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Legal Matters®

You could be compensated even if you were partly at fault

Everyone agrees that you should be able to sue for an injury if you were an innocent victim and you were harmed by someone else's negligence.

But what if you were partly at fault? What if you were injured after you did something that you knew was dangerous? What if you even signed a form saying you knew the risks and accepted them?

A generation or two ago, most people in the U.S. were out of luck if they were injured in a way that was even partly their own fault. But today, the courts generally allow people to sue even if they were somewhat at fault...as long as someone else was *more* at fault.

And the "someone else" might not even be the person who caused the harm. It could be someone who merely had a legal obligation to *pro-*

tect you from harm.

For this reason, you should never just assume that an injury you suffered was your own responsibility and that you can't be compensated for your pain and suffering and other harm. You should always talk with a lawyer first, to find out whether your family can be put in a better position after your injury.

Here are some examples of people who engaged in risky behavior but who were still found to deserve compensation for their injuries:

A bar fight. A fraternity reunion was held at a Texas resort, and about a

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Better safety measures needed for drug pain pumps



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Federal health regulators have announced steps to improve the design and safety of drug pumps that have been linked to more than 700 deaths in the past five years.

“It’s clear from the history of problems we’re seeing that there is a need for more careful infusion pump design and testing,” said Dr. Jeffrey Shuren of the U.S. Food and Drug Administration.

Infusion pumps are used to deliver fluids — liquid nutrients and medicines such as insulin, morphine, chemotherapy and anesthesia — into a patient’s body. They are used in hospitals, as well as by patients at home.

In the past, the FDA assumed that many problems with the pumps were the fault of a doctor or nurse mistyping infusion directions. But FDA officials now believe that software and design issues are actually at the root of many of them.

The FDA is working on new guidelines that call on manufacturers to provide more detailed design and engineering information for new pumps. The FDA also wants manufacturers to try out the devices in settings where they are commonly used, and when necessary, it wants to be able to inspect the manufacturing plant before approving a device.

You could be compensated even if you were partly at fault

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dozen frat members ended up at a resort bar along with a dozen or so men from a wedding party. One of the frat members made an offensive comment to the date of one of the wedding members, and before long there were tensions, threats, name-calling and a generally hostile atmosphere. This lasted about an hour and a half until closing, when a fight broke out.

During the fight, one of the frat members entered the melee to try to rescue a friend, and ended up with a fractured skull.

The frat member acknowledged that he could have left the bar at any time, and was partly at fault for joining in the fight. However, he sued the resort, arguing that the resort knew for 90 minutes that trouble was brewing and should have done something to defuse the situation, instead of simply continuing to sell drinks to people who were already drunk and rowdy.

A jury found the resort 51% at fault, and awarded the frat member \$1.48 million. Recently, the Texas Supreme Court upheld the verdict.

Amusement park injury. A South Carolina man with a history of back problems was injured in a go-cart ride at an amusement park when another rider collided with him. He sued the park, claiming the park should have stopped the ride because a group of young men were riding recklessly and putting others in danger.

The park argued that the man knew there were risks to go-carts, and that he chose to ride despite a warning sign that said “Participate at your own risk” and that the ride was not recommended for people with back problems.

But the South Carolina Court of Appeals let the suit proceed, finding that the park might have been

more at fault than the injured man.

Child playing at school. An 11-year-old boy was injured when he slid down a banister at a summer program at a school in upstate New York. The child had apparently been left unsupervised at the time.

The school district argued that it couldn’t be sued because the injury was the child’s fault – he knew the risks of falling and slid down the banister anyway.

But the New York Court of Appeals said that even though the child might have acted carelessly, the school could still be liable if it was more at fault for failing to supervise him.

“Children often act impulsively or without good judgment,” the court said, and a school shouldn’t be able to use this fact to avoid its duty to look after them.

Signing a waiver. A Colorado woman went to a salon to use a tanning booth. Before she did so, she signed a liability waiver that said, “I have read the instructions for proper use of the tanning facilities and do so at my own risk and hereby release the... manufacturers from any damage or harm that I might incur.”

After entering the booth, the woman injured her fingers when they came into contact with an exhaust fan.

