

CAR ACCIDENT INJURY HANDBOOK

The Practical Guide to Washington
State Personal Injury Law

- ❖ **Guide to Rules of the Road and who is at Fault for Your Car Accident**
- ❖ **Find Out Where to Look for Insurance Coverage**
- ❖ **When Should You Settle and How to Maximize the Value of Your Case**

By Andrew Cherin
www.lawcherin.com

TABLE OF CONTENTS

I. Introduction.....	4
II. About the Author.....	5
III. The Car Accident.....	7
1. Evaluation by EMT.....	8
2. The Police.....	8
3. Take Pictures.....	9
4. Contact Insurance Company.....	10
5. Call a personal injury lawyer.....	11
IV. Hiring a Personal Injury Lawyer.....	12
V. Who is at fault?.....	16
1. Intersection Rules.....	16
2. Deception Law.....	17
3. Rear End Collision.....	21
4. Comparative Fault.....	24
5. Bad Road Design.....	26
6. Dram Shop Cases.....	27
VI. Insurance and compensation?.....	31
1. PIP.....	31
2. Subrogation.....	34
3. UIM.....	34
4. Liability Insurance.....	36
5. Small Claims.....	39
6. Personal Assets.....	40
VII. Injuries.....	41

1. Whiplash.....	41
2. Concussion.....	45
3. PTSD.....	45
4. Surgeries and Broken Bones.....	46
VIII. Compensation.....	48
1. Medical Costs.....	48
2. Lost Wages.....	49
3. Pain and Suffering.....	49
4. Permanent Injuries.....	50
IX. Conclusion.....	52

I. INTRODUCTION

Thank you for purchasing this book! I created this book to help guide people who have been injured in car accidents navigate and demystify the personal injury legal process. This book is appropriate for people who have been severely injured and people who have neck or back sprains requiring chiropractic or massage treatment.

My goal is to help create a better understanding of what is involved in the legal process for people to make a more educated decision on whether they have a good case to hire a personal injury lawyer or whether they can manage the case themselves.

LEGAL DISCLAIMER: This book is not intended as legal advice but rather informational purposes only on general legal issues that may or may not pertain to your individual case. Each case is different and the legal analysis for your case must be tailored to your specific facts. By reading this book you are not gaining legal representation from me, only a fee agreement signed between myself and you can create such a contract for representation. Additionally, any stories or scenarios in this book are intended for demonstrative purposes only and should not substitute for legal advice. I have written this book with Washington State law in mind

only and other state's laws may be different and not apply in the same manner.

II. ABOUT THE AUTHOR

I am a personal injury lawyer representing people who have been injured in car accidents in and around Seattle, WA. My passion for personal injury law came when I was in college and one of my close friends was severely injured in a car accident. I saw him make a miraculous recovery and take his case through the legal system.

The lawyer that represented my friend was very compassionate, patient, and understanding of what my friend was going through and made sure that he was getting the treatment that he needed and the ability to pay for his treatment. After my friend was fully healed, the lawyer negotiated a settlement to compensate him appropriately from the responsible party's insurance company.

This lawyer showed me the difference that being a personal injury lawyer could really have on person's life who was going through a very difficult time and navigating a very foreign world (the legal process) to most people. I knew at this time that this was the type of person and the type of profession that I wanted to embody to help others.



I live in Seattle with my two black labs Molly and Lulu. They love walking around local parks or exploring forests around the beautiful Pacific Northwest, and I love taking them to these places.

When I am not taking my dogs for walks or working on my client's cases, I enjoy playing chess (I taught chess for one year), watching Seattle sports teams, playing baseball, and listening to podcasts.

III. THE CAR ACCIDENT

As of the date of publishing this book, the statute of limitations for bringing a lawsuit for injuries suffered in a car accident is three years in Washington State. This means that you have three years to file a lawsuit from the date of the car accident or you will lose your right to be compensated for your injuries.

Being involved in a car accident is one of the most traumatic events in a person's life. It can often leave you with nightmares for weeks or years, waking you up at night reliving the experience of the impact or losing control of the car with no hope of stopping what you know is coming.

Immediately after the car accident, many people are dazed and confused about what just happened. If you are not seriously injured, there are some things you should do to make sure your case is well documented. These small things can make a huge difference to make sure it is handled as smoothly as possible and you are less prone to liability attacks by the insurance adjuster of the person who caused the car accident.

Top 5 Things You Should Do After A Car Accident

1. Get an evaluation by the EMT or doctor:

Even if you are slightly injured after you have been rear ended, you should get seen by either an EMT at the scene or a doctor either immediately following or the next day. Soft tissue injuries are very troublesome injuries that need a chiropractor, physical therapist, and or massage therapist intervention for complete and speedy recovery. An evaluation by a doctor or EMT at the scene will help rule out any serious injuries and can lead to a course of treatment for any pain you are in. Additionally, this will create a paper trail of your injuries linking them to the car accident.

