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Legal Matters®

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Hurt by an independent contractor? You may still be able to recover

Generally a company cannot be held responsible for injuries caused by the carelessness of an independent contractor it has hired to perform a job. After all, the company that hired the contractor typically has no control over how the work is done.

However, if you or someone close to you has been hurt in an accident caused by an independent contractor and the contractor doesn't have the resources to compensate you for your harm, don't just assume you're out of luck. Instead, contact an attorney with personal injury experience who can fully investigate the situation. Because in certain cases, the person or company who hired the negligent contractor may be held accountable as well.

Take a Florida case from a few years back. In that case, a homeowner hired a handyman and paid him in cash to hang cabinets in her home. The owner apparently had no idea what the man's name was or the name of his business, and she didn't know if he was licensed. She didn't ask for references — she selected him because he happened to have a truck with cabinets in it.

The contractor hung the cabinets improperly and they fell on the homeowner's tenant, who was seriously injured. Because the contractor couldn't be located, the tenant sued the homeowner for negligent hiring. The case went to court and the tenant eventually secured a very significant recovery.



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Of course, this doesn't mean a homeowner will be held liable for the negligence of a contractor he or she has hired in every instance. But if an improperly done job poses a lot of risk, if the work is something that needs a lot of skill and training or if there's a relationship that gives the owner a duty to protect someone else from harm, then the homeowner has more of an obligation to investigate before hiring.

In most states an injured party can also hold someone accountable for the work of their contractor if the work is inherently dangerous.

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Patient can recover for late diagnosis

Few things are more traumatic than a cancer diagnosis. But trauma can turn to tragedy when a doctor fails to diagnose the cancer in time to treat it. If this happened because the doctor didn't do everything a reasonably competent physician would have done to diagnose the condition in time, the patient may be entitled to compensation for their loss.

That happened in South Carolina, where a woman had breast cancer for four years before her radiologists detected it.

The patient, a woman in her late 40s, had undergone annual mammograms since 2013.

The cancer was apparently already visible, but doctors didn't diagnose it until 2018, when it had reached stage 3. By then, the patient needed not only surgery and radiation, but chemotherapy that wouldn't have been necessary if the cancer had been diagnosed sooner.

The patient claimed doctors missed the cancer because she was poorly positioned on the mammogram machine, which resulted in not enough breast tissue showing up in the imaging. She argued that was something the radiologists should have recognized when comparing images from year to year. As a result of the delayed diagnosis and due to the need for chemotherapy, the patient allegedly lost several years of life expectancy.

The hospital clearly thought the patient had a strong case and opted to settle for a substantial sum.

The end result can be attributed to the patient's diligence in two ways: diligence in receiving mammograms and diligence in quickly seeking to vindicate her legal rights.

The latter type of diligence is important because of the statute of limitations — the amount of time an injured person has to file their claim after realizing they have suffered harm from someone else's actions. A lot of patients don't realize that in many states, this period is shorter

for medical malpractice claims than it is for other types of injury claims.

Recently, this led to a disappointing result for a Michigan woman who suffered permanent vision damage due to her optometrists' repeated failure to diagnose her glaucoma despite her complaints of symptoms and tests showing eye-pressure levels above the normal range.

The patient was finally diagnosed by a new optometrist in February 2018 and filed suit in April 2020. She claimed she didn't know her prior optometrists were negligent until two months before she filed suit, when a specialist at the University of Michigan told her that they breached the standard of care.

But the Michigan Court of Appeals said she should have been aware she had a claim at the time of the diagnosis, when the new optometrist told her she suffered permanent vision damage because of the delay.

Meanwhile, a Missouri case highlights the need to talk to a lawyer for any type of injury in the medical context, whether it involves a failure to diagnose or something else.

In that case, a woman was at a rehabilitation center recovering from a stroke and surgery when staff members allegedly left her unattended, allowing her to fall from bed and strike her head.

Just over two years later, the patient filed suit against the hospital, which she said was responsible for her injuries.

But a trial judge threw out her suit, ruling that it was a medical malpractice case, which required her to sue within a two-year statute of limitations, and not a personal injury case, which would have given her three years to do so.

