



**The Truth About  
Washington Auto Accidents**

**10 Secrets Insurance Companies Don't Want You  
to Know and Other Insider Tips**

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A series of legal guides meant to empower accident victims and those looking for a lawyer.

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## Introduction

### **Why I Wrote This Book**

How do I know which doctor to go to? Who is going to pay all these expensive medical bills? How will I get my car fixed? What should I do when the insurance company calls me? Who is going to pay for my missed time from work? How will I put food on the table? How will I take care of my family? What if I can't go back to work? What if I'm never the same again?

If you've been injured in car crash, undoubtedly some of these questions are the ones that are keeping you up at night. You deserve answers to all of these questions. For too long, the answers to these questions have been hidden away from you and the rest of the public. Sure, the attorneys all know, but they won't tell you... unless you hire them. And even then, they are not going to tell you enough so that you can actually handle your own case.

All of that is about to change. I believe in STRAIGHT-TALK. I believe that you deserve to know. I believe it is a lawyer's duty to assist the public by giving them good, usable information. Most of all, I believe in giving it to you straight. I'm not going to beat around the bush, or dance around issues. I will always tell you what I think. Just to prove it, I'll tell you something that other lawyers are going to hate me for saying. As you will discover when you read this book, you may not need to hire an attorney for your case. In fact, it could even wind up costing you more!

*Real life ain't Judge Judy.* I'm sure we've all seen a daytime courtroom show where someone has been injured in a car wreck and is suing the person who hit them for money. (Sometimes the victim is even wearing a neck brace.) Those shows are modeled after small claims court. In small claims court there are no attorneys. The celebrity judge will listen to each side's testimony and give a quick verdict (in the form of money) to one side or the other. The judge hands down some ruling without explanation and afterwards the parties will talk about their frustration or confusion. The parties are confused because nobody ever explained the process to them, or what they could expect, or how the law worked, or even the nuts and bolts of what goes on in the courtroom.

In my experience, unfortunately, that feeling of confusion often occurs even when someone has an attorney. This is because nobody ever takes the time to make sure that he or she understands the law. The lawyer seems to speak in a different language, and never checks in to be sure that the client understands what is happening. Despite the way it looks on TV court shows, personal injury claims are *very complicated*. If it's not an issue of fault, then it's an issue of injuries, or what caused the injuries. Injury cases require an intelligent, compassionate, dedicated, and experienced attorney who understands the intricacies of representing an injured client.

But smarts isn't everything. What is *equally important* is an *ability to communicate* with and educate the client so he or she understands the process, the claim, and the strengths and weakness of his or her claim. Without effective communication, the injured person is hardly better off than representing himself in small claims court because he will not understand the crazy and complicated game that he now is playing—however unwillingly.

While it may sound cliché, I went into the legal field to help people, and I have focused exclusively on helping injured people with their personal injury cases, mostly car crashes. After years of helping injured people, I have learned the ins and outs of getting justice and fairness for my clients, and it is my greatest pleasure to share my knowledge with my clients, and now you. What someone who has been injured needs are answers and straight-talk about his or her case. If you have been injured, you don't need empty promises or highly technical legal mumbo-jumbo. You need to know what to expect, what to do, and how to do it. I consider it my calling as an attorney to share what I have learned. To do anything less is a disservice to my clients and all others who need help.



## Chapter 1

### What is a Personal Injury Case?

**\*Non Straight-Talk Alert.\*** A personal injury case arises when someone suffers a physical or mental injury as a result of someone else's negligence. Negligence is a legal term that means that someone's conduct fell below the standard of care for a reasonable person in a similar situation. The standard of care varies from situation to situation, depending on who the injured party is and who the negligent person is. For instance, a professional driver (such as someone driving a bus) would be expected to have a higher standard of driving than a nonprofessional driver would. A bus company would be expected to have a higher standard of safety for its passengers than a private individual would.

The *straight talk* is that someone is negligent when he or she does something he or she shouldn't have done, or when he or she doesn't do something he or she should have done. For example, not stopping at a stop sign is probably negligent.

**\*Non Straight-Talk Alert.\*** Liability, or who is at fault, also changes from situation to situation. Washington State has numerous statutes and codes that determine the standard of care an individual is held to. When driving, these are called the Rules of the Road. They establish who has the right of way in certain situations, who must yield to whom, and how drivers must interact with each other. Determining the party who is

at fault is dependent on the facts leading up to the accident. For instance, if a driver was running an errand for an employer at the time of the accident, the employer might be liable for the driver's actions. However, if the driver decided to make a personal detour while running the errand, then the employer may not be liable. The permutations are endless. The question of liability is one of the first important considerations in a personal injury case and often times is not "cut and dried" but requires technical analysis.

The *straight-talk* is that liability just means who's fault the accident is. Unfortunately, liability, as with most parts of the law, is very complicated once people start arguing over something. Even cases that seem to be "slam dunk" on liability sometimes aren't.

After the question of liability is answered, the next step is to determine damages. Damages are the money that can make up for, or compensate for, the injuries that were caused by the negligent conduct. This is where the rubber meets the road in a personal injury case. In Washington state, there are two types of damages—special and general. Special damages are also called economic damages. These are things that can be proven with bills, invoices, and receipts (for example; medical bills, or the costs of prescription medicines). General damages are less exact and more "touchy feely." For instance, they can include pain and suffering and loss of enjoyment of life, and other categories that are all hard to put rock solid numbers on. There are no guidelines on how to place a value on general damages. Instead, the compensation is based on what damages a jury might find if they heard the case, which is highly subjective and can vary widely from jury to jury.

