

Affordable Legal Services

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COUNSELOR

So you have had an automobile accident— and it wasn't your fault



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NEWSLETTER REPRINTS

Copies are available on request. Please send a self-addressed stamped envelope with your request to my office.

Fall 1992:

Specialization (The fallacy of legal specialization)

Low Cost Divorce Alternatives

Uninsured Motorist Coverage

Spring 1993:

You Can Live Without a Living Trust

Testamentary Trusts vs Living (or Inter-Vivos) Trusts

Your Option Not to Prolong Your Life Artificially

The (Child) Custody Game

Joanne Reisman autobiography

Spring 1994:

Bankruptcy is Nothing to be Ashamed Of

Renter's Insurance

Highlights of the New 1993 Laws That May Affect You

See an attorney immediately! You have nothing to lose by seeing an attorney. Almost all personal-injury consultations are done free, and there is no obligation to continue with an attorney until you sign a fee agreement. You can get valuable information about your rights. The adjuster will not withdraw a settlement offer because you went to see an attorney.

DON'T talk to any insurance adjusters—except to report to your insurer that you had an accident. In some cases you might need to look to your own insurance company for payment. This happens in a hit-and-run situation, a one-vehicle accident, or when another driver is at fault but does not have sufficient insurance to pay your damages. In these cases your insurance company may fight with you over how much they will pay. Until you can obtain legal advice, limit your contact with your company to simply reporting the accident. Do not allow them to record a statement from you about the details. They will send you a report form to fill out and you can bring it to your first appointment with our office. Insurance companies are not in the business of giving away their money if there is any way they can avoid this. If they are offering you anything, it is with the hope that they will avoid paying you more later.

DON'T settle your case on your own, at least until you see an attorney first. Then you can decide if you need help or want to proceed on your own.

DON'T settle your case too soon. Once settled you are barred from seeking further compensation, no matter how unexpectedly serious your injuries become. You need to give your body time to heal plus a few months more to make sure you are not going to relapse, before you even think of settling. A settlement offer that includes paying all future medical bills does not include money for your future pain and suffering which you are otherwise entitled to. Also a settlement puts the adjuster in a position to control your medical treatment. Through a release he can make inquiries, or order medical records at any time. You could be required to visit a doctor the insurance company picks before they will consent to continuing to pay your bills. Once you settle you are no longer in a bargaining position if you don't agree with them.

DON'T sign any papers from an insurance

company before you speak to an attorney.

DON'T release medical information. Even if you are not given a settlement offer, the adjuster might offer to pay your bills in exchange for a medical release from you. The adjuster can then obtain valuable information that can ultimately be used to reduce the settlement value of your case. There are other ways to get your medical bills paid. Absolutely no one but you and your attorney should have access to your medical records until you are done with treatment.

DON'T allow your statement to be taken. Very innocent statements by you can later be twisted to be used against you in defending the case. In one case, a woman told the adjuster that before the accident, she wasn't sure what she was doing—maybe talking to her daughter or tuning the radio. During preparations for trial, this statement was repeatedly thrown at me as evidence that my client hadn't been paying attention to the road. There is absolutely no requirement for you to give any statement to anyone before you have consulted with an attorney. I would even prefer to see you before you file your 72-hour report with the DMV. The report is required, but the 72 hours is not so strictly enforced that it can't be delayed until you can speak to an attorney.

If you have a good case, an attorney will often work on a contingency basis

Contingency means you will not pay a legal fee up front. The attorney will take a fee from the money you later recover—usually a percentage that you agreed on. If you don't recover, you owe the attorney nothing. Many attorneys, myself included, will accept cases with a very good possibility of eventual payment, on a contingency basis.

What we are looking for when you come in is evidence that you have a good case! (If you were at fault, or more than 50% at fault, you may not have a good case.)

What constitutes a good accident case

A good case has three main factors:

1. It can be proven that the other side was at fault.
2. There is money to pay your claim. (This is satisfied if on the date of the accident either

Continued on page 2

The consequences of driving without insurance

You've had an auto accident

Continued from page 1

Oregon law requires all drivers to have valid car insurance. If you are caught without insurance, the consequences range from a ticket and a fine to having your car confiscated.