Caution: If you wait a couple weeks or longer to see a doctor for your injuries following a car accident, the insurance company for the defendant will use this against you. Depending on how long you wait, the insurance company may deny coverage for lack of a link to the car accident or failure to mitigate your injuries from getting worse.

2. Wait for the police to arrive:

Always wait for the police to arrive at the scene or call the police following a car accident. Police will usually arrive within five to ten minutes of a car accident. It is very helpful to your case to have the police arrive, issue a ticket to the defendant, and document the scene and witnesses. A police report can include things such as insurance information of the defendant, address and contact information for the defendant, witnesses and their contact

information, and a narrative of what happened based on the officer's examination of the scene and statements given to him or her.

Caution: Many people that cause the car accident will not want the police to get involved because they are afraid they will receive a ticket, go to jail, or their insurance rates will go way up. Additionally, many people will not want to wait around very long if there car is drivable. It is important that you have the police show up. It will not take very long for the officer to show up in most cases and his report provides vital documentation of your case which without will turn into a he said she said battle between you and the defendant, creating a long legal fight over liability.

3. Take pictures of the scene:

Taking pictures of the scene is very helpful in creating visuals that can show how large the impact was based on damage to both vehicles. It can show how the accident may have occurred. It can rule out false statements or excuses on an alternate theory that the third party may claim saying that you were at fault. Pictures at the scene are much better than pictures from the auto shop as pictures of the scene shows both vehicles, where the impact occurred, what time of day it was, what the road conditions were, etc.

Tip: If you are going to take one picture at the scene, take a picture of what the defendant's car looks like (you may never get

another true view of their damages again). This is vital for low impact claims where there is little or no damage to your bumper but you were still impacted hard enough to jar your spine and cause injury. The defendant's car could be the key to your case showing much more damage and the true nature of the impact.

4. Report the accident to your insurance company:

Immediately report your car accident to your insurance company. Your insurance company should be the company handling repairs to your vehicle, creating a claim number for personal injury protection (PIP) claims you can submit to your doctors and therapists on your road to recovery, and most importantly documenting it for a possible uninsured motorist claim, which some insurance requires you report to them the car accident within 48 hours of the accident or possibly lose your claim.

Caution: Never let the defendant's insurance company handle the repairs to your vehicle or get any of your medical records, initially. If you think you are saving money by not reporting this claim to your insurance company, you are dead wrong. If it is not your fault, your insurance most likely cannot raise your rates. Additionally, you are giving the third party all the leverage in your case because now they know everything that is going on, they have the money and won't play nice, and they will belittle your claim because they can spin your case any way they like with all the information they have by being the only one to repair your vehicle and look at your medical records. By having your

insurance cover the car repair, the third party will not get an intimate chance to spin the case in their favor.

5. Call a personal injury lawyer:

The next day following a car accident, you need to call a Seattle personal injury lawyer. The personal injury lawyer can help save you from taking a low ball offer from the insurance company that will want to settle your case as soon as possible for as little money as possible. Moreover, the Seattle personal injury lawyer can walk you through the process of searching for ways for you to pay for your medical treatment while you are trying to get back to normal (the defendant's insurance company will not pay for your medical bills as you accumulate them and will only pay you one settlement payment at once). Even your own insurance company may deny your PIP, UIM, and other policy benefits where you might not be able to do anything if you don't have a lawyer representing you.

II. HIRING A LAWYER

Unfortunately, many people do not truly know what a personal injury lawyer can do for their car accident case and the true cost of one. I am reminded every day that people who should be familiar with what a personal injury lawyer can do for a car accident victim and how much we cost, have no idea. It's not their fault at all and it is some preconceived notion that is brought on by media and more likely the insurance companies themselves not wanting you to hire a personal injury lawyer to represent you in your car accident injury case.

I want to dispel these rumors as simply as I can with 5 quick common misconceptions about Seattle personal injury lawyers and car accident cases:

1. I can't afford a car accident lawyer
2. I can settle on my own
3. I don't want to go to trial
4. I don't want to cause trouble for the other person
5. I am not injured that bad to need a lawyer

1. I can't afford a personal injury lawyer to represent me in my car accident.

Many people think that lawyers are too expensive and they can't afford one. While it is true many lawyers charge \$250 an hour or

up for criminal, family law, business law issues, etc., a personal injury lawyer is paid out of the settlement. A personal injury lawyer for your car accident case will typically charge 1/3 of the settlement value but this amount leaves you with plenty of money in your pocket even after we are paid. You will not ever have to pay us out of your pocket as we will handle all the bills and write you a check from the trust account at the end of the case. Additionally, a personal injury lawyer will not charge you if they cannot recover any money.

2. I can settle my car accident case on my own, I don't need a lawyer.

Many people believe they can settle their case on their own without the help and guidance of a car accident lawyer. It may be ego or it may be being uninformed about what a lawyer actually can do for you and how much they charge that leads people to want to settle their case on their own. It also could be the insurance company flashing some money in front of your face soon after the car accident that seems like a lot of money but is nothing in compared to what you actually are owed. The problem with settling your case on your own is you are probably leaving a lot of money on the table and settling too early when your injuries may not have been fully treated by a chiropractor, physical therapist, acupuncturist, or massage therapist.