All damages require evidence. Judges and juries aren't just going to take your word for it! Usually injuries are documented through

medical records a treatment provider creates. Each time you visit a medical provider, he or she will document your medical history (what you say happened to you), your complaints, his or her objective findings (things that can be directly observed, like a broken bone), diagnoses, and recommendations. Often the evidence includes medical terminology and shorthand. Evidence may also be in places other than medical records, such as employment records, school records, and even with friends and family. It takes expertise to know where to look for the best evidence that will document the necessary facts to prove a case.

As you can see, a personal injury case is not as straightforward as Judge Judy may make it seem. Determining liability and legally responsible parties requires a strong understanding of Washington statutes and case law. Proving causation can often be a major battle where your doctors have to fight with the insurance company doctors. Winning your case requires being able to read technically complex medical records, knowing what documents are needed to prove what claims, and knowing where to get them, then being able to communicate all of that clearly and effectively to a jury.

## Chapter 2

### Get Ready for a Fight!

Ask any insurance company CEO what the main goal of his company is, and he'll tell you it is to make a *profit for his shareholders*. Not to treat injured victims fairly! That means that if you've been injured in an auto accident, I've got news for you... you are in for a fight!

- You are *not* in Good Hands with Allstate
- Like a *bad* neighbor, State Farm is there
- Farmers. Get you back to where *we think you should be*.

Most of the time, personal injury claims will be covered by auto insurance. (There are many types of insurance coverages; here we are discussing liability coverage.) However, just because you were injured and deserve to be made whole does not mean the insurance company is gladly going to give you any money. Insurance is a multi-billion dollar industry. Insurance companies are in the business of making money (by taking in premiums) and holding on to it as long as possible (so that they can invest it and earn even more money). Insurance companies do not like to pay claims, because that takes cash out of their pockets. Therefore, in the interest of corporate profits, insurance companies carefully scrutinize each and every claim and try to pay as little as possible.



The overarching tactic the insurance companies use is called “The Three Ds”: deny, delay, defend. They will *deny* that the accident is their insured’s fault, or that you were injured. They will *delay* giving you any money for as long as possible (assuming you don’t take the “quickie settlement”). Lastly, they will *defend* any claim you make aggressively, even forcing you to go to trial.

The first person we begin dealing with at the insurance company is the claims adjuster. The claims adjuster’s overall job is to get you to sign a full release of all your claims for as little money as they can get you to accept. The adjusters have many strategies for accomplishing that. The best way they can get you to accept less money is to search out and find as many weaknesses in your case as they can. However, the best way the insurance company knows to get you to accept as little as possible is to offer it to you quickly. The insurance company knows that most claimants will *not be represented by an attorney* right after an accident and it is a *prime opportunity* to convince the victim to sign a release, or at least to sign forms turning over medical records and give statements about the facts of the accident and their injuries. The insurance company’s object once you open a claim is to underpay it as much as it can get away with. This can be accomplished by:

- **Quickie Low Ball Settlement.** This is the oldest trick in the book. The insurance adjuster will be very friendly and offer you an amount to just wrap this whole thing up right away. The quickie offer can vary from a few hundred dollars to a couple thousand. The bottom line is that the insurance companies know that if they get you quickly before you speak to an attorney, they can get away with paying a whole lot less.

- **Recorded statement.** An adjuster will request a recorded statement shortly after an accident to get you to commit to a version of the story and document your injuries. This is dangerous for two reasons. First, they will try to manipulate you into describing the accident in a way that puts liability in question, or diminishes the damages. This will be used against you if facts change after the statement was taken, even if it is years afterwards. Second, at the time when you give the statement, it is possible that all of your injuries haven't shown up yet. For example, in most cases where surgery is required, it usually isn't performed until months after the accident. If you settle right away, then you've given up the right to have the surgery included in the settlement.
- **Records release and review.** An adjuster will request you to allow the company access to your medical and/or employment records before and after the accident, and then send the records to a specialist (who makes a lot of money working for that insurance company) to review and give an opinion whether you were injured and whether the treatment was reasonable. As can be expected, the specialist will often find there were no injuries or limit the injuries caused by the accident.
- **Independent Medical Examination.** If your case goes on long enough, the insurance company may ask you to go see a doctor of their choosing. They tell you that it is so that they can make sure all of the care you're getting is what you actually need. In reality, it is a hatchet job from the beginning. Remember the doctor who makes a lot of money doing records reviews for the insurance company? This guy makes even more money doing exams, then writing reports saying that you aren't hurt.

- **Secret Surveillance.** Insurance companies are using surveillance of claimants more and more to try to undermine the existence of injuries. They will record you going to work, the grocery, running errands, or going to the gym, to try to catch you in a lie. If they can't catch you lying about the extent of your injuries, then they will use the surveillance to prove that you were not limited by your injuries.

### **From the Case Files**

One of my friends, Adjuster X, used to work as an insurance adjuster before he woke up one morning and decided he could no longer work for “the dark side.” He has agreed to share some of his stories. Whenever you see the From the Case Files, like above, you can expect another shocking, but true, example of insurance company bad behavior.

Adjuster X received a call from one of the truck companies that his company insured. They had just been in a wreck where the truck driver had hit a school bus full of kids. Adjuster X immediately went to the scene of the accident, and settled the cases of over 30 children for \$500 each. He just had the parents sign a release. Nobody realized that sometimes it takes days for symptoms to set in. But, for those kids, no matter how injured they were, they would never get another dime.