What people often don't know is that the penalties get more serious if an uninsured driver is involved in a car accident. Even if it is the other driver's fault, your license will be automatically suspended for one year! You might qualify for a special hardship permit to get to work, but it is not guaranteed. If you drive after your license is suspended, you can be charged with a misdemeanor, and in some cases a felony, and face additional fines and a possible jail sentence. You will not get your license back or a hardship permit until you demonstrate that you have insurance.

Another consequence that people are not aware of until it is too late is that if you are in an accident and don't have insurance, you won't have the funds to pay your medical bills that every policy provides. Through a clause called Personal Injury Protection (PIP), all insurance policies will pay up to \$10,000.00 of medical bills over a one-year period for every person injured, regardless of who was at fault. Also, if the injured person can't work for 14 days or longer, PIP will pay 70% of his/her lost wages up to \$1,250.00 per month for up to a year.

they had insurance or you had insurance. Your policy will always cover you for your injuries when the other driver is at fault but has no insurance.)

3. You have actual damages. The fact that you were in an accident does not entitle you to money if you are not hurt and your property is not damaged. However, any pain you experience is a damage. It is not necessary to go to the hospital in an ambulance to recover money later for your injuries. You should go to at least one doctor and report your injury and see if further treatment is advised. This is just common sense!

What you need to bring to your attorney to show you have a good case

DO obtain the Police Report: I require that you first obtain a police report before you come in to the office. (I will talk to you by phone and advise you what you need to do before we meet, while you are requesting the police report.) If you know no police came to the accident scene, there probably is no report. If police officers came to the scene, there is usually, although not always, a report. Every city police department has a different procedure to obtain a report. In Portland, you must send a written request and a check for \$10.00 to:

Portland Police Bureau
1111 S.W. Second Ave., Room 1126
Portland, Oregon 97204

The request must contain your name, your address, and the date, time and location of the accident. In other cities, such as Gresham, you can go directly to the police station, pay, and get the report.

DO take Photographs: In non-serious accidents, take your own photographs. Take photographs of your car, the other car, the scene of the accident, and any injuries you, your friends, or other family members have received. Bruises often fade before you can reach an attorney. Don't be afraid to waste film—be like a professional photographer and shoot several photographs of everything, using different angles. Use lots of film; take duplicate shots! Developing a whole roll is not expensive, and having several photographs to choose from will help you select the best. Bring these photographs to the lawyer's office. Develop the film immediately! If your pictures are not clear you will need to retake them before the evidence is no longer available! You can also take a video, but some regular photos are also recommended as they can be easily copied or enlarged.

DO hire an investigator via our office (in serious accidents or accidents where fault is not clear). When there is a bad accident, there will be more problems establishing liability and proving damages, as more money is at stake and you can expect more resistance from the other side. You need a professional investigator to photograph the scene and interview witnesses

as soon as possible. If there was media coverage, obtaining film clips before they are recycled is important. If you contact me, I will arrange for an investigator to assist you, and will help direct the investigator to get the information I believe will be important later on. You will need to pay the investigator's fee, but there is no charge for my services. In a serious case, the clarity of the evidence is too important to risk not having it done right the first time. Besides not having experience to know how to obtain evidence, if you are also injured physically and emotionally it will be difficult for you to deal with these details. (It is OK to go ahead and make your own pictures, particularly of your injuries. I would just want an investigator as well to make sure nothing is missed.) If fault is not clear, and particularly when there is no police report, an investigation may be necessary before an attorney feels comfortable accepting the case on a contingency basis.

DO write down all important information: the names, addresses, and phone numbers of any witnesses, and details you think are important; anything the other driver or anyone else involved says at the scene. Return to the scene soon after the accident. Take time to observe the physical layout, presence or absence of signs or warning devices, and anything that may have contributed to the accident. Take notes.

Determining how your damages will be paid

Was your insurance current at the time of the accident? If it was, you really don't have to worry about the other driver's insurance, because if they were not insured, your insurance will cover you. In very serious accidents, your insurance might not provide enough coverage. If you have a good driving record, you can get \$100,000/\$300,000 coverage and add a one-million-dollar umbrella for a nominal cost—\$150 a year in many cases.

