

page 2

Supreme Court ruling helps railroad,
maritime workers

page 3

Auto insurance might cover trauma
of witnessing accident

Three common drugs that could
have dangerous side effects

page 4

County may be liable for bushes
obscuring stop sign

Landlord must maintain
furnace in single-family home

Consumer Safety
fall 2011

Legal Matters[®]

Injured by a drunk driver? Talk with your attorney

Every two minutes, someone in the U.S. is injured in a drunk driving crash, according to the National Highway Traffic Safety Administration. That's more than a quarter of a million people every year!

If you or someone you care about is injured by a drunk driver, you might be able to obtain some compensation from the driver's insurance company. But what if the driver doesn't have insurance, or doesn't have enough insurance to make up for all your injuries? How will you be fully compensated for your medical expenses, your lost time at work, and the pain and suffering you experienced as a result of the injury?

As with any other type of accident, you should always talk with an attorney if you or someone you care about has been hurt by a drunk driver. Only an attorney can fully investigate the facts and determine the full amount of compensation to which you might be entitled.

For instance, did you know that many people *other* than the driver could be legally responsible for a drunk driving accident?

In many cases, the bar, restaurant or store that provided the alcohol to the driver could be liable. That's because any business that sells liquor to the public has a legal duty to make sure it isn't en-

continued on page 2



Arnold & Smith
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.NCInjuryLawyer.pro

Many people besides a drunk driver can potentially be responsible for the driver's actions. Only an attorney can determine who might be legally responsible to fully compensate you.

Injured by a drunk driver? Talk with your attorney

continued from page 1

dangerous anyone by its actions. A bar, restaurant or store must take reasonable care not to sell alcohol to someone who's already intoxicated...and if it does sell alcohol to such a person, it can be held responsible if the person injures someone else.

In one recent case, Dave & Buster's, a national restaurant chain, agreed to pay \$1.5 million to the family of a bicyclist who was killed by a customer who was driving home from one of the chain's New York locations.

The customer's blood-alcohol content was nearly three times the legal limit on the night of the crash. The bicyclist's family claimed that Dave & Buster's employees over-served the customer, and thus the company was legally responsible for the accident.

In one unusual case, the Missouri Court of Appeals is now considering whether an airport bar in Kansas City can be held liable for over-serving a businessman before his flight to Dallas. The businessman was still drunk when he arrived in Dallas, and caused a fatal car crash after leaving the airport.

In some states, a "social host" who serves alcohol at a private home or at a party also has a legal duty not to let a guest get drunk and drive away.

There have been cases where a person who carelessly buys drinks for others can be held responsible

for the consequences. For instance, in New Mexico, a group of salespeople for a drug company took the employees of a doctor's office out on the town, purchasing drinks for them at multiple restaurants. One of the employees got into a car accident driving home, seriously injuring a woman and killing her child.

The woman sued the salespeople. The New Mexico Supreme Court allowed the lawsuit, noting that the salespeople had ordered and paid for the drinks, had control over the alcohol being served, and acted so as to gain a business benefit. Therefore, it said, they had a duty to be careful not to allow anyone to become a danger to the public.

There have even been some very unusual cases, such as where police were held liable for stopping a drunk driver and then letting him go, after which he caused a crash, or where a doctor was held liable for not warning a patient that even a small amount of alcohol could cause significant impairment when combined with a drug.

The larger point is that many people besides a drunk driver can potentially be responsible for the driver's actions. Only an attorney – not the police, and not an insurance company – can determine who might be legally responsible to fully compensate you for the injury you've experienced.

Supreme Court ruling helps railroad, maritime workers

The U.S. Supreme Court has made it easier for railroad workers to be compensated for their on-the-job injuries.

The Court made it easier for workers to prove in court that an injury resulted from carelessness on the part of the railroad.

The case involved a rail worker who injured his hand while switching railroad cars.

Generally, a person who sues for an injury in court has to show that the defendant was careless and that the carelessness was a di-

rect, substantial cause of the injury.

But the Supreme Court said that under the federal law governing railroad injuries, this isn't necessary. All a worker has to show is that the company's carelessness played *some part* – no matter how small – in causing his injury.

This is good news for railroad workers, and it is probably good news for maritime employees, too. That's because the federal law governing injury lawsuits by maritime workers is almost identical in this respect to the one for railroad workers.



Auto insurance might cover trauma of witnessing accident

Car insurance policies typically cover physical injuries that are suffered in an accident. But in some cases, an insurance policy might cover psychological injuries as well.