3. I don't want to have to go to trial by hiring a lawyer.

Many people believe that by hiring a lawyer for their car accident case that they automatically will have to go to trial and relive this traumatic event in their life. The truth is most cases do not go to trial and you will not have to sit in court at any point. A lawyer will make sure that you are fully healed, account all your medical costs and lost wages, and then try to settle with the insurance company first. Usually a lawyer can settle with the insurance company, which is ultimately your decision whether to settle your case or go to trial. A lawyer will not unilaterally determine that your case must go to trial, that is your decision alone, but you will have good options of taking an amount of money now or going to trial for more money in the future.

4. I don't want to cause more trouble for the person that caused the car accident.

Many people for whatever reason believe that by hiring a lawyer and trying to get money for their medical bills, lost wages, and pain and suffering will somehow cost the person that hit them more money. This could not be further from the truth. The only person you are saving money for is the insurance company by not hiring a personal injury lawyer to get the most money out of the insurance company. The person's insurance rates are going up by being in a car accident and will not go higher by you getting more money out of the insurance company. The person that hit you will not have to compensate their insurance company for the \$10,000 or more that their insurance company pays you for your car accident injury case.

5. I am not injured that bad to need a lawyer.

Many people, especially males under the age of 40, will not want to go to a chiropractor, acupuncturist, physical therapist, massage therapist, etc. for treatment of their injuries suffered in a car accident. Many people will try to tough out their injuries and not go to a professional right away, which will hurt themselves and hurt their case if they ever decide to pursue a personal injury claim. Not going into treatment for neck or back pain can lead to arthritis and other worse injuries if not treated soon after a car accident. Additionally, if two months later you decide that you want to get treatment, the insurance company will now most likely deny your treatment being related to the car accident no matter what your doctors say and cause much more of a hassle that could require your case going to trial, which otherwise you would not have needed to if you sought treatment right away.

III. WHO IS AT FAULT?

You may think that your car accident injury case is cut and dry and you know who is at fault. However, you may be completely wrong because of assumptions many people falsely make.

Many people believe that the person on the right has the right of way in all situations where two cars approach an uncontrolled intersection at approximately the same time. While this is mostly true, there are situations where the car on the left has the right of way and thus innocent. Generally, the law provides that the car on the right is the "favored driver", in most situations. Situations that could create a favored driver are merging onto the freeway, unmarked intersections, and turning in traffic signal controlled intersections, among others.

1. Intersection Rules

Generally, the person on the right is the favored driver in almost all situations. However, there are situations where the driver on the right is not the favored driver. A common example that many people falsely believe the person on the right is the favored vehicle is where two cars approach an intersection but the car on the left enters the intersection clearly before the car on the right. By entering the intersection before the car on the right, especially if the car on the right is speeding, the car on the left becomes the

avored vehicle. This can be shown by the point of impact on your vehicle. If the person on your right hit you in the middle of your car or further back and did not slam on their brakes, you most likely had control of the intersection and are the innocent party.

Another situation where the favored car is the car on the left is where two cars, going opposite directions, are turning onto the same street but there are two lanes onto that street. The oncoming car turning left generally has to yield to the car turning right. However, if there are two lanes, it is assumed that the left lane belongs to the car turning left and the right lane belongs to the car on the right. Thus, the car on the right at that point, who is turning right, does not have a right to turn into the left lane, thus overpassing the lane on the right. It is assumed that the car turning left has the left lane and the car turning right has the inside right lane.

2. Deception Law

There are many situations in the law that have gone on and shown our favor for the right hand driver as the favored driver. The advantage of being the favored driver is, of course, that the primary duty for avoiding a collision falls on the disfavored driver. The right of way granted to the favored driver is strong and will only be withdrawn in extreme cases where the disfavored driver is able to show that the favored driver operated his car so wrongfully and negligently as to create deception tantamount to entrapment.

There are cases that show that even where the driver is speeding, the favored driver will have the right of way. The favored driver is entitled to assume the right of way will be yielded to him. WPI 70.06 states that even after it becomes apparent that the disfavored driver will not yield the right of way, the favored driver is given a reasonable amount of time to react before a collision will be considered his or her fault. In *Anderson v. Wheeler*, the disfavored driver saw the favored driver approaching an intersection at a high rate of speed. This had the effect of intensifying rather than diminishing the disfavored driver's duty to yield.

However, the favored driver's right to assume the disfavored driver is not tantamount. It is the duty of every person using the public streets to exercise care to avoid a collision. WPI 70.01. This means that even if a favored driver has the right of way, that driver may not merely hit someone or drive distracted and hit someone. All rights of way are relative, and the duty to avoid accidents or collisions at street intersections rests upon both drivers. *Bennett v. Karnowsky*, 24 Wn.2d 487, 491, 166 P.2d 192 (1946). Both drivers and pedestrians must exercise a degree of care which a reasonably prudent person would exercise under the same or similar circumstances even though they may have the right of way or be the favored driver.