An appeals court affirmed the decision, reasoning that while the injury may not have arisen directly from the specific treatment the patient was receiving, it was still a case against a health care provider and was related to health care.

While no reasonable person would blame these patients for not taking action sooner, these outcomes serve as an important reminder that it may be worth talking to a lawyer if you have suffered any kind of harm in a health care setting so you don't miss the opportunity to exercise your legal rights.



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Man's death years after low-impact crash results in settlement

One might think at first glance that a wife who secured a settlement for the death of her husband after a surgical procedure must have obtained that settlement from the hospital. But she actually obtained the settlement from the trucking company involved in a low-impact traffic collision with the victim more than two years earlier.

The deceased husband, Donald Eckert, suffered neck, back, arm and shoulder injuries in June 2017 when a tanker truck driving by a driver for Wallis Oil Company collided with him while making a right turn.

At first it seemed as though Eckert would need only an initial surgery for his injuries. But he ended up requiring shoulder and back operations two years later. Following one of the procedures, he suffered a stroke and died.

At the time of these procedures, Eckert — who had pre-existing lower back issues from years working as a bus driver — had already filed a personal injury action against the trucking

company. But his death turned the personal injury claim into a wrongful death action under the theory that the surgery was related to the initial accident and thus the trucking company was responsible for everything that followed.

The company ended up settling for a sizeable amount, perhaps concerned that it might be riskier to go before a jury. Although not every case will necessarily yield a similar result, if a close family member has died from medical complications that can be traced back to an accident, talk to an attorney as soon as you can to see what options you might have.



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Hurt by an independent contractor?

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For example, in a case from Michigan, landowners hired an independent contractor to fell timber on their property. One of the contractor's employees had his leg crushed by a falling tree. The employee sought to hold the landowners responsible. A trial court threw out the case, but the Michigan Supreme Court reversed, finding that logging could be deemed inherently dangerous because it could not be done without causing some kind of damage.

The timing of events may play a part in your ability to recover from the party that hired the contractor. For example, in a recent Massachusetts case, a lumber reseller contracted with a trucking company to deliver wood.

After the trucking company's driver completed the delivery, he caused a fatal accident. The estate of the man who died then sued the lumber reseller, asserting that the reseller was negligent in selecting the trucking company. But a federal judge in Massachusetts dismissed the case. A federal ap-

peals court agreed, emphasizing that the contract between the reseller and the trucking company ended as soon as the driver delivered the lumber. Because the accident happened after that point, any negligence occurred outside the scope of the driver's employment and the reseller could not be held responsible.

The results of any case are dependent on its unique facts and the law can differ from state to state, so if you've been harmed by an independent contractor and you're wondering whether you have recourse against the party that selected that contractor, contact a local attorney.



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Lack of witnesses no bar to recovery for slip-and-fall

If you've been injured in an accident but, because of the circumstances, you have an incomplete memory of the incident and no witnesses to back

you up, you might assume that you have no avenue for recovery. But a recent California case shows us that it's still worth talking to an attorney with experience in personal injury cases, because you may have a better shot at compensation than you think.

In that case, a woman was visiting her sister in a rented home. During her visit, the bathroom light at the top of the stairs stopped working. The guest still used the stairs and fell.

She then sought to hold the homeowner responsible for her injuries, arguing that the stairs — which lacked a handrail, were less than 30 inches in width and had a substantial differentiation between the risers and treads — didn't comply with the Americans

with Disabilities Act or with local building codes.

When the defendants' attorney took the injured woman's testimony in an out-of-court deposition, she could not remember specifically how she fell. While she remembered heading up the stairs to the bathroom and then waking up at the bottom of the stairs in pain, she couldn't recall if she missed a step or slipped and fell backwards.

A trial judge tossed out the case, stating that because she couldn't remember how she fell, her case was based entirely on inference and not evidence that the supposedly defective stairs actually caused the accident.

The California Court of Appeal, however, saw things differently, pointing to other cases where "circumstantial" evidence led to a reasonable inference that a dangerous condition caused a fall.

While circumstances differ in every case, if you have been hurt but can't definitively state exactly how the injury happened, don't just assume can't proceed. Talk to an attorney to discuss whether there are other factors that might allow recovery.



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