Legal Matters®

Consumer Safety
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Car accident victims need to know about *all* their rights

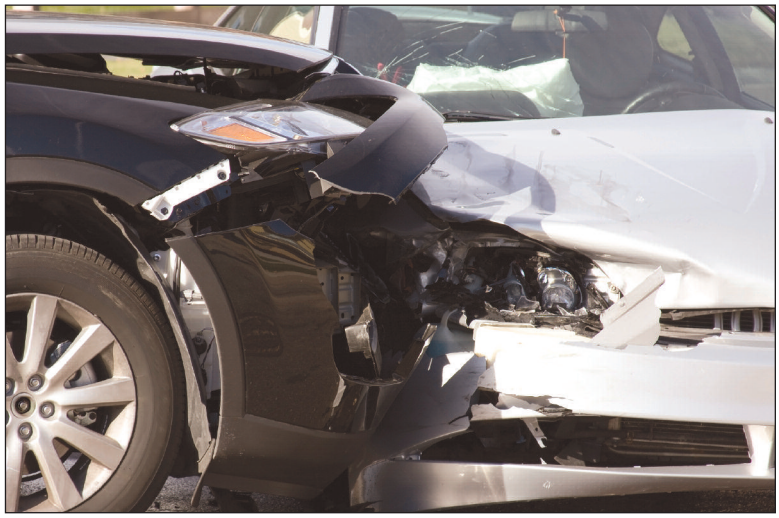
People who have been injured in car accidents don't always know all their rights. Often, they think that if they receive a payment from the other driver's insurance company, that's all they're entitled to – even if the payment just isn't enough to fully compensate them for their pain and suffering, medical bills, and lost time at work.

If you or someone you know has been injured in a car crash, it's important to know all the types of compensation to which you may be entitled. Only an attorney – and not an insurance company, police officer, etc. – can fully investigate your case and determine how you can be fully compensated.

For instance, often someone *other* than the driver may also be legally responsible for the crash. Although the other driver may have done something wrong at the moment of impact, our justice system has wisely decided that in many cases, businesses and other entities may be responsible if they could have prevented the situation from arising, but didn't.

These entities often have great financial resources, and it's only fair to ask them to look out for others and prevent harm to innocent people who use their services and rely on them.

Here are some examples:



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• In Maryland, an elderly couple got off a bus and were walking home past a fire station that was under construction. A dump truck backed into them, injuring the husband and killing his wife.

While the driver may have been careless, a jury found that the general contractor and a subcontractor at the site were also legally responsible for the harm. These contractors had removed the side-

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walk in front of the fire station and had not created a safe alternative path for pedestrians to use.

The jury determined that while the contractors didn't directly cause the accident, they were responsible for not preventing it.

• In Virginia, a jury found a national fraternity liable to a freshman at George Mason University who was severely injured in a car crash on the way to a party.

The off-campus fraternity designated drivers to "shuttle" young women back and forth to its events. However, the fraternity made no effort to make sure the drivers it designated were safe. The driver in this case picked up the young woman and her friends and drove well over the speed limit – despite their pleas to slow down – eventually losing control of the vehicle.

Although the woman had very serious injuries as a result, the driver's insurance limit was only $25,000 – not nearly enough to compensate her.

But a jury determined that the fraternity itself was also legally responsible for the crash.

Although it was the driver who was speeding, it was the fraternity that hosted the party, invited the guests, and offered a shuttle service. Therefore, the jury said, it had a legal duty to make some effort to ensure that its drivers were safe.

• In northern California, a woman who was taking her friend's three children home from school was driving on Highway 12 when a car suddenly crossed the median and plowed head-on into her vehicle, causing severe injuries.

The woman and her friend sued the driver, but they also sued the state transportation department, claiming that the stretch of road where the accident occurred was particularly hazardous and that the department had failed to address it.

The woman's lawyers discovered internal reports at the department noting the recurring problem of head-on collisions on Highway 12, and evidence that the agency had formulated a plan to solve the problem in the late 1990s – but failed to implement it.

The lawyers also presented evidence that on a similar highway, the state had put up median barriers and improved sightlines, which virtually eliminated deaths caused by cars crossing the median.

A jury eventually found the state 35 percent responsible for the accident because it could have prevented it, but failed to do so.

• In New York, the Applebee's restaurant chain settled a lawsuit brought by a motorcyclist who was injured in a crash caused by a customer. The motorcyclist claimed that Applebee's had served so many whiskey and 7-Ups to the customer that his blood-alcohol level was more than twice the legal limit two hours after the accident.

Once again, Applebee's didn't directly injure the motorcyclist, but it could have prevented the harm by being more responsible in the way it served liquor.

There are many other examples of businesses being responsible for not preventing a car crash. Sometimes a driver's employer may be legally responsible. Sometimes the car manufacturer may be responsible for making an unsafe or defective car.

But the important point that you don't know who may be legally responsible, and the extent to which you can be compensated, unless an attorney fully investigates *all* the facts involved in your situation.

Aluminum bat maker held responsible for pitcher's death

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The manufacturer of an aluminum baseball bat is responsible for the death of an 18-year-old pitcher who died after being struck in the head by a line drive during an American Legion game, the Montana Supreme Court recently decided.

The pitcher's parents argued that the bat, a Model CB-13 Louisville Slugger made by Hillerich & Bradsby, increased the dangers of baseball because it caused balls to be hit at a higher velocity, giving pitchers and infielders less time to react. The parents claimed that the manufacturer failed to properly warn about this danger.