These are just a few of the tactics that the insurance industry uses to fatten the pockets of their CEOs. The average person who happens to be in a car crash would have no way of

knowing about these tricks and tactics, and the insurance companies take advantage of the lack of knowledge when an individual is unrepresented. In some cases, the adjuster will insist that the claimant is required to participate in an examination or give a recorded statement even if this is not true. It is possible to fight back against the insurance company, but it requires an experienced personal injury attorney to know how and when to protect a client from all of the traps.

## Chapter 3

### **Do You Really Need an Attorney?**

Despite how complicated car crash cases can be, not every case calls for an attorney's expertise. There are several categories of cases where it would likely cost more to retain an attorney than it would be worth. This is true if the injuries are minor, require only minimal treatment, and are not permanent. In these instances, the damages may be minimal and it may not be cost effective to hire an attorney.

Personal injury attorneys generally work for a contingency fee. This means that the attorneys don't get paid unless they win your case, and the amount they get paid is based on how much they get for you. Retaining an attorney will require that you sign a retainer agreement, which is just a contract that outlines what the attorney will do for you, and how much it will cost. These agreements are not standardized so it is extremely important that you thoroughly read and understand every provision in a retainer agreement before signing it.

**WARNING.** Never sign a contract that you don't understand. If there is a part of the retainer agreement that doesn't make sense, ask the attorney to explain it to you. Have the contract changed so that it says what it should say in plain English!

That said, a contingency fee agreement works in the interests of both parties—it gives the attorney incentive to work hard on

the case and recover as much as possible, while it reduces the risk to you if there is no recovery on the case. Another huge advantage of the contingency fee contract is that you are not limited in how good a lawyer you can hire, even if you don't have any money. You can still shop around and hire the person that you respect and trust the most.

However, if you have a small case with small damages and minor injuries, it may not make financial sense to hire an attorney. This is partly because when an attorney takes your case there are certain things that need to happen. For example, an attorney will order all of your medical records. There is actually a state law that dictates how much medical providers can charge for the privilege of copying their records, and it isn't cheap! Sometime these, and similar other costs, will amount to more than you could get even if you had an attorney. All reputable personal injury attorneys offer a free consultation and it is smart to take advantage of this service.

If your case involves intricate issues such as significant injuries, then it is usually prudent to hire an attorney. The attorney will know how to deal with complex liability issues or complicated medical opinions. They also will know the tactics used by the insurance carrier and will be able to protect their client. Ultimately, that knowledge and expertise will result in a better outcome.

Here are some arguments the insurance company will use to justify paying out as little as possible on your claim:

- Minimal damage to the cars in the accident
- Weight problem of the injured person
- Too little treatment

- Too much treatment
- Pre-existing injury to the same part of the body
- Gaps in treatment
- Too many prescription medications
- Use of alternative care (chiropractic, acupuncture, naturopathy, etc.)

Before making your decision, keep in mind that a recent study performed by the Insurance Research Council found that insurance companies pay higher settlements to injured people who are represented by an attorney than to unrepresented people. The IRC is a non-profit organization supported by leading property and casualty insurance companies in the United States. The IRC found that people who have an attorney received, on average, 3½ times more money in settlement than those individuals who settled their own claims. While insurance adjusters often tell accident victims that they should not hire an attorney because they will receive less money, this is simply not true.

### **From the Case Files**

Adjuster X went to the home of an insured who had been hit head on by a drunk driver. The drunk driver didn't have any insurance of his own, so the insured was going to make a claim under the uninsured motorist portion of his policy. (In Washington, it is against the law for an insurance company to raise your rates for making a claim when the accident was not your fault. This covers Personal Injury Protection, Underinsured Motorist, and Uninsured Motorist claims). Adjuster X convinced the insured that the only way to punish the drunk driver who injured him was to settle his claim with his insurance company for \$1,500, so that his insurance company could then go after the uninsured drunk for that amount. Of course, this was not true. What happened is that Adjuster X got the victim to accept \$1,500 as a full settlement when in fact he was probably entitled to the \$25,000 policy limits that he carried since he had over 60 stitches on his face and would be permanently scarred.



## Chapter 4

### What a Personal Injury Lawyer Can Do for You

Being in an accident is one of the most stressful and difficult experiences a person can go through. It is all confusing new territory for most people. The aftermath of an accident entails one hassle after another—getting your car fixed, going to the doctor, phone calls from adjusters, getting prescriptions, missing work, not to mention your pain and suffering.

Here are all the things I do for my clients:

- Offer peace of mind in knowing that I (not a “case manager” or a paralegal) am representing you.
- Protect your rights and do everything I can to bring about the best result for you.
- Personal service for *you*. You are a person, not just another case or a number. I will listen, and treat you with respect.
- Keep you informed of what is going on and let you know what to expect at each stage.
- Give you peace of mind in knowing that if you are not treated fairly by the insurance company, then I will do whatever it takes to get you justice.

There are many ways that I go about providing you with those intangibles:

- Educate you about your claim and answer questions.
- Obtain and gather documentation about the claim.
- Review the facts of the case to identify all potential at-fault parties.
- Review and analyze all possible layers of insurance coverage for the accident.
- Interview witnesses.
- Investigate the scene of the accident (take pictures and gather other physical evidence).
- Evaluate legal issues surrounding the facts of the accident.
- Speak with your treating physicians about your medical conditions and recommended treatment plan.
- Review available insurance, such as health coverage or personal injury protection (PIP) to determine if bills can be paid while you are treating.
- If you are unable to work, assist you in filling out forms properly to replace your wage loss.
- If personal injury protection coverage is available to pay for wage loss or medical bills, make sure all the proper documentation is submitted and that the insurance company pays on a timely basis.
- Discuss settlement offers with you in detail and answer all of your questions regarding whether to settle, and the risks associated with litigation.