Make sure this extra coverage extends your uninsured motorist coverage! You will still need to bring in information on the other driver's insurance, because that will be the primary source of payment. If neither of you has insurance, it will be up to the attorney to determine if he/she wishes to accept your case on a contingency. Some investigation into the assets of the other driver may be necessary. Not surprisingly, it is rare that a financially secure party drives without insurance.

Establishing your damages

You are entitled to damages in two ways. First, you are entitled to reimbursement for any direct financial loss or expense the accident caused, if there is a reasonable relationship between the accident and the damage. Such losses are typically any wages lost because you

Continued on page 4

Auto accident

Continued from page 2

cannot work, any medical expenses incurred, incidental expenses such as transportation to the doctor, the cost of temporary help at home while you are disabled, and any medications or medical aids you need. These damages are usually easy to document. Keep copies of all payments you make, your medical bills and any other bills whether paid or not, and we will later help you obtain employment verification to show lost wages.

Second, you are entitled to damages for your pain and suffering. This is a little harder to prove and there is no set formula. For the most part, your damages will correlate with the severity of your injury, the negative impact on your life, the length of time you require medical treatment, whether you have any permanent injuries or scarring, and your account of the pain you suffered. The best way to demonstrate pain and suffering is documented medical treatment. If you hurt, go to a doctor. Not only will the doctor try and help you, but he will record your medical status, and this record will help document your case later. Your medical treatment should involve your personal physician if you have one, a specialist for your type of injury if a referral is appropriate, and for most people who mainly have muscle spasms and soreness, but no observable bone, muscle, or ligament breaks or tears, a series of sessions with a chiropractor or physical therapist. Additional therapies such as acupuncture, massage, hot whirlpools, and exercise programs are all acceptable, although it is wise to discuss these with your personal doctor first and proceed only when they formally endorse these additional therapies. Only you really know if you are having pain and if that pain is interfering with your ability to enjoy life as you did before the accident. I always recommend that my clients keep a diary of how they feel, making daily entries. Each person has a different level of comfort when it comes to

writing, and the entries can be detailed or simple. Obviously, the more detail the better. But at a minimum, put down if you are having pain that day, what treatment you have that day if any. How has the pain affected you? Has it kept you from enjoying an activity? Which activity? Where is the pain? How would you describe it? On a scale of 1-10, with 10 being worst, rate the pain. The diary can be a pocket calendar with enough room below the printed dates for you to make written entries. Friends and family members can be excellent witnesses in describing how the injuries have affected your life. They notice your complaints and your mood swings. Where there is a very serious injury, the effect on your lifestyle can be documented on film during your recovery.

Getting your medical bills paid before the case is settled (see 2010 update.)

Oregon law requires every car owner and driver to have auto insurance, and every Oregon insurance policy must have Personal Injury Protection (PIP), which will pay the medical bills of the driver, the passengers and any pedestrians, up to \$10,000.00 each. (Also, after 14 days off work PIP will pay 70% of lost wages up to \$1,250 per month for a year.) In non-serious accidents, this is more than enough. Any private medical coverage you otherwise have may also be used to pay your medical expenses. My office will help you arrange for your doctors to bill the insurance company directly. In the event there is no car insurance we will help you find medical care alternatives—ranging from using private insurance you might have at your job, to going to low-cost public medical care providers. While I cannot give you money to pay your bills in advance, I can notify your medical creditors that I am working on your case, and will promise to pay their bills out of any eventual settlement.

Update 2010

By law every Oregon insurance policy has to include PIP which now offers up to \$15,000 of medical coverage (not \$10,000. (It is possible to buy higher PIP coverage but most people don't.) The maximum lost wages you can now get are \$3,000 per month (no longer limited to \$1,250.00). You still have to be off work for at least 14 days and your PIP wages are only 70% of your actual wages. These changes were brought about as a result of the lobbying efforts of the Oregon Trial Lawyer's Association of which I am a member.

Courtesy Of:

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