The manufacturer argued that if it had a legal duty to warn of dangers, it owed that duty only to the actual user of the product – in this case, the batter, not the pitcher. It claimed that the pitcher was just a "bystander."

But the court disagreed, finding that the manufacturer had a duty to protect all players against physical harm caused by the bat.

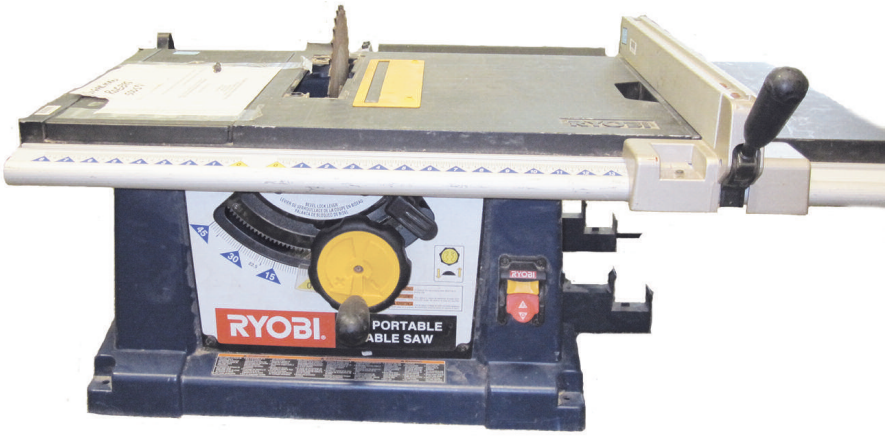
Table saw maker sued for injury due to faulty design

A construction worker who suffered a hand injury while using a table saw could sue the manufacturer for failing to equip the saw with a "flesh-detection" safety feature, a federal appeals court in Boston decided recently.

The plaintiff was cutting a length of wood with a Ryobi Model BTS15 benchtop table saw when his left hand slipped into the spinning saw blade, causing him a severe injury.

He sued the manufacturer, arguing that the saw had been improperly designed because it lacked a flesh-detection safety feature that would have automatically stopped the blade upon contact with his hand.

The manufacturer claimed that it wasn't feasible to equip the saw with such a feature because it would make the tool – designed to be inexpensive and portable – much heavier and more expensive.



It said such a feature had been generally rejected by sawmakers.

But the court disagreed, and said there was enough evidence for a jury to determine that it was feasible to design the saw with the safety feature.

Are nursing home patients signing away their legal rights?

When a patient moves into a nursing home, the patient or a family member must typically sign an admission agreement. In many cases, these agreements say that any legal disputes between the patient and the facility will be resolved through "arbitration."

That means that instead of being able to bring a case in court to decide who's right, a patient or family member must go before a private judge. In arbitration, you might be giving up your right to a jury, a public trial, the ability to obtain and present certain evidence, and the ability make certain claims and obtain certain remedies.

Recently, the West Virginia Supreme Court decided that if a patient was injured due to the carelessness of nursing home staff, the patient's family could still sue in court even though the admission contract contained an arbitration requirement.

The court examined various state and federal laws, and concluded that while two people who already have a legal dispute are free to choose to have it resolved by arbitration, a nursing home contract can't force someone to sign away their right to a court trial *before* a dispute even arises.

Doctors sued for lost chance of better medical outcome

Doctors who treated a woman for head injuries after a car accident – but failed to recognize that she had also suffered a stroke – may be legally responsible for depriving the woman of a chance of a better outcome, the Washington state Supreme Court recently ruled.

The doctors sent the woman home from the hospital after treating her head injuries, but she returned the next day after having neurological problems. Different doctors determined that she'd had a stroke that left her with permanent brain damage.

The woman sued the first set of doctors, claiming that she would have had at least a 50 percent chance of a better outcome, including the possibility of a complete recovery, if they had promptly diagnosed the stroke and treated it.

Usually, a medical malpractice lawsuit involves a claim that a doctor did something wrong and caused an injury. But the court allowed this case to go forward even though the woman didn't claim that the doctors actually caused her harm – she merely claimed that they made it less likely that she'd recover from it.

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County could be held responsible for a pit bull attack

Most dog owners realize that if they fail to control their pet, they can be held accountable for any harm that someone else might suffer.

But a recent case in Washington state shows that at least in some circumstances, victims of dog attacks can hold local authorities responsible as well.

The victim was a middle-aged woman who lived alone with her Sheltie service dog that she needed for her medical conditions. She often left a "doggie door" open so that a neighbor's Jack Russell terrier could join them.

One morning, two pit bulls owned by another neighbor burst through the doggie door and went on a 20-minute rampage. The woman was pinned against the wall and suffered bites to her breasts, face, forehead and nose. She required two surgeries and 27 stitches to her face, and she was left permanently disfigured. The Jack Russell terrier was killed in the attack.

The woman sued the pit bulls' owners, but she also sued the county, which had legal responsibility for animal control. She claimed the county authorities should have declared the pit bulls a danger long before the incident.

At the trial, the woman testified that she had complained to the police about the pit bulls on two previous occasions, but got no response. Several neighbors also testified that they had complained about the dogs and their owners' neglect – including a 10-year-old boy who said the dogs had tried to bite him while he was on rollerblades.

A jury decided that the county shared the blame for the attack, and awarded the woman a significant amount of money for her medical expenses, pain and suffering.

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