- Allow you to make the decision about whether to take a settlement or whether to continue to trial.
- Determine if we require additional experts to prove your case.
- Negotiate with the insurance companies.

If we are unable to resolve your case and we need to file a lawsuit, I will:

- Prepare the Summons and Complaint.
- File the lawsuit.
- Locate and serve with process all required parties.
- Engage in discovery, submitting questions for the defendant to answer and answering questions defendant asks of you (including objections).
- Draft and serve Requests for Admission.
- Prepare you and your treatment providers for deposition.
- Conduct depositions of the other party or other witnesses.
- Prepare and implement a winning strategy for your case.
- Review and analyze medical records.
- Depose the other side's experts.
- Prepare and respond to any motions and attend any court appearances required to argue the motions.
- Prepare our case for trial.
- Conduct arbitration hearing, mediation, or trial.

This list is not every possible thing that I may do on your case, but it gives you a general idea. It is important to note that most cases do resolve short of trial. That is because trial is risky for everyone. However, the only way to get the best results is to prepare every case as though it will go to trial.

## Chapter 5

### **How to Find the Right Attorney for Your Case**

This is a tough question. Unless you are in the legal profession, or have seen a personal injury attorney in action, how would you really know who to hire to represent you? There are many factors that you should consider when choosing an attorney to handle your case. These are a few questions to get you started:

#### **How long have you been practicing personal injury law?**

There are many attorneys who try to dabble in doing personal injury cases. They think they are easy. They are wrong. Just like I wouldn't try to write someone's will, other types of lawyers may not be as proficient in personal injury law unless they have committed their career to it. Do you want them learning on your case?

#### **What is your training since law school?**

Has the attorney completed any advanced courses in trial work or strategy? Has he or she completed any nationally known course work to hone his or her skills? An attorney dedicated to the craft will have taken additional courses that aren't required to get justice for his or her clients.

## **Who in your office will actually be handling my case?**

I don't know about you, but I want the person I meet with and decide to hire to actually work on my case. Many lawyers have "case managers" or paralegals who do much of the work, and the attorney only jumps in from time to time when needed. In my office, if you hire me then you get me, from start to finish.

## **Do you have experience with serious injury cases?**

Your attorney should have experience handling cases with the type of injury that you have suffered. There are many types of injuries and your attorney needs to understand the intricacies of your injury and know what experts are needed to help prove your case. Additionally, with serious injury cases, it is crucial to understand how those injuries will impact the rest of your life. Have you won any large verdicts or settlements?

If you are seriously injured, you do not want to hire an attorney whose practice consists of handling small fender benders. You want someone who is up to handling your case.

## **Do you routinely teach other attorneys?**

Some attorneys who are well respected in the legal field are asked to speak at Continuing Legal Education seminars to teach other attorneys. The teaching attorneys will have often written articles or other materials for the seminar. If an attorney has been asked to speak to other attorneys, then he or she must be credible.

## **Do you have experience handling my type of case?**

There are many general practitioners who can draft wills, settle contract disputes, set up corporate entities, but they probably don't regularly handle personal injury cases. It is my

recommendation to find an attorney whose practice is devoted to 100% personal injury cases. This is true for a number of reasons:

- Insurance companies keep track of attorneys they regularly deal with and will evaluate a claim higher because they are dealing with an experienced personal injury trial attorney. He or she can tip the scale on whether the insurance company decides to settle or push a case to trial. Even though most personal injury cases settle, an insurance company has no motivation to offer a decent settlement if it thinks that it will do well at trial because the plaintiff's attorney doesn't know what he or she is doing or will settle low to avoid going to trial.
- An experienced personal injury attorney will know the local defense counsel and how he or she generally handles cases and conducts trials. If an attorney has never been to trial or folds immediately before trial, the insurance company will note this and evaluate the claim lower.
- Insurance companies frequently change their tactics and strategies and combating them requires constant vigilance. An attorney who specializes in personal injury will keep abreast of these policies and procedures and know how to combat them.
- The law is constantly changing; an attorney must stay constantly on top of all of the changes to know how the law could affect your case.
- Experienced attorneys will know the medicine behind their clients' injuries. Soft tissue injuries can produce a number of varying diagnoses and prognoses. An insurance company might use their own "independent" (these guys aren't really independent) doctor who has a

different professional opinion from the treating providers. An attorney must understand how to explain to a jury why the rent-a-doc's opinion shouldn't be given any weight.

**Lastly, find an attorney you like.**

Believe it or not, personality counts! You are about to go through a journey with your attorney, and it is crucial not only that you like your attorney but that you trust him or her.



## Chapter 6

### Factors to Beware of

The following are some warning signs to look out for in selecting an attorney:

- Beware of “PI mills.” Many large firm personal injury attorneys make their money through high volume and fast turn-over. The cases are often handled by paralegals with the attorney only stepping in when necessary. In some cases, the client never meets the attorney! The business model for these PI mills is to settle as many cases as fast as they can because they lose money by spending more time on a case and would rather not litigate. It is in your best interest to avoid these large “churn and burn” firms as their bottom line can be in conflict with your best interests. If the attorney is too busy to meet with you, evaluate your case, or answer legal questions, that’s a bad sign.
- Beware of attorneys who make contact with you first. In many cases, this can actually be illegal!
- Beware of attorneys who promise or guarantee you an outcome in your case.
- Beware of attorneys who don’t have experience in handling personal injury cases.
- Beware of attorneys who have a collection of doctors to

whom they will refer you. Generally these attorneys use the same doctors over and over, and get thousands of dollars in fees from the referrals. As a result, the attorneys will value their relationships with the doctors over you. Additionally, the insurance companies have computers that keep track of this stuff, and they will know that they can get away with a minimal settlement in these cases.

