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INSIDE THE LAW



Roger E. Barton, Esq.
Managing Partner

Inside the Law is the first of a series of regular newsletters from Barton, Barton & Plotkin. We intend for this publication to provide you with answers to questions you might have relating to you and the law, information on new legislation, useful local tips for you and your family, updates on our recent success stories, and introductions to our attorneys and staff. We welcome feedback on this issue of the newsletter, and encourage you to submit questions that you would like us to answer in future issues.

NO RISK OF DEPORTATION BY PURSUING A PERSONAL INJURY CASE

An undocumented immigrant may not be deported for bringing a personal injury case

In fact, undocumented immigrants can sue for personal injury damages including their lost wages. Recent cases have made it clear that the courts will not punish workers who have been injured on the job by deporting them in the event that they bring a personal injury case.

Employers hire undocumented workers for dangerous jobs to keep labor costs low. Because this is against the immigration policies of the U.S., Congress enacted The Federal Immigration Reform and Control Act of 1986 ("IRCA") which requires employers to obtain documentation from prospective employees verifying their identity and proving that they are eligible to work in the U.S. The IRCA does not penalize the alien for getting employment without having proper work authorization, unless the alien uses false documents to get a job.

Employers are responsible for paying the wages lost by the employee

Recently, employers have tried to prevent undocumented immigrants from bringing personal injury law suits, and to prevent any claim for lost wages. Employers argued that since the immigrant was not allowed to work in the U.S., they should not have to pay for the employee's past and future

lost earnings. The courts have rejected this argument, saying that because the employer chose to ignore its obligation to verify the immigration status of the worker, it now has to live with the consequences of its actions, and is responsible for paying the wages lost by the employee.

Because the IRCA puts the burden on the employer to verify documentation, courts protect undocumented immigrants by allowing them to bring personal injury lawsuits, and will not allow the law suit to be used as a basis for deportation.

Employers are responsible for paying the wages lost by the employee

YOUR QUESTIONS ANSWERED

What should I do if I am in a car accident – what are my legal rights?

If you are in an accident your first concern should be your injuries. Do not do anything that might complicate or aggravate your injuries. If you are able to help others, do what you can. However, do not move them or do anything else that could aggravate their injuries. Then call for help. Try to remain calm until medical attention arrives. When medical attention arrives tell the emergency rescue workers as precisely as possible about your pain, numbness, and limitation of movement. Even if you do not

have any injuries that you know about, do not say that you are not hurt. Quite often you will begin to feel pain hours, and sometimes even days after the accident happened. If you say, "I'm not hurt," it could be a problem later even if you have serious injuries. Instead say something like, "I'll let them check me at the hospital, but I am not in any pain at this moment."

Make sure you get a copy of the police report or accident number, and the license plate number of the other driver. You must also report the accident to your insurance company, and to the other driver(s)' insurance company, within 30 days. This will preserve your rights to get payment for your medical expenses and other out of pocket costs under the No Fault insurance law. If you fail to give notice within 30 days, you will not be eligible for these benefits.

Of course you may also have the right to bring a lawsuit for personal injury and lost wages. Unlike No Fault which only covers out of pocket expenses and has a limit of \$50,000, your claims for personal injury and lost wages can be much more.

If you have been involved in a car accident, you should also contact a lawyer who can protect your rights and answer your questions.

If I have been the victim of Medical Malpractice, how long do I have to sue?

Unlike other areas of law, the statute of limitations for Medical Malpractice cases varies widely depending on many different factors. Generally you have 2 1/2 years to bring a claim, but that time can be longer in many cases, and also shorter in some cases, for example, where a City hospital is involved. Please contact one of our experienced nurses or medical malpractice attorneys if you think you

have a case. Call immediately so that your rights are preserved.

If you have a question that you'd like us to answer, please call us at 212-687-6262 or email answers@bartonesq.net

Super Lawyers 2007

Recently Barton, Barton & Plotkin partner Sherri L. Plotkin was recognized as one of the top lawyers in the New York Metropolitan area in the New York Times edition of Super Lawyers. Only the top five percent of lawyers in the New York Metropolitan area are recognized each year as Super Lawyers.



**5 MINUTES WITH...
SHERRI PLOTKIN**

Where were you born and raised?

I am a proud New Yorker, born and raised in the Bronx.

How long have you been with Barton, Barton & Plotkin?

I joined the firm as a receptionist over 30 years ago and since then I've fulfilled almost every role at the firm.

What is your current role?

I am a partner responsible for overseeing a Medical Malpractice team of attorneys, nurses and para-professionals. I am also involved in a number of our firm's other cases in the areas of general negligence, construction, and defective products.

Which part of your job do you enjoy most?

I enjoy helping families to overcome very difficult situations to help them to put their lives back together. I'm very committed to my clients and their families. It is a very real part of the way we think as a firm.

Outside of your job, what are your interests?

As I said earlier, I was born and raised in the Bronx, so I love The Yankees! I also like to travel and spend time with my family.

You can contact Ms. Plotkin at 212-687-6262 or splotkin@bartonesq.net

RECENT SUCCESS

\$11 million settlement against a New York City hospital and obstetrician for failing to properly manage the pre-natal, birth and neonatal periods, resulting in brain damage and cerebral palsy; immediately following his birth, the infant involved in this case developed hypoglycemia (low blood sugar), which was not timely diagnosed nor treated, causing bleeding in his brain with seizures, brain damage and cerebral palsy.

\$6.6 million verdict in the Court of Claims for a student at Brooklyn College who sustained second- and third-degree thermal burns over 22% of his body when the clothing he was wearing caught on fire while he was using a welding torch during an independent study class. The case was won after a lengthy trial and sustained by two appellate courts, including the highest appellate court in The State of New York. ■