Thus, the favored driver is only entitled to assume the right of way will be yielded until he knows or should know in the exercise of reasonable care that the disfavored driver will not yield. Once that is apparent, the favored driver is allowed a reasonable amount of time to react. If he fails to do so, and a collision occurs, he may be found at fault.

However, the court has placed a law that allows favored drivers to be at fault where they deceive the disfavored driver into making a driving move that is considered reasonable given the circumstances. The disfavored driver will be excused from her duty to yield the right of way if the driver is deceived by the action of the favored driver. However, the deception must be tantamount to an entrapment, a deception of such marked character as to lure a reasonably prudent driver into the illusion that he has a fair margin of safety in proceeding.

Here are two examples of when this comes into play:

- (1) The disfavored driver sees the favored vehicle, but is misled by the actions of that driver into thinking it is safe to proceed.
- (2) The disfavored driver is deceived by a “clear stretch of the road.” *Oliver v. Harvey*, 31 Wn. App. 297, 640 P.2d 1087 (1982).

For the deception rule to apply, the disfavored must see the favored vehicle. If you did not see the favored vehicle, however, this rule will not save the disfavored vehicle as there would be no deceit element. The disfavored driver’s view of the favored car

must also occur sooner than an instant before the collision, or there is no deception. *Tobias v. Rainwater*, 71 Wn.2d 845, 431 P.2d 156 (1967). The rule also does not apply when the disfavored driver looked but did not see a favored vehicle that was “obviously there to be seen.” *Bockstruck v. Jones*, 60 Wn.2d 679, 682, 374 P.2d 996 (1962).

Basically, the deception rule comes down to when the disfavored driver could have reasonably concluded that the favored driver was not speeding and there was a fair margin of safety but they were mistaken. A common example could be where there is a lot of fog and the speed of the favored vehicle is tough to estimate. Additionally, where the favored vehicle speeds up after going a certain speed, this could come into play here as well. However, this may not switch the burden to the favored vehicle but it could lower the liability for which the disfavored vehicle would be responsible for.

Similar to the deception rule, the “clear stretch of road” rule applies when the disfavored driver carefully looked from a point where oncoming traffic should be visible and could not see a negligently operated favored vehicle because of physical obstruction on the roadway. To prevail, a disfavored driver must show both that the favored driver was negligent, and that the favored driver was concealed by an obstruction. However, this may not switch the burden to the favored vehicle but it could lower

the liability for which the disfavored vehicle would be responsible for.

3. Rear End Collisions

There is another common misconception that the person in the rear is always at fault if they rear end a driver. While the following driver has the primary duty of avoiding an accident, he is not guilty of negligence as a matter of law, simply because he collides with a vehicle in front of him. *James v. Niebuhr*, 63 Wn.2d 800, 389 P.2d 287 (1964).

It is the duty of every driver to exercise reasonable care to avoid placing himself or herself or others in danger. *Robison v. Simard*, 57 Wn.2d 850, 360 P.2d 153 (1961). Some people decide that they are just going to stop in the middle of the road without signaling and everyone else should anticipate them turning even though there is no signal. However, state law says that the operator of a motor vehicle must communicate to others using the roadway of his or her intentions, usually by signaling in some fashion.

Stopping RCW 46.61.305(3): No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Signaling RCW 46.61.310: The duty to signal is owed to any driver following closely, not just to the single driver closest behind. Therefore, the law states that people driving must show their intention of stopping to turn to people behind them by signaling that they are going to stop and giving the person behind them reasonable time to safely stop. Most importantly here, the law states that you must exercise reasonable care when stopping to take into consideration the well being of all people including pedestrians, cars behind you, cars coming from other directions, and yourself. This clause gives weight to all other factors besides giving the people behind you the priority when making a safe stop.

In *James v. Niebuhr*, 63 Wn.2d 800, 389 P.2d 287 (1964), the plaintiff was rear-ended when she stopped on a state highway to allow traffic to enter from an access road as a matter of courtesy. Following a jury trial finding in favor of the defendant, the trial court granted judgment notwithstanding the verdict as to liability, and ordered a new trial for purposes of assessing damages. The Supreme Court reversed the trial court, finding that although the following driver has the primary duty of avoiding an accident, a jury could find for defendant if the plaintiff stopped suddenly and without warning at a place where a sudden stop was not to be anticipated.

The case above stands for the principle that you should not slam on your brakes at the last second to allow someone who was not in the intersection to cross, not stop in the middle of the road to

turn without signaling first, and that you should not stop on a highway to allow merging traffic a courtesy spot.