- Beware of attorneys who rush you into signing a contingency agreement without allowing you time to review it in detail and ask questions.
- Beware of an attorney who has a lot of paralegals. This can be a sign that you will be passed off to a paralegal and the lawyer may not even do any work on your case.
- Beware of general practice attorneys. As discussed above, the personal injury claim is a minefield that calls for an attorney who knows how to get you to the other side.

## Chapter 7

### The Legal Process

**\*Non Straight-Talk Alert.\*** This chapter is full of technical terms. Unfortunately, there is no way to avoid it.

If a personal injury case cannot be settled through negotiations, generally a lawsuit needs to be started. The first step in starting the lawsuit is to file a summons and complaint with the court and then to have the defendant(s) served with the documents. The insurance company will then assign a defense attorney to represent the person whom it insures.

In Washington state, an injured party generally has 3 years from the accident to start the case. This is called the statute of limitations and requires strict compliance. If it is missed, there is very little that you or anyone can do. Therefore, time is of the essence and failure to comply has devastating consequences. If you decide to hire an attorney, he or she will be responsible for meeting the proper technical requirements to begin the lawsuit in the right place at the right time.

Once this is accomplished, the case enters the “discovery” phase where the parties send written questions to each other. Also in discovery, witnesses can be compelled to testify in a deposition. That is where the witness is sworn in and gives testimony under oath. It is very similar to testifying in court. In some cases an independent medical examination may be requested.

Discovery is the time when both parties have a chance to get an idea of what the other person's case looks like—the strengths, weaknesses, and legal strategies. This phase can take months to years to complete.

After both sides have all the information they need, the parties can enter into alternative dispute resolution to try to get the case settled. This can be in the form of a mediation where the parties hire an experienced attorney to assist them in reaching a fair resolution. A mediation is held at an office where the parties sit in separate rooms and the mediator goes back and forth between them until the parties either agree to a settlement or give up. Mediation is time consuming and boring, but it can be successful.

Another means to resolving the case is arbitration. In Washington State, the courts have set up a program called “mandatory arbitration” that is geared towards quickly resolving a case that is valued \$50,000 or less. Arbitration is conducted through an informal hearing in front of an experienced attorney that allows the parties to present the evidence to support their case. The arbitrator then weighs the evidence and gives an award. It is like an informal trial held outside of a courtroom. Arbitration is favored by attorneys because the rules of evidence are more relaxed and it is much less stressful on the plaintiff than a trial. It is nonbinding and a party who feels the award is unfair can appeal and the case can be sent to trial. However, a party who appeals must do better at trial than they did at arbitration or they are responsible for paying attorney fees to the other side, which could be considerable. The rules governing mandatory arbitration are strict and complicated. They often pose a trap to the unwary, inexperienced attorney.

Of course, the final option for resolving a case is a trial in front of a judge and jury. If the parties agree, they can waive the right

to a jury and just have the judge decide everything. Generally insurance companies will not agree to trial in front of a judge, so when the case goes to trial, it is usually in front of a jury. Juries are unpredictable. Sometimes they give high awards, but usually, they tend to be conservative in personal injury cases, and not award very much. No attorney can guarantee an outcome in front of a jury and many experienced trial attorneys are surprised by disappointing verdicts. As a result, trial is the last option because of the cost, stress, and considerable risk.

## Chapter 8

### **The 10 Insider Secrets that Insurance Companies Don't Want You to Know**

In my experience representing thousands of injured victims, I believe that there is no such thing as a “perfect” case. Each one has its challenges to overcome and requires hard work no matter the size. I have created this list of secrets that the insurance company doesn't want you to know because they are hoping that you will commit one or more of these mistakes.

- **Secret 1. Get enough information at the accident scene.** Failing to get all important information at the accident scene can virtually ruin your case. If you don't get names and addresses of the people involved, it puts you at a significant disadvantage in trying to determine fault and figure out what insurance might be available. If you fail to get the correct information about one of the cars involved while you are standing at the scene of the accident, you may never be able to get it again! Also, sometimes a surveillance camera will record the incident, or a 911 tape will be made. These tapes are often recorded over and the evidence forever lost within days. Therefore, the sooner someone investigates the accident, the better. The more time that goes by, the more evidence disappears, never to be found.

- **Secret 2. Do not wait to see a doctor.** If you are hurt, you need to see a doctor. Period. As discussed earlier, all injuries caused by the accident must be proven with evidence. This requires a medical provider documenting your symptoms and recommended treatment. If you delay seeking treatment or help from a medical professional, it suggests that you weren't hurt and raises a question to the insurance company of whether you were injured at all.
- **Secret 3. Do not exaggerate your symptoms.** One of the most important factors in your case is how you present as a witness. Will the jury or arbitrator believe you and what you say? Your story has to be supported by the evidence in your case. Usually that means that your complaints are in line with the opinions of your treatment providers. Otherwise, the jury may decide that you are faking or exaggerating. A jury will be particularly harsh to a plaintiff whom they perceive to be a “whiner” or who is playing them for money.
- **Secret 4. Be totally honest with your attorney.** Nearly every aspect of your life will be examined once you make a claim for bodily injury. This includes your work history, your medical history, your lifestyle, your background, and family life. Your attorney needs to know everything—the good, the bad, and the ugly. I can't protect you from something unless I know about it. The time to find out about a blemish in your work history or a criminal conviction you had is not when you're being deposed or examined at trial. It is vitally important that you are up front and honest with your attorney. A defense attorney will mine for details during discovery and the information will likely come out at some point. The insurance companies have endless resources to find

out everything about you. Your attorney will be able to deal with that past firing or other challenge as long as he or she knows about it.

