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# Legal Matters®

## Workplace injuries can lead to significant financial recovery

**M**any people believe that if they're hurt on the job they are limited to worker's compensation, which often does not amount to full financial recovery. But if you are injured in the workplace, it's important to talk to an attorney instead of just assuming you can't bring your case to court. That's because under certain circumstances you may be able to bring a personal injury claim with a chance of obtaining more full compensation, as recent cases show.

Take, for example, the case of oil field worker Miguel Barron, who was fatally injured in May 2016 while helping remove a 32,000-pound heat exchanger from an elevated platform at an ExxonMobil refinery in Texas. A crane caused the heat exchanger to knock down a 1,000-pound pipe, which landed on Barron and killed him.

"Worker's comp exclusivity" might have prevented Barron's family from taking his direct employer (which Exxon had hired to do rigging work) to court. But they were able to show that ExxonMobil itself was 45 percent responsible for Barron's death and that the crane company was also 45 percent responsible. As a result, a jury awarded very substantial damages to the family.

A similar situation (but with less severe injuries) involved a 55-year-old woman working as a baggage handler at the Newark Liberty International Airport in New Jersey. Oversized bags at the airport were transported on carts called "tugs," and this worker's job was to move



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the tugs from a baggage room underneath the terminal to the planes. Another company, Omni-Serv, was charged with returning the tugs to the baggage room.

One day the plaintiff was resting on an empty tug, waiting for more luggage to be loaded, when an Omni-Serv worker crashed another tug

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## Colleges must protect intoxicated students from harm

A recent ruling from Massachusetts' highest court shows that at least in some states, colleges and universities can be held liable if they fail to protect students from alcohol-related emergencies.



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The case stemmed from the alleged sexual assault of a freshman at Northeastern University in Boston.

The student claimed that a classmate sexually assaulted her in her dorm after he walked her back from a party at another residence hall. She alleged in her lawsuit that resident advisors knew she was seriously intoxicated at the time but failed to

take appropriate steps to protect her from harm.

The university sought to have the case dismissed, arguing that because there is generally no duty to protect others from harm caused by third parties it had no duty to protect the student, who was voluntarily intoxicated, under the circumstances.

When a trial judge granted Northeastern's motion, the student appealed.

The Supreme Judicial Court affirmed the decision, finding that the mere presence of an intoxicated young woman accompanied by an intoxicated young man on their way back to their residence hall did not make a sexual assault reasonably foreseeable to university employees or staff. As a result, the student did not have an actionable claim.

But the court was unwilling to accept Northeastern's argument that colleges and universities have no duty to protect students from the consequences of voluntary alcohol use. It announced that institutions of higher education have a "special relationship" with their students that obligates them to take "reasonable measures" to protect students who are in "imminent danger."

Although it didn't help the student in this case, the decision sends a signal that colleges can in certain circumstances be held accountable when it's clear a student is at risk and no action is taken. While this is a Massachusetts case and other states may view the issue differently, if you or a member of your family has suffered alcohol-related harm on campus and you feel the school should have done more to prevent it, it's certainly worth discussing your case with an attorney.

### We welcome your referrals.

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## Hazard obscured by darkness not 'open and obvious'

Under the common law in many states a property owner has a duty to warn "invitees" (people like customers, party guests and family friends who are there for the benefit of the property owner) of any known dangerous conditions on the premises. But if a danger is "open and obvious" — meaning that it's reasonable to expect the invitee to figure out the danger for him or herself — the property owner will not be held responsible for injuries that result.

However the definition of what's "open and obvious" is often up for debate. That's why if you've been hurt by a dangerous condition on someone else's property, even if it seems like it was noticeable, you should always talk to an attorney.

The case of Michigan woman Laura Liquia illustrates this. Liquia, her husband and some friends booked a cabin at a resort to celebrate a friend's wedding. After the reception, they took a shuttle back to the cabin. It was after midnight in a rustic area, so it was very dark, and Liquia was unfamiliar with the lay of the land. Walking toward her cabin arm-in-arm with a friend she tripped over a post, fell down

and fractured her ankle.

Liquia sought to hold the resort liable for the injury, arguing that the post was a hazardous condition that the proprietors should have repaired or warned her about.

A circuit court judge ruled in the resort's favor, saying the post was open and obvious and that the defendant should have been walking more slowly, looking at the ground or using a flashlight.

Liquia appealed and the Michigan Court of Appeals ruled in her favor. According to the higher court, the danger of tripping over a darkly colored post at night that was well below eye level but higher than what a reasonable person should be expected to step over was not necessarily discoverable by an ordinary person upon casual inspection.