In a very peculiar ruling, however, *Felder v. Tacoma*, 68 Wn.2d 726, 415 P.2d 496 (1966), the plaintiff was rear-ended as he stopped approaching an intersection with a flashing yellow light. The plaintiff, believing the light was going to change to red, stopped abruptly. The defendant argued that the plaintiff had stopped suddenly and without warning at a place where a sudden stop was not to be anticipated. The court, however, held that when approaching a street intersection, a driver is bound to anticipate that the car ahead of him or her may be stopped by traffic signals or conditions, and may therefore be guilty of negligence in running into said car when said car does stop. See also, WPI 70.04; *Billington v. Schaal*, 42 Wn.2d 878, 881, 259 P.2d 634 (1953) and *Brummett v. Cyr*, 56 Wn.2d 904, 906, 355 P.2d 994 (1960), both of which stand for the proposition that a driver has an almost absolute right to stop for a traffic signal.

RCW 46.61.065 Flashing signals.

(b) FLASHING YELLOW (CAUTION SIGNAL). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

This case does not make a lot of sense if you believe this holding stands for all people who mistakenly believe a yellow blinking traffic signal means stop and causes an accident are not at fault.

However, the person who approaches a yellow blinking signal and stops may be in the right if the person reasonably believes that they need to stop in order to not run into another vehicle or pedestrian. Yellow blinking signals are usually placed by cross walks or near fire departments to make cars aware of pedestrians or fire trucks.

Bottom Line Take Away: The rear driver is at fault in most situations where they rear end the driver in front of them. However, if the lead driver does not give reasonable warning of their intention to stop by brake lights or hand signal, and at a reasonably anticipated spot, the lead driver may be at fault for causing the car accident. While the lead driver can stop and have a false belief about something, the court will take all viewpoints into consideration. Thus, the action by the lead driver must be reasonable in the eyes of the jury.

4. Comparative Fault

Washington State is a comparative fault state, meaning that if you have been involved in an accident and you are partially at fault, your award at trial will be deducted by the percentage of fault attributed to you in the accident. This does not mean that Washington State is a contributory negligent state, which bars recovery for injuries if the plaintiff is found to be contributorily negligent in causing the accident at all, followed by in a very remote number of states.

In an case based on fault seeking to recover damages for injury or death to person or harm to property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

An example of someone being partially at fault for the accident is where driver A was driving on the highway and driver B was merging onto the freeway but did not look where driver A was, subsequently striking driver A and causing them injuries.

However, driver A was found to be driving too fast and was partially at fault for the accident. The case is taken to trial and the jury or judge finds that driver A was 10% at fault for the accident and his damages were \$100,000. Therefore, driver A is only awarded \$90,000 worth of damages. The case gets more complicated where both parties were injured in the accident.

Additionally, you could be found **contributorily negligent** for your injuries if you did something that delayed or impeded your full recovery that a reasonable person would not have done. What a reasonable person would do is up for interpretation. An example of this could be not getting treatment for your injuries and letting an injury fester, get infected, or further get injured by not seeking medical attention immediately or when a reasonable person would have, given a similar situation, resulting in an exacerbation of the injury or a new injury forming, such as an infection. This could greatly reduce your medical bills as well is increase your bills. After an accident, you should either go to a hospital

immediately to get checked out or, if you don't require immediate treatment, get checked out by your family doctor the next day or soon after an accident.

While this works to limit the defendant's liability in most cases, it can also bring in a defendant who is only 1% at fault for the case under **joint and several liability**. The court will use equity in these situations and make one defendant who is 1% at fault pay for the entire damages of the plaintiff, as long as the plaintiff has no fault for the accident, the other defendant has no way to pay, and the plaintiff would suffer great damages if they do not recover from the 1% defendant.

5. Road Design

The city or local government could be at fault for causing a car accident if they have been found to have a bad road design that leads to more car accidents than normal. The city must fix the road design flaw if they are on notice that this area is dangerous and causing a lot of car accidents for some reason.

A possible reason for a road design case against the city is where there is a stretch of road that has a blind spot for traffic and speeds are high. In this scenario, if there are a lot of car accidents here because of the blind corner and the city does not add a warning sign, lower the speed limit, or create more visibility for drivers on this curve, the city could be at fault for injuries sustained in a car accident by both the driver who caused the rear end collision and the person that was rear ended.

Getting the city or local government involved in a case is tricky and requires a lot of formalities that are not present in typical cases. However, getting the city or local government involved in a case where you are injured by an uninsured motorist and you do not have uninsured motorist coverage, the city could provide you with a vital source of money to pay for your medical bills and injuries, where you otherwise would have collected nothing.

6. Dram Shop Cases

Drinking and driving continues to be one of the most destructive, selfish habits in today's society. Some believe that drinking and driving is an unconscious act because the faculties of a person that is drunk are not there. In effect, the person you are sober is not able to clearly think on their own when they are drunk. A dram shop case is a label that describes bars and taverns who over serve alcohol to people without thinking about the consequences of the people who are consuming the alcohol who then go and drive their car drunk (DUI), injuring or killing others. Dram shop or dram shop is a legal term in the United States referring to a bar, tavern or the like where alcoholic beverages are sold.

Traditionally, it referred to a shop where spirits were sold by the dram, a small unit of liquid.