- **Secret 5. Do not try to hide past accidents.** Once you begin a case, the other side will want to know how many accidents you have been in and, if the case is filed, you have an obligation to disclose this information. In most cases, they already know. The insurance industry keeps track of claims in a large database that all companies subscribe to. Giving less than truthful answers or trying to hide your previous accidents only make you appear to be less than credible.

### **From the Case Files**

I once represented a client who told me that he had never been in another accident before in his life. I asked him on several occasions, and each time he confirmed that he had never been in another accident. During that client's deposition, he was confronted by the insurance company's attorney with a police report from a prior accident and medical records from the treatment he received in that accident. That client had not been up front with me, so this came as a surprise to me. Had I known about it, I could have protected him or come up with a strategy. But, since the client was caught in a lie, his case was wrecked.

- **Secret 6. Do not under report your injuries.** As stated earlier, you must prove every injury that resulted from the accident. This means they must be documented in



your medical records by your treating medical providers. Sometimes a patient will be a tough-guy and downplay his or her pain, saying things like “it’s not that bad” or the injury is “minor.” Other times patients will not report all injuries. Either approach undermines his or her case. In injury cases, you do not get extra points for being brave! Your medical records will be scrutinized by the claims adjuster and defense attorney. Every pain and every complaint, even if it’s small, needs to be in your medical records to be part of your claim. If it is not in the records, it is difficult to convince a jury that it actually happened.

- **Secret 7. Do not miss doctor appointments or have “gaps” in your treatment.** If you are hurt, you need to keep your appointments. Period. Any time you miss an appointment and it is noted in your records, or you have a period of time where you don’t get any treatment (a gap), it suggests that you weren’t injured or hurt, and that is why you didn’t go. Once missed appointments or gaps are in your records, it is difficult to explain to a jury.
- **Secret 8. Follow your doctor’s advice.** You are not a doctor, and you can’t treat your own injuries. You need to find a doctor you like and trust, and do what he or she says so that you can get better as quickly as possible. Doing what the doctor says shows that you have a desire to get better.
- **Secret 9. Do not try to hide prior or subsequent injuries.** It is critical that you are honest and up front with your attorney about any injuries that occurred before or after your accident. If the case is filed, you have an obligation to disclose this. Essentially, your life becomes an open book when you open an insurance claim. An experienced personal injury attorney will investigate details about your

other injuries and make a determination on how best to present your case.

- **Secret 10. Keep accurate tax returns.** If you have lost income as a result of your accident, the simplest way to prove the loss is through tax records. However, if your tax returns are inaccurate, or non-existent, then your wage loss claim is in jeopardy. If this is the case, you need to have an honest discussion about it with your attorney.

## Chapter 9

### Information About Insurance

In Washington State, a driver must have at least \$25,000 per person limit or \$50,000 per occurrence limit for liability coverage in case he or she causes an auto accident. The *straight-talk* is that with minimum coverage, the most an insurance company will pay to an individual will be \$25,000 and the most it will pay for any one accident, regardless of the number of people injured, is \$50,000. If you have minimum limits, that means the most your insurance company will ever pay to one person is \$25,000 and it will pay no more than \$50,000 collectively even if the total claims exceed this. These numbers are usually seen with a ‘/’ on your insurance policy. The above example would look like 25/50. The first number is the per person limit, then slash, then the per accident limit. The most common amounts are 25/50, 50/100, 100/300, and 300/500.

**\*Non Straight-Talk Alert.\*** In Washington, insurance companies are obligated to offer other kinds of coverage. This includes personal injury protection (or PIP). This coverage will pay for medical bills, wage loss, and other benefits that are caused by an auto accident. PIP coverage is “no fault,” meaning that even if you are at fault for an accident, you still get your PIP coverage. When you first purchase your policy, you can reject PIP coverage but the rejection must be in writing. Even if you reject PIP, you may be entitled to benefits if the company cannot produce your signed rejection on file.

Also, the insurance company must offer uninsured/underinsured motorist coverage (also referred to as UIM/UM). This coverage will compensate you for damages caused by either an uninsured motorist, or an insured driver who does not have enough insurance to compensate you fully. Like PIP, this coverage can be rejected by a signed waiver. The UIM/UM rejection must also be in writing or else the insurance company must provide you with the coverage. The limits of this insurance coverage will be equal to the amount of your liability insurance unless you state in writing that you want a different amount.

Most people do not know that you must reimburse any insurance company (PIP, Health Ins., L&I) that paid any benefits for you out of any money you get at settlement. This means that if your health insurance paid for your doctor visits, you have to reimburse them. If your PIP insurance paid for medical bills and/or wage loss, you have to give them some money back, too. It's called "subrogation" and it's a right the insurance company has written into its contract. It is the law, and unfortunately, we do not have a choice. If you don't reimburse them, they can sue you for the money, take your house, your wife and your dog. They often will file a "lien" against the settlement. However, the good news is that there are rules about when and how much they can take. Usually, you don't have to pay them back the full amount they paid, and sometimes you don't have to pay them back at all. It takes an experienced attorney to know how to handle these claims and protect your money.

### **Misconceptions About the Claims Process**

**Myth #1: You must sign every document the adjuster sends you.** You are not required to sign a release of information for the other person's insurance company. While adjusters may want to look at your medical and employment records to assess your injuries, they do not have a right to the documents unless a lawsuit has been filed.

