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# Legal Matters®

## Injured by a drunk driver? Why you should talk to an attorney about your rights

According to the National Highway Transportation Safety Administration, approximately 32 people die in crashes caused by drunk drivers. This translates to one person getting killed every 45 minutes and more than 10,000 people dying each year.

Even in crashes that aren't fatal, countless people who are hit by drunk drivers end up with debilitating injuries that are often permanent, leaving them unable to work. What's more, many people, no matter how good their health care coverage may be, end up with huge medical bills beyond what their insurer will cover. Plus, they can suffer terrible physical pain and emotional trauma following a serious accident.

If you've been in an accident that was caused by a drunk driver, you shouldn't have to absorb these costs on your own. A good local attorney who is experienced in bringing claims against drunk drivers can help you recover the compensation to which you're entitled. In fact, a couple of cases from South Carolina illustrate that recovery can be substantial, depending on the facts and circumstances.

The first case stemmed from a crash caused by a man who had been drinking and driving while traveling north on Interstate 95 from Florida. When another driver slowed for traffic, the man plowed into the back of his car.

The victim, a retired engineer who went on to write and publish self-help books, suffered a serious lower back injury that required several



surgeries. He also suffered a concussion. Additionally, he ran up \$400,000 in medical bills.

Meanwhile, at the scene of the crash, the drunk driver — who had prior DUI arrests — allegedly offered to pay the victim if he didn't call the police. He also allegedly stumbled and almost fell into the victim's arms. When the police arrived on the scene, a rear-facing dashcam recorded the drunk driver in the back of the patrol car fading in and out of consciousness while asking where he was.

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### Julie A. Rice, Attorney at Law, & Affiliates

Offices in Georgia, Florida, and Nationwide

[www.juliericelaw.com](http://www.juliericelaw.com)

[www.georgiamedmalattorney.com](http://www.georgiamedmalattorney.com)

Free Consultation Call Today 770-865-8654

## Drinking establishments pay for harm caused by drunk driver



A recent tragic case underscores that when a drunk driver causes an accident, the driver may not be the only party responsible. Bars or restaurants that served alcohol to the person who caused the accident may be held accountable as well, as long as they knew or should have known that the person was intoxicated. That is what is known as a “dram shop” case.

In the dram shop case in question, bar patron Anthony Pascucci traveled to Charleston, South Carolina, for a wedding and went barhopping with friends. While attempting to drive back to the relative’s house where he was staying, Pascucci got lost due to his level of intoxication (toxicology tests put his blood alcohol content at three times the legal limit) and headed the wrong way on Interstate 26.

After entering the highway, he struck another vehicle head-on, causing that car to overturn and catch fire as its driver, Tonya Carson, was stuck inside. Her husband, Randall Carson, driving directly behind her in a separate vehicle, attempted to extricate Tonya from her car, but it caught fire.

Tonya died of thermal burns, while Pascucci died from his injuries.

Randall filed claims against Pascucci’s estate for wrongfully causing his wife’s death and for the emotional distress he suffered. After Pascucci’s insurer paid out the limits of his policy, Randall sought to hold accountable two drinking establishments that allegedly overserved Pascucci while taking no steps to prevent him from driving.

Both bars — Madra Rua Irish Pub and the Sparrow — could have fought to avoid liability. But it would have been an uphill battle given the toxicology results and Pascucci’s receipts from the evening indicating that he consumed as many as 17 drinks.

Ultimately, the Madra Rua’s insurer agreed to pay out the full limits of its substantial liability policy rather than face a potentially more severe result at trial. The Sparrow’s own policy had lapsed by the time the wreck took place and only contributed a few thousand dollars of its own money to the settlement.

While nothing can bring back Randall’s wife, and nothing can undo the emotional trauma he suffered witnessing the accident, the settlement at least represented some measure of justice and should encourage other establishments to be more careful in the future.

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We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

## ‘Public immunity’ doesn’t shield city from responsibility for transit death

In many states, the doctrine of “public immunity” shields state and local governmental entities from liability for accidents caused by the negligence of their officials and employees. Depending on the state, this means the amount of compensation an injured person can recover is strictly limited to a set amount — often not enough to make up for the harm — or they can’t sue at all.

But if the negligence of a public entity has caused your injury, it’s still worth talking to a lawyer because, depending on the circumstances, there may be a way to get around the immunity.

Take a recent case from Michigan. Michael Whyte, who had a blood alcohol content of four times the legal limit, was in a transit station in Detroit when he fell off the platform between cars of the Detroit People Mover, the city’s automated light

rail system. Tragically, he was struck and killed by a moving train.

DPM trains don’t have drivers and are operated remotely from a control room by system control operators who also monitor security camera footage at each station. Two system control operators were monitoring the video feeds at the time of the incident.

Whyte’s estate filed a negligence suit in state court against the operators, DPM and Detroit’s transit agency.

