions that produce similar symptoms. A thorough history and neurological examination is of utmost importance. Physical examination involves observing skin color and temperature, swelling, and vascular reactivity; overgrown and grooved nails; swollen and stiff joints; muscle weakness and atrophy.

The disease is poorly understood by victims who suffer from the disease, their families, healthcare providers, and insurance companies. Considering that RSD may have been caused by a minor injury and can take time to develop and be diagnosed, insurance and personal injury claims in this area often require litigation experience. At Bornstein & Emanuel, P.C., our lawyers have extensive experience in handling RSD and CRPS cases.

CASE STUDY

Bornstein & Emanuel, P.C. has been at the forefront of developing legal claims based on RSD. One case involving a woman helps to illustrate how pursuing a claim for RSD resulted in a far more significant recovery to compensate a victim for serious injuries, that may not have been available with a traditional approach to the case. The woman was in an elevator when it dropped 10 stories. The firm retained an engineer and was able to establish that the defendants were responsible for a governor rope that failed when it broke. The client was originally diagnosed with a fractured toe. However, the injury developed into RSD. In this case, the firm first needed to establish negligence on the part of the defendant. Thereafter it was necessary to show that the injury had evolved into RSD and that it was seriously compromising the client's quality of life and her ability to provide for herself and her family. The firm argued that the injury should be compensated far more significantly than a standard broken toe. This was accomplished during the pretrial phase of the lawsuit. During jury selection the case was settled for **\$900,000**.

ATTORNEY PROFILE

Kenneth Bornstein, Partner

Kenneth Bornstein, a partner in Bornstein & Emanuel, P.C. recently discussed his background, experience and interests for this Attorney Profile feature. The Attorney Profile allows members of the Bornstein & Emanuel, P.C. family to highlight their professional accolades and personal interests – offering friends, clients and potential clients a chance to see a side of the them that is rarely seen.

Background

Kenneth lives in Merrick with Edna, his wife of 17 years, and their twin sons, Daniel and Shane. Kenneth was born and raised in the Brighton Beach section of Brooklyn, N.Y. He graduated from Abraham Lincoln High School and earned both his Bachelor's Degree (in Athletic Administration) and his Juris Doctorate from St. John's University.

Experience

After law school, Kenneth joined the Legal Aid Society in Queens and handled a variety of cases from inception to disposition. Kenneth's work with the Legal Aid Society provided real-life courtroom experience that would become valuable later in his career.

"I learned trial skills by handling misdemeanor trials in Criminal Court and felony trials in Supreme Court," Kenneth recalled.

In 1990, Kenneth and a colleague formed Leventhal & Bornstein, a Garden City-based general practice firm with an emphasis on criminal and personal injury law. Anthony Emanuel joined the firm in 1992. In 1994, the firm changed to Bornstein & Emanuel, P.C., concentrating almost exclusively in the field of personal injury.

Interesting Cases

The legal profession is filled with unusual or offbeat cases. They often make good fodder for television scripts or late-night talk shows and they even make attorneys, like Kenneth, pause for reflection. He has been on the winning side of several interesting cases:

"There was the insurance company that failed to pay a life-insurance policy when an insured client died as the result of a bee sting... the client who recovered (damages) for a dog bite to his genitals... the client who was injured while pushing a



Kenneth Bornstein, partner in Bornstein & Emanuel, P.C.

vehicle in an automotive class... and the cheerleader who was injured when she fell from a 'pyramid' routine."

Activities

Kenneth is a member of the Nassau County Bar Association, the New York State Trial Lawyers Association and the St. John's University School of Law Alumni Association. He is a mentor with the Nassau County Bar Association Mentor Program and a volunteer with the We Care Fund of Nassau County. From 1999 to 2004, Kenneth served as director and secretary of the Merrick-North Merrick Little League.

Interests

THOROUGHBRED RACING: "I am a part owner of thoroughbred race horses and the last two years we have had a firm outing at Belmont race track for our clients and friends."

BASEBALL: "We take baseball trips every season with our kids to different cities and parks. We started with a trip to the Baseball Hall of Fame in Cooperstown. We have now been to the following stadiums: Camden Yards in Baltimore, Fenway Park in Boston, Wrigley Field in Chicago, SBC Park in San Francisco, PNC Park in Pittsburgh, Great American Ballpark in Cincinnati, Jacobs Field in Cleveland and Dolphins Stadium, where the Marlins play in Miami."

WINE: "I have a passion for red wine – Cabernet and Pinot Noir. I've taken wine tasting trips to Long Island Wine Country and to Napa Valley. I'm also a member of a wine club that meets monthly."

MOVIES: "My favorites are 'The Godfather,' 'Goodfellas,' 'A Few Good Men,' 'Silence of the Lambs,' and 'Casablanca.'"

TIPSHEET: WHAT IF I'M IN AN ACCIDENT?

An accident can occur at almost anytime. If you are involved in one, it is important to remain as calm as possible. If you are injured, you must go to a hospital by ambulance. Even a minor injury can become more significant and must be evaluated by a doctor, especially injuries to the head. The following checklist can be useful for those cases where you haven't suffered an injury:

- Stop your vehicle in the safest place and call the police.
- Document the names of those at the scene of the accident.
- Ask police how to obtain their report for your insurance claim.
- If you think the other driver was under the influence of alcohol or drugs, insist he or she undergo a breath test.
- Cooperate with police.
- If the other driver accepts responsibility, do not accept money offered to you. You may give up your right to file a claim.
- Never agree to ignore an accident.
- Write a detailed account of the accident.
- Take pictures from various angles showing damage, position of vehicles, skid marks and other evidence.
- Report the accident to your insurance company.

PRACTICE AREAS

Firm Concentrates on Personal Injury and Wrongful Death Claims



The Law Offices of Bornstein & Emanuel, P.C. concentrates its practice in personal injury and wrongful death litigation, including Reflexive Sympathetic Dystrophy, Industrial and Workplace accidents, Premises Liability and Motor Vehicle Accidents. The following is a detailed list of the firm's practice areas:

Reflex Sympathetic Dystrophy Personal Injury and Wrongful Death

- n Motor Vehicle, Pedestrian Accidents and Drunk Driving Crashes
- n Insurance Coverage Disputes



The Law Offices of Bornstein & Emanuel, P.C.
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- n Premises Liability Accidents
 - Inadequate Security
 - Animal Attacks
 - Slip and Fall Accidents
 - Lead Poisoning
- n Industrial and Scaffolding Accidents
 - Elevation Accidents
 - Falls from Scaffolding, Cranes, and Ladders
 - Elevator and Stairway Accidents
 - Carbon Monoxide, Radiation, and Toxic Chemical Exposure
 - Flammable and Combustible Materials, Fires and Explosions
 - Forklift Injuries
 - Electrocution and Burn Injuries
 - Dangerous and Defective Machinery and Tools
 - Falling items from Scaffolding, Cranes, and Ladders
- n Other Practice Areas
 - Medical Malpractice
 - Nursing Home Negligence

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