Supreme Court Upholding Dram Shop Laws: In April 2000, after a night of drinking heavily at the Bellingham Moose Lodge a man named Hawkeye Kinkaid crashed into a vehicle transporting

Bianca Faust and her family, killing Kinkaid and seriously injuring everyone in Faust's car.

Christopher Faust, a 7-year-old boy present in the victims' vehicle at the time, was so severely injured that he has been rendered a paraplegic for the remainder of his life. The family sued the lodge who had provided the intoxicating liquor to Kinkaid, who did not have adequate insurance coverage to cover the injuries, before he got into the crash. Faust won the lawsuit in Whatcom County Superior Court, but the judgment was eventually overturned by the Court of Appeals on the grounds that Faust had to present "specific point-in-time evidence" that Kinkaid was already visibly drunk when the establishment provided him with liquor.

However, the state Supreme Court made note that a forensic expert had determined Kinkaid likely consumed the equivalent of 21 twelve-ounce beers or 30 ounces of 80-proof liquor throughout the evening and that his blood alcohol content (BAC) was approximately .32 at the time of the crash – four times the legal limit in Washington.

The court determined that such a high level of intoxication, combined with the fact that the bartender had admitted that Kinkaid was too drunk to drive and that she eventually refused to serve him because of how intoxicated he was. However, she likely should have made that determination sooner in the evening, before he was intoxicated enough to cause this devastating crash.

As a result of the Supreme Court's ruling, the family was awarded a \$14 million judgment to provide care for Christopher throughout the remainder of his life.

Why are bars and taverns accountable for the actions of others?

Society has determined that while we believe in individual rights to determine actions, bars and taverns should be held accountable for profiting off the over serving of alcohol to others who, once drunk, do not possess the faculties to make rational decisions. Moreover, bars and taverns profit from the more alcohol that is consumed and the more alcohol that is consumed the more likely someone is to act irrationally, act aggressive, injure others in fights, injure others in car accidents, and injure themselves by alcohol poisoning. Society believes that these taverns must police the drinking of their patrons, while at the same time keep their pocket books in check from taking advantage of people who once drunk will continue to drink and pour out their wallets on expensive alcohol until they are passed out.

Had we not created the law that taverns, bars, and restaurants are able to be sued in dram shop cases, these places would have little incentive to stop serving alcohol to people that are drunk. Bars and taverns are businesses that make tons of money off of alcohol sales and if everyone was accountable for their own

actions only, these places would serve alcohol until people are passed out, in effect robbing people blind. Dram shop laws creates an incentive for bars, or a balance check for bars, whereby they balance making money off of people buying alcohol and the possibility of being sued by the family of the victim of their over served patron's poor decision making to drive drunk and killing someone. Thus, the bar must weigh the benefit of making money and society's interest to stop drunk driving car accidents.

Why sue the bar or tavern and not hold the driver of the car responsible for their actions? Do they get off without paying?

The driver of the car is 100% responsible for their actions. However, they are often not in a position financially to pay for the amount of damages that a person who has been injured or killed in the drunk driving car accident. How much do you think being severely disabled or killed in a car accident is worth? \$1 million, \$10 million, \$100 million? Most people do not have insurance to cover even \$250,000 if someone is injured in a car accident. However, bars, taverns, and restaurants must carry at least \$1 million in liability insurance and most have much more insurance protection.

IV. INSURANCE AND COMPENSATION

You may believe that your car accident injury case is cut and dry and the defendant's insurance company will pay for everything and compensate you properly. That could not be further from the truth. Many people do not know that the defendant's insurance company will not pay for your medical bills as you accumulate them, only once you settle.

This puts added pressure on people to settle early for a small sum of money like a couple thousand dollars and your bills being paid up to that point. Unfortunately, it often takes six months or more for most injuries to fully heal with conservative chiropractic care or physical therapy.

How do you pay for your medical bills while you are awaiting a settlement once you are fully cleared by your chiropractor or physical therapist?

1. Personal Injury Protection

How are you going to pay your medical bills while you are awaiting a settlement?

You shouldn't have to worry about how you are going to pay your medical bills or whether or not you should tough out a nagging injury and just live with it – get treatment now. Not only could delaying your treatment affect your settlement, it will make your life that much more difficult by suffering with the pain. It is important to remember that you will be compensated for your injuries if you were not at fault or have an insurance policy for Personal Injury Protection.

Personal Injury Protection (PIP) is one of the most beneficial insurance policies that someone in a motor vehicle accident could have. In Washington, every insurance company is supposed to offer their clients personal injury protection and the client may either accept and pay a premium each month for it or reject it in writing. PIP covers your medical expenses if you are ever in a motor vehicle accident, regardless of fault. The coverage is usually \$10,000 or \$35,000, depending on your plan and premium paid. Most people opt for the \$10,000 coverage.

The best part about PIP coverage is that you will almost never have to pay out of pocket for your treatment. However, if you ever have to pay out of pocket, PIP will reimburse you for your costs. Therefore, you can continue to go seek treatment knowing that your bills are being paid on time.