A judge threw out the case, finding that the defendants were shielded by public immunity under Michigan law.

But the Michigan Court of Appeals reversed the decision, finding enough evidence to suggest that one of the operators may have been “grossly” negligent in not monitoring the security cameras at the time of the incident. Because Michigan’s public immunity law only protects public entities from regular negligence as opposed to more extreme “gross” negligence, the court ruled that Whyte’s family members should be able to have their day in court where a jury can decide the case.



## Injured Uber rider couldn't be forced to arbitrate claims vs. rideshare service

If, like millions of people, you have used a rideshare app like Uber or Lyft to hail a ride somewhere, you have probably entered agreements you're not even aware of. As a condition of using the app, you even may have agreed to arbitrate any disputes that might arise between you and the company.

This means that if you're hurt in an accident caused by your driver, you've given up the right to take the company to court. Instead, a "third party" selected by the company will resolve the dispute. In an arbitration proceeding, you won't have the same right to discovery (production of evidence that may help you win) to prepare your case, and if you lose, it will be binding with no right to appeal.

But a recent Massachusetts case shows that these arbitration agreements aren't always enforceable.

In that case, William Good, who worked in Boston but lived in nearby Somerville, hailed a ride from Uber's smartphone app to take him home from work at the end of his shift.

When he had hailed a ride a few nights earlier, a pop-up appeared in the app informing him that Uber had updated its terms and encouraging him to read the terms in full.

The pop-up also displayed hyperlinks to the updated "Terms of Use" and "Privacy Notice," but the app did not require Good to click on the hyperlink and scroll through the terms. Nor did the pop-up specify what the "Terms of Use" contained. Rather, it was a "clickwrap" agreement in which the user agrees to the terms of an agreement simply by clicking or checking a box stating that he or she accepts.

After picking up Good, the driver allegedly drove at an extreme speed, scaring Good. When the car entered Somerville, Good said he heard the driver swear, and



he felt the car swerve back and forth and collide with something, causing him to hit his head on the headrest of the passenger-side seat.

Good suffered a severe spinal cord injury and will remain a quadriplegic for life.

The driver, meanwhile, apparently had at least 20 driving citations on his record leading up to the crash.

Good sued Uber in state Superior Court. But Uber, citing the dispute resolution clause in its "Terms of Use," moved to compel arbitration.

The judge, however, sided with Good, finding that the agreement did not create an enforceable contract because it did not reasonably notify Good of its terms nor did it adequately obtain Good's assent to its terms. Now Good has an opportunity to seek full recourse in a court of law.

It's important to note, however, that the agreement may have been enforceable if presented differently on the app. Additionally, this case was decided under Massachusetts contract law. The result might be different in another state. Still, if you are hurt in an accident while using a rideshare service, don't assume that an arbitration agreement on the app will foreclose any possibility of justice in court. Talk to an attorney to see what rights you may still have.

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## *Hit by a drunk driver? Talk to an attorney about your rights*

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The drunk driver didn't have sufficient insurance, so the victim's underinsured motorist carrier — which covers costs that the at-fault driver's insurance does not cover — agreed to settle the case before it went to trial for a substantial amount that apparently covered the victim's medical expenses, pain and suffering, and economic losses due to delays in getting his next book published.

The other case involved a husband and wife who suffered emotional distress when they were trapped in their overturned vehicle after getting into a crash with a drunk driver. The driver in question had pulled out in front of them at an intersection, and they could not stop in time.

Though neither victim suffered severe physical harm, the jury assessed the emotional distress of being trapped upside down as worth nearly \$100,000. However, because the at-fault driver was intoxicated at the time of the accident, the jury awarded "punitive" damages — in other words, damages specifically to punish the wrongdoer and serve as a deterrence to others — that brought the verdict to nearly \$800,000.

The value of every case depends on its unique facts and circumstances. But if you've suffered harm at the hands of a drunk driver, it's important to discuss your case with an attorney.

If you're interested in learning more, talk to a personal injury lawyer where you live.





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### Injured person waited too long to bring claim against airline

A recent Massachusetts case highlights how important it is to see a lawyer immediately after you've been injured to discuss any potential legal rights you might have. If you wait too long, you just might let a good claim slip away.

In that case, a JetBlue airline passenger returning to Boston from Aruba tripped and fell while disembarking from his flight. He claimed he fell because of a gap between the aircraft and the jetway.

Almost three years later, he sued JetBlue in state court claiming the airline was negligent, meaning that by allowing the alleged gap, the airline didn't act as carefully as a reasonable airline would have. The case was moved to federal court since it was an international flight and thus the Montreal Convention, an international treaty the U.S. signed onto, governed the case.



But the Montreal Convention has a two-year statute of limitations, meaning that the injured passenger would have had to bring his case in federal court a year earlier for it to proceed. Instead, the federal court dismissed it, rejecting the man's argument that the clock should have been paused while he and JetBlue were engaged in unsuccessful negotiations to settle the case.