**Myth #2: You have to give the adjuster a recorded statement.** If a lawsuit hasn't been filed, you do not have any obligation to give a statement to the other guy's insurance company, recorded or otherwise. In fact, these often work against you because the adjuster can ask virtually any question without objection and the claimant locks him or herself into answers early in the claim. It is important to speak to an attorney before agreeing to a recorded statement. Often an attorney will sit in on a recorded statement to protect your case.

**Myth #3: Insurance adjusters are always honest with claimants.** In the days after a claim is opened, the adjuster's goal is to find out as much as possible about a claim to find any weaknesses to exploit. Adjusters can sometimes say something just to see if the claimant will give them what they want or to see how the individual reacts.

There have been documented instances of insurance companies using fraudulent means to get a claimant to accept a low settlement offer.

### **From the Case Files**

Ms. Jones was seriously injured when a teenager hit her after running a stop sign. She incurred substantial medical bills which exceeded the limits of the insurance policy. The insurance adjuster on the claim told Ms. Jones's family that it would represent her and would compensate her appropriately but would not represent her if she hired an attorney. The adjuster then told Ms. Jones that she needed to settle the claim for the limits of the policy. However, settling would have resulted in her releasing any other claims she had against other at-fault parties which would have resulted in her losing hundreds of thousands of dollars.

Ms. Jones hired an attorney who obtained the Allstate's training manual, which directed the adjusters to contact accident victims immediately after an accident and inform the victims that they did not need an attorney to receive fair treatment or fair settlement. The goal was to keep attorneys out of the claims process, thereby paying out less money to claimants. The Washington State Supreme Court ruled that Allstate was engaged in an illegal practice of law when it advised Ms. Jones to accept the settlement offer that only benefited the company and she was allowed to recover money against the insurance company for its practices.

**Myth #4: The insurance company will make a reasonable offer to settle your claim to avoid having to hire an attorney to defend the case.** This is simply not true. The insurance companies see this as nothing more than a cost of doing business. Also, there is an increasing trend towards insurance companies using in-house counsel, meaning that they don't have to pay attorneys by the hour to represent them. Therefore, these companies are not saving money by avoiding a lawsuit.

**Myth #5: There is a set equation to estimate the value of a claim.** You might have heard that a claim should be worth three times the amount of medical bills that you incurred from the accident. However, the reality is that every case is different. For instance, if you were to break your ribs, there would be little a doctor could do to treat your injuries and your appointments would be sporadic over a number of months. However, your pain and suffering would be great. Every move you made would be agonizing and even breathing would be painful. That case would have relatively low medical bills. On the other hand, if your injury is to your muscles and soft tissue in your neck or back, you would need regular treatment, sometimes on a daily basis, while the injuries healed. Your pain and suffering would probably be considerably less than the case of a broken rib, but the bills for treatment would probably be higher.

In comparing those two injuries, the bills for treating a broken rib would probably be much less than the bills for a soft tissue neck and back injury. However, the general damages for the rib injury would probably be much higher than those for the soft tissue injury. As you can see, valuing these two claims cannot be reduced to a formula. Don't listen to people tell you how much they think your case is worth or how much they or someone they know received for an accident. Every case is unique and only an experienced personal injury attorney can offer sound advice about the value of your case.

## Chapter 11

### **What I Wish Every Injured Person Knew About the Courtroom**

Very few people who aren't attorneys have sat through a jury trial from start to finish. If you have, you know that it's nothing like what you see on TV or in movies. If you haven't, you are probably like most people and think about the courtroom as depicted in "Law and Order" or A Few Good Men. In my years of experience, I've found that people have many misconceptions about what really happens in a trial and most of my clients are genuinely shocked by the truth. As a result, I always sit down with my clients before they make the decision about whether or not to go to trial and educate them about some realities about the courtroom.

- Frivolous cases do not survive litigation. The legal process was created to weed out cases that are without merit. At times, you might have read about a case that appears to stretch reason, but keep in mind that if the story you heard about was actually true, then the case was examined by a judge and jury and made it through the scrutiny. Keep in mind that only the members of the jury know what evidence they thought was important, and how they reached the verdict that they awarded.
- In our state, the word "insurance" can never be mentioned in the courtroom. The jury is never told that there is



insurance that will cover any judgment or settlement. In Washington, even mentioning the fact that a party is insured is grounds for a mistrial. However, in reality, the insurance company has not only hired the attorney representing the person at fault, but they will also be the ones paying at the end of the day. The individual defendant generally has little input in how the case is handled. It's really up to the insurance company.

- A case can be tried in front of a jury, which is called a “jury trial,” or in front of a judge with no jury, which is called a “bench trial.” Either side can request a jury; if nobody does, then the case will be heard by the judge. In almost every case, the insurance company will request a jury. Insurance companies know that it is difficult to get a jury to sympathize with an injury victim. Juries generally have preconceived misconceptions about frivolous lawsuits, rising insurance rates, and run-away verdicts, which results in lower awards to plaintiffs.
- When a lawsuit is filed, the defendant can force the plaintiff to go see the doctor of his or her choosing for an examination. The truth is that an independent medical examination is not independent. I've seen so many of these reports that are all the same. Often these doctors make all of their money by performing these examinations for insurance companies and are chosen because they help to undermine your case. They do this by saying the person wasn't injured in the accident, that the injury was pre-existing, that the injury was caused by something else, or that the treatment wasn't necessary. At trial, the doctor will testify about his or her findings to try to discredit the plaintiff's treating doctor's opinions, even though the examiner only saw the plaintiff for a short time. These doctors are nothing more than “hired guns” for the insurance company.