PIP pays for medical bills and you don't need a referral to start seeing a physical therapist, chiropractor, or massage therapist –

PIP will cover all these bills. Additionally, PIP will cover your lost wages, prescriptions, and other out of pocket expenses.

PIP is a great policy to pay for your medical bills while you wait for your settlement. However, if you do not have enough PIP coverage, which is often the case if you have gone to the hospital after a car accident and need physical therapy, massage, and chiropractic care. There are other ways that you have to pay for your medical treatment including medical insurance and liens.

The good thing about having a personal injury lawyer representing you is that they can get you treatment that you otherwise could not afford out of pocket? How can this be? Well, medical insurance providers generally will not cover your car accident injury claims because they do not think they will be compensated for the claims they pay, but if you have a lawyer signing a letter of guarantee, they will cover these bills.

Additionally, if you do not have medical insurance a lawyer can guarantee payment to a chiropractor or any other provider so they you can keep seeing them and they can then be paid out of the settlement. Without a lawyer, you most likely will not be able to keep seeing these providers because of their hesitance to give away free services now, and you may be forced to pay out of pocket.

2. Subrogation

Subrogation is the process of paying your insurance company back for bills that they have paid on your behalf after you have been paid for these bills by the defendant. If you do not hire a lawyer you will never hear of this because the defendant's insurance will merely pay back PIP or your medical insurance all the money they have been paid. However, if you hire a lawyer, your lawyer can allow you to not pay as much back and actually keep more of that money in your pocket.

The theory behind this is that if you had not been injured by this other person, PIP would not have had to pay for your medical bills and you were compensated for your bills in your settlement. In Washington State if you have a lawyer, you are only required to pay back about 2/3 of the PIP bills (authorized in Washington under the state cases of Matsyuk and Mahler) and possibly less if you were not fully compensated for your injuries, which could be the case if the defendant had a policy limit that was lower than your judgment, among other things.

3. UIM Insurance

Uninsured or underinsured motorist insurance (UIM) is an auto insurance policy that protects you if you are injured in a car accident by someone that does not have insurance or not enough insurance to cover your case value. Estimates for how many

people have insurance in Washington state vary but generally it is thought that around 17% of people driving in Washington do not have insurance.

Additionally, the minimum bodily injury liability amount is \$25k/50k, meaning there is only \$25,000 available per person for a car accident injury and \$50,000 total if more than one person is injured in the car accident. You can guess that many people obtain the minimum insurance limits for their car because they want to save money so there are probably at least 25% of people driving around with minimum insurance.

Therefore, there is about 42% of people driving on the road with little to no insurance coverage to cover your injuries. This means that if you do not have UIM insurance, you will only recover whatever the defendant has in the form of insurance or personal assets (which is nearly impossible to reach).

UIM coverage steps in the place of someone who causes your car accident and acts as if they represent that person. This means that it is difficult to get the full amount of the UIM limits because the insurance company will be fighting for every penny that they pay out. Therefore, having this policy does not necessarily mean that you will be paid the full premium amount you have taken out, but it at least means that the money is available to compensate you for hospital bills, surgeries, doctor visits, rehabilitation, massage, chiropractor, and other medical appointments and treatment. Additionally, it will cover your lost wages, pain and

suffering, and any other related costs you have associated with being injured in the car accident.

What are the time limits to bring a lawsuit or claim for UIM insurance coverage? The time and notification to bring a UIM claim are dictated by your insurance contract. However, in Seattle there is a statute of limitations that affixes to all contract claims and claims for breach of contracts. A statute of limitations is the time period you have to bring a lawsuit or lose it forever if you don't file within that time. For personal injury car accidents there is a three-year statute of limitations to bring a personal injury claim against the defendant who caused the car accident. However, a UIM lawsuit against your own insurance is grounded in contract law so you have 6 years to bring a lawsuit for breach of the policy contract by the insurance company. This does not start until the insurance company does something that breaches the contract such as denying coverage or not agreeing to an amount that is fair breaching the contract - paying for or compensating you for your contractual rights to pain and suffering, medical bills, lost wages, etc.

4. Liability Insurance (Defendant's Insurance)

Once you are fully healed from your injuries sustained in the car accident, your personal injury lawyer will start settlement negotiations with the defendant's insurance company.

Contrary to popular belief, hiring a personal injury lawyer does not mean going to court for your car accident case. 99.9% of cases

do not go to trial and will settle outside of the court house.

However, there are cases that do require trial where insurance companies are not playing fair or not offering enough because of possible issues with linking the injuries to the car accident or the length of treatment.

A personal injury lawyer takes your full case as a whole, what you have gone through, what type of treatment you received for your injuries, if you have any injuries that need long term care and are permanent, your lost wages, your out of pocket expenses, and your pain and suffering you had to go through as a result of the car accident, and creates a package detailing all this to send to the insurance company called a demand package.

Once the insurance company receives the demand with all of your medical records and medical bills, the insurance adjuster will offer a counter offer to your lawyers' offer. A back and forth will commence until one side says they have reached the lowest or highest that they can go and no deal is reached. At this point, your Seattle personal injury lawyer will come back to you with the offer and you will determine whether this is enough for you given all the money that must be paid back, lawyers' fees, and what you have gone through.