In one recent case, a Michigan appeals court ruled that an insurance company had to cover a claim for psychological harm suffered by a woman who witnessed her son's fatal motorcycle crash.

The woman was following her son in her own car when he was thrown from his motorcycle after getting cut off by another vehicle. She saw the accident and went to help him. He was taken to a hospital, but was pronounced dead 30 minutes later.

Afterward, the woman was diagnosed with severe depression and post-traumatic stress disorder. She

filed a claim with her auto insurer for injury benefits.

The insurer rejected her claim, arguing that her psychological injuries didn't arise from her use of a motor vehicle.

But the court disagreed, and said her injuries were clearly the direct result of a car accident – even though there was no physical contact between her car and another vehicle.



Three common drugs that could have dangerous side effects

Here's a look at three drugs that have been frequently prescribed in recent years, but that could cause serious health problems.

- **Plavix.** Plavix is a blood-thinning drug that doctors frequently prescribe for patients at risk of heart attacks. But a growing number of lawsuits suggest that it may not be as safe or effective as advertised.

The drug, which has been marketed as a sort of "super-aspirin" that sells for \$4 a pill, may actually cause an increased risk of heart attack, as well as a risk of strokes and potentially fatal blood disorders.

Some people have claimed in court that it's actually no more effective than aspirin itself, while creating a greater risk of dangerous side effects.

About 40 lawsuits have been filed in New Jersey against manufacturers Bristol-Myers-Squibb and SanofiAventis since the U.S. Food & Drug Administration required a new warning on the drug last spring.

At least 11 cases have been filed in Illinois as well, and hundreds or even thousands more are expected to be brought in the near future.

- **Nexium.** Over the past decade, the drug Nexium has been helpful to people who suffer from acid-reflux problems. But patients who take it are increasingly complaining about bone deterioration, leading to broken hips, legs, and ankles, as well as other bone fractures.

In fact, last year the U.S. Food and Drug Administration issued a safety alert about the increased risk of fractures for patients who take Nexium and similar drugs.

Now, the first in what will likely be hundreds of lawsuits has been filed seeking compensation from the drug manufacturer for this problem.

The suit was filed by a 58-year-old woman in Toledo, Ohio, who took Nexium for seven years. She claimed the drug caused her to break her leg while walking, and break three bones in her ankle while going down a flight of stairs.

Women in their 40s and 50s who have taken the drug for an extended period of time appear to be most at risk for serious bone problems.

- **Meridia.** The obesity drug Meridia has been withdrawn from the market in the U.S. after studies linked it to a higher risk of stroke and heart attack.

"Meridia's continued availability is not justified when you compare the very modest weight loss that people achieve on this drug to their risk of heart attack or stroke," a U.S. Food and Drug Administration official stated in announcing the medication's withdrawal.

"Physicians are advised to stop prescribing Meridia to their patients, and patients should stop taking this medication," the official said. "Patients should talk to their health care provider about alternative weight loss and weight loss maintenance programs."

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!

County may be liable for bushes obscuring stop sign

Dawn Cassidy, a New Jersey woman who was eight months pregnant, was heading home from an obstetrician's appointment. As she proceeded into an intersection after stopping, a tractor-trailer barreled through. The impact spun her car 360 degrees.

She suffered a punctured lung and broken ankle and, even more tragically, the loss of her unborn child.

The truck driver claimed he didn't realize there was a stop sign at the intersection, because sagging leaves and branches had blocked the sign from view.

When a lawyer investigated the case, it turned out that a local police officer had noticed the obscured sign two weeks earlier and had reported it to the county.

Cassidy sued the county, arguing that it had a legal responsibility to maintain highways and signs so as not to create a dangerous situation.

Eventually, the county agreed to join with other defendants in a settlement that financially compensated Cassidy for her terrible injuries.

Landlord must maintain single-family home furnace

If you're renting a house, it's a good idea to check your lease carefully and understand who is responsible for making periodic inspections and repairs.

Recently, a fire broke out in a rented single-family home in New Jersey. The tenant's brother died of smoke inhalation.

The tenant sued the landlord, claiming the fire was caused by a negligently maintained furnace.

The landlord – who apparently hadn't inspected the furnace in eight years – argued that he had no obligation to inspect or fix the furnace unless the tenant notified him of a problem.

But a New Jersey appeals court said the lease required the landlord to make any necessary repairs. It also said the state fire code required that furnaces be maintained to avoid fire hazards.

So unless the lease said otherwise, the landlord had an obligation to inspect the furnace periodically and make any needed repairs.



©istockphoto.com/Michael Tupy



The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.NCInjuryLawyer.pro