## Chapter 12

### **What Cases We Don't Accept**

My law firm is small. We can't take every case. After years of representing all kinds people in all types of personal injury cases, I have learned that providing high quality representation means limiting the number of cases that I accept. This way, I can devote more time and attention to each client to get the best results. I'm not the lawyer for everybody. Similarly, some cases aren't for me. If you case has one or more of the following I probably would not be willing to represent you:

- Accidents where the statute of limitations is about to run. Serving the defendant(s) in a lawsuit can take time and if it is not done precisely, then the case is gone forever. Therefore, if it has been more than two years since you were in an auto accident, I will not take your case because I won't have adequate time to ensure it is done correctly.
- Accidents involving minor impact or little damage to the vehicles. In my experience I have found that juries do not believe that big injuries can come from small crashes. The expense and time involved in proving the injuries can leave the client with little to no recovery. Therefore, the risks for the client do not justify what it costs to get there. While there are exceptions to this rule, I have found that minor impacts usually equal a minor award.

- Cases where the body parts injured in the accident were previously injured. Again, juries tend not to want to award money to a person who has had a long standing injury to the area claimed to be hurt in the accident. The risks in going to trial are too great. Therefore, I tend not to accept these cases.
- Cases where you have had numerous other claims or consecutive accidents. Once you have entered the insurance industry's database with multiple claims, settlement tends to be very difficult. Juries also tend to be unsympathetic to a person who makes multiple insurance claims.
- Cases where the person has a criminal history of dishonesty, deceit, or fraud. Certain types of criminal history are admissible at trial and will undermine a person's credibility with the jury. Even getting a settlement out of the claim will be difficult, not to mention a favorable jury award.
- It is my goal to provide the best legal services possible for my clients and I choose to select a smaller number of cases to which I can give my undivided attention. Of course, these are only guidelines and I approach each case with an open mind. If you would like a free consultation to discuss your case, please do not hesitate to contact my firm.

## Chapter 13

### **Information About My Practice & Me**

It has been my pleasure and honor to have dedicated my legal career to representing injured people since I first began in 1999. Over the years I have handled thousands of personal injury cases and have dealt with all of the major insurance companies in Washington. I have gone to trial, arbitration, and mediation in many, many cases. Personal injury is not only all that I do, but it is all that I have ever done.

I attended the University of Southern California for my undergraduate education, then Pepperdine University School of Law. After I graduated I immediately passed the bar and continued representing individuals against insurance companies and large corporations.

My firm does not base its business on a high volume or the personal injury mill model. We are very selective about which cases we accept. If I believe that you can settle a case yourself and would be better off not hiring me, I will tell you so. I will also not hesitate to advise a person if I believe a case cannot be won or if the risks of pushing forward would outweigh the costs.

If we don't accept your case, it is not necessarily the end of the road for you. There are lots of attorneys out there, and I'm sure

you will be able to find someone willing to take on your fight. If we do accept your case, you will have a team behind you to make sure the details of your claim are taken care of. We will vigorously pursue your case. We understand how stressful a personal injury claim can be and we understand that you have hired us to alleviate your anxiety. We are a small firm with a hands-on approach and we make ourselves accessible to our clients.

### **Legal Mumbo-Jumbo**

I wouldn't be a very good lawyer if I didn't include some legal disclaimer related to the information in this book! While this book is intended to educate you about your personal injury claim, it is not intended to give legal advice. It is not intended to substitute for legal counsel on your case. I cannot give you legal advice about your case unless you have retained me to represent you. The information in this book is intended only for educational purposes.

If you would like more information about me or my firm, please visit [www.straighttalklaw.com](http://www.straighttalklaw.com) or [www.plg-pllc.com](http://www.plg-pllc.com).



## About the Author

### Jason G. Epstein

Jason G. Epstein has been representing individuals against insurance companies and large corporations since 2001. He limits his practice to personal injury and wrongful death cases including auto accidents, motorcycle accidents, or other serious and catastrophic injuries. Hopefully you have already visited *StraightTalkLaw.com*. The website is loaded with tons of information, and is constantly updated to keep you informed of recent developments. You can also stay up to date by following the blogs which are linked to *StraightTalkLaw.com*.

#### *Jason G. Epstein...*

- Has Been Fighting Insurance Companies Since 2001
- Has Been Honored as a Rising Star by Washington SuperLawyers three years in a row
- Has the Highest Possible Rating (10.0) on Avvo.com
- Is a Graduate of Gerry Spence's Trial Lawyer's College
- Is a Frequent Lecturer to the Other Attorneys
- Is the Author of Numerous Consumer Books and Reports
- Is a Graduate of the National Institute of Trial Advocacy
- Is Involved in the Leadership of the Washington State Association for Justice
- AV Rated by Martindale-Hubbard

Jason grew up right here in Washington, attending The Overlake School and Mercer Island High School. Mr. Epstein then went to California while attending the University of Southern California and Pepperdine University School of Law. He is the father of two children, both boys.

Jason understands that providing the best legal representation to his clients means limiting the number of cases he accepts. He takes fewer cases so he has more time for you. By limiting his caseload, Mr. Epstein is able to give each client and each case the time and attention that they deserve. If you would like to see if your case qualifies for Mr. Epstein to represent you, please contact us through *StraightTalkLaw.com* or call us toll free at 1-888-333-1873.



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Mr. Epstein strongly believes that most legal disputes could be avoided if people had a better general knowledge about the legal system, insurance coverage and the insurance claim process.

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