The woman sued the manufacturer, claiming the booth was unreasonably dangerous. A court threw the suit out, saying she couldn’t sue because of the waiver.

But on appeal, the state Supreme Court sided with the woman. It said it wouldn’t be fair to allow manufacturers to get away with selling dangerous or defective products just by making customers sign a waiver before using them – particularly when the customer gets nothing in return for signing the waiver other than being able to use the product in the first place.

We welcome your referrals.

We value all our clients. And while we’re a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you’ve already referred someone to our firm, thank you!

Jury sends message about texting while driving

A Texas jury has sent a message about texting while driving, and it's a significant wake-up call.

Megan Small, a senior at Baylor University who was returning to school after Thanksgiving break, was killed when a pickup truck crossed the center lane and struck her car head-on. A friend of Small's, who was following behind her, swerved to avoid the wreck and suffered a concussion.

The two families sued the driver of the pickup truck.

But what really infuriated the jury was evidence suggesting that the pickup driver had made seven phone calls and sent or received 15 text messages in a short period before the crash, and that he was either sending or receiving a message at the moment the accident occurred.

The jury awarded more than \$20 million in damages.

Of course, there's no reason to think the families will ever actually collect anything more than the pickup driver's insurance policy limits. But the jury still sent a strong message that drivers should put away the phone when they get behind the wheel.



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Mold in a home can be hazardous to your health

Landlords have a responsibility to take tenants' complaints about water damage and mold seriously.

A landlord in Laguna Beach, California found that out recently when a jury awarded a tenant significant damages after his 9-year-old daughter became ill due to living in a water-damaged home.

Patrick Fetzer and his daughter, Lauren, rented the home from June 2006 until August 2008. During that time, Lauren was hospitalized twice due to respiratory distress, and was eventually diagnosed with a rare, life-threatening pulmonary disease.

The Fetzers claimed they noticed musty odors and endured roof and window leaks the first winter, but the landlord ignored their complaints.

A jury found that the landlord was negligent and had to pay for the harm to Lauren.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

Our vulnerable elderly are entitled to legal protection

Our legal system is there to protect all members of society – even (and maybe especially) the most frail and vulnerable members.

Recently, a jury in Santa Clarita, California sent a powerful message to this effect by awarding a very large verdict to Sophie Schwartz, a 94-year-old woman with severe dementia who was assaulted by an employee of her nursing home.

An aide walked in and discovered the assault. The employee is now serving a jail term for attempted rape.

Schwartz's family sued the nursing home company, claiming that it didn't properly screen employees, short-staffed the units, and provided inadequate supervision.

The company argued against a large award, noting that the woman was not actually raped, suffered no lasting physical or economic harm, and in fact has no memory of the incident.

But the jury found that the company had put profits ahead of caring for the people whose well-being had been entrusted to it, and that even a 94-year-old woman with dementia is entitled to fair compensation for such a terrible harm.

Our legal system is there to protect all members of society – even (and maybe especially) the most frail and vulnerable members.

Be sure to keep us informed about your entire situation so we can best represent your interests.

Have a lawsuit *and* a comp claim? Be careful

In some cases, an injured employee could lose workers' compensation benefits by settling a personal injury claim with a third party without first getting the employer's consent.

In one recent case, a truck driver in Indiana was injured on the job when his truck collided with an automobile. His employer's workers' compensation coverage paid his medical expenses.

The truck driver left his job, but continued to experience pain from the accident. So he applied to reopen his workers' compensation claim, seeking \$26,500 in additional compensation for a permanent impairment.

But his former employer argued that his claim for additional benefits should be thrown out because he had settled his personal injury claim against the

driver of the automobile for \$10,350 without first obtaining the employer's consent.

The Indiana Supreme Court agreed with the employer, saying the state's workers' compensation law clearly precluded the truck driver's comp claim in this circumstance.

The court noted that because the truck driver had settled with the other driver, the former employer was no longer able to go after that driver to recover its expenses. That's the reason the employer's consent is required.

The law varies from state to state, but if you have both a civil lawsuit and a workers' comp claim arising from the same injury, you need to be careful. Be sure to keep us informed about your entire situation so we can best represent your interests.



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