The offer from the insurance company will include medical bills that must be paid back if paid by your insurance company or paid if the medical provider has not already been paid for their services. You will also have to pay back your insurance companies (both medical and auto) if they made any payment for

treatment related to the car accident. The reason for this is called subrogation. Subrogation is a term referred to by your attorney and insurance company for the insurance company to be repaid for the amount they paid, or a portion of such paid. The reason you have to repay the insurance company is because your attorney is going after the defendant's insurance company for money that your insurance paid and thus you can't keep this money because it is seen as you recovering twice if otherwise.

If you accept the settlement, your lawyer will (upon your directive) pay any outstanding bills or subrogation claims that others may have against you. Then your lawyer will take their fee and provide you a check for the remaining amount. A full accounting of all costs will be provided to you upon the final payout to you from your personal injury lawyer.

If you say no, then your Seattle personal injury lawyer will counsel you on trial or arbitration for the car accident law suit to be filed. A lawsuit in King County Superior Court will cost you about \$240 plus about an \$80 service fee for a process server to serve the summons and complaint on the third party. Additionally, there is a \$200 plus fee to pay for an arbitration hearing if your case is less than \$50,000.

If you go through the lawsuit, you may have to undergo a deposition where the other attorney will ask you a lot of questions about how you were injured, what injuries you sustained, and how you progressed. Some defense attorneys may even ask personal questions, questions about your past, questions about run ins with

the law, questions about drug use or past drug use, and other possibly insulting or nerve wrecking questions. However, your attorney will be there with you and object to the questions if they are out of line.

The trial or arbitration will not occur until months following the filing of the lawsuit. An arbitration will be sooner and will be a mini, informal trial, probably not in a court room. If you go to trial, a jury or bench trial are options and the trial may last 3 days to 3 weeks depending on the amount of experts hired by each side to testify about your injuries.

Arbitrations are like mini trials and are not nearly as expensive as a trial because there are usually no experts testifying, which you have to pay for. Experts can include the chiropractor, doctor, accident reconstructionist, occupational therapist, etc. They are all very expensive and will usually charge hundreds of dollars per hour to get ready for testifying and actually testifying. Arbitrations usually only last a day but a trial can last a week or more depending on how many experts need to testify by each side.

5. Small Claims

Another option for people who either have little or no medical bills and want a quick result is small claims. Small claims are limited to \$5,000 or less in King County so you may not want to pursue this avenue if your bills are high.

Small claims may also be an option for you if the defendant does not have any insurance and you do not have UIM insurance. It is

a smaller judgment that you can receive relatively quickly and you can more likely collect from the defendant. A lawyer cannot represent you in this hearing.

6. Personal Assets

If the defendant does not have any insurance and you do not have UIM insurance, but you have suffered a great amount of medical costs, you may want to pursue the defendant personally. These cases are generally not worth pursuing unless the defendant owns multiple houses or has a lot of assets. Most people that do not have insurance or little insurance, also do not have enough money to compensate you for your injuries.

The sad truth of the matter is not many personal injury lawyers will want to take this case to trial because of the little chance of actually recovering any money from these people personally. It is no good spending lots of money on a trial and getting a \$1,000,000 settlement only to see the defendant never pay a dime. You can try to use a collection agency to collect on the judgment but you will likely not see a dime because these people do not have any money.

If the person does have considerable assets but just didn't have insurance on the vehicle for some reason, it may make sense to pursue them personally. If they have a well paying job you can garnish wages or if they own property you can place a lien on the property to prevent selling or refinancing until your lien is satisfied.

V. INJURIES

The healing process for being injured in a car accident varies tremendously between people. Some people can heal within a week and some people take multiple years to recover from injuries suffered in a car accident. A lot of this depends on the age, physical fitness, and type of injuries sustained in a car accident.

1. Whiplash Injuries

Many people that are injured in car accidents are diagnosed with the term whiplash injury. What is Whiplash? The word whiplash is not a medical term or diagnosis; however, it is commonly used by doctors in emergency rooms to inform patients about the injury that they have suffered. "Whiplash" is merely a descriptive term that describes the biomechanical physics applied to the neck in the accident that produces the injury. It is more appropriate to refer to this injury as a hyperflexion/hyperextension injury or a "cervical strain/sprain."

The spine is divided into three sections - the cervical, thoracic, and lumbar areas. The cervical spine refers to what we commonly refer to as the neck area of the body; the low back is the lumbar spine and the middle portion of the back where the ribs connect to the spine is the thoracic spine. The cervical spine has the smallest

vertebrae in the body and is supported by layers of ligaments and muscles that provide most of its structure.

When a person is rear-ended in a car accident, the car is rapidly accelerated forward. This is the same experience that you feel when you are in a roller coaster and the roller coast accelerates quickly pulling you backwards in the seat. However, unlike in a roller coaster ride, you are not securely