The court also said the trial judge focused too much on Liquia's actions instead of the "subjective nature" of the hazard. Now Liquia has the chance to bring her case before a jury.

The law may differ from state to state, of course, so talk to an attorney where you live.

## Truck crashes net significant recoveries

Tractor-trailers are an indispensable means of transporting goods quickly and cheaply. But they can also pose serious hazards on highways that can result in significant harm to other drivers. If you or a loved one has been hurt in an accident involving a tractor-trailer, it's worth talking to a local attorney to find out what recourse you might have, because recoveries can be substantial, as a pair of recent cases show.

In the first case, a truck driver was attempting to deliver supplies before dawn by backing his tractor trailer into a store driveway on a four-lane divided highway in Virginia. He was blocking the two lanes of travel in his direction and although he was flashing his headlights, he did not deploy any other safety device to warn approaching drivers.

The plaintiff apparently saw the flashing lights but thought the truck driver was alerting him to a speed trap and couldn't see that both travel lanes were blocked. His vehicle collided with the truck and he suffered a broken hip, broken ribs and a concussion. The trucking company claimed the plaintiff was responsible for his own injuries, but apparently realized the strength of the plaintiff's case when it came out that the store owner had warned the company how dangerous it was to block those lanes. The case settled for a sizeable amount.

The second case involved a van driver who was heading east on a U.S. highway in Ashton County, N.C., while a truck driver was heading west. The trucker lost control, crossed the median and struck the van. The van driver was thrown 50 feet from his vehicle into a ditch, where he lay until he was found. He suffered serious injuries to his knee, left eye, stomach, right arm and pelvis and suffered deep lacerations to multiple parts of his body. The 24-year-old victim died a few hours later of cardiac arrest.

The victim's family sought to hold the trucking company accountable. At trial, the truck driver claimed he suffered from cough syncope, a condition that causes people to lose consciousness during coughing fits. The trucker testified that he suffered an episode that day and passed out seconds before the crash. However an eyewitness testified that the truck driver had been weaving for about 12 miles before the crash, making her afraid to pass him. After a 9-day trial, the jury returned a verdict for the family of the victim and awarded a large amount of damages.



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## *Workplace injuries can lead to significant financial recovery*

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into the one she was sitting on. The woman suffered a serious back injury that required two surgeries and other intensive treatments while leaving her permanently disabled. Because someone other than her direct employer was responsible for her harm, she was not limited to worker's comp and was able to obtain a sizeable settlement from Omni-Serv.

There's also the example of a truck driver in North Carolina who developed severe breathing problems when she was exposed to harmful vapors from chemicals she was hauling. She thought she would be limited to worker's comp until her attorneys discovered that the barrel containing the chemicals had been leaking and that the chemical company, which was not her direct employer, may have caused the leak. The chemical company contended that the driver must have done something to puncture the

barrel, but an accident reconstructionist showed that even reckless driving couldn't have done that, and the chemical company eventually settled instead of risking a trial.

Finally, a Missouri state trooper was able to recover a large settlement after a truck rear-ended his patrol vehicle during a 2017 traffic stop. The trooper, Derek Mason, was sitting in the front passenger seat with the lights activated when the truck, which was traveling in the middle lane, drifted to the right lane, then onto the side of the highway and into Mason's car.

Mason was never able to return to work, but his settlement with the trucking company should provide him and his family with financial security going forward.

Every case is different, of course. But a trial attorney can help you determine your options in your own case.

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## Non-driver held accountable for car wreck

If you're hurt by a drunk driver and you're concerned he or she doesn't have sufficient assets or insurance to cover your harm, don't assume you're out of luck. That's because in some instances someone else may be equally at fault.

Take a recent case from Georgia where a man named Alonzo Reid was hurt in an accident caused by drunk driver Lakenin Morris. The car Morris was driving did not belong to him — it belonged to his friend Keith Stroud, whom he was drinking with that afternoon. Stroud, who was intoxicated, asked Morris to drive his car, despite the fact that Morris was also drunk, did not have a valid driver's license and had a history of reckless driving — facts Stroud apparently was aware of.

Reid took both of them to court and secured a judgment that included punitive damages for acting with "malice, wantonness and entire want of care," although the judge limited the amount of punitives



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assessed against Stroud because he was not the driver and thus could not be considered an "active tortfeasor" (wrongdoer).

Reid appealed. The Georgia Supreme Court reversed, pointing out that under state law a defendant found to be so intoxicated as to "substantially impair" his judgment could be subjected to unlimited punitive damages as an active tortfeasor, and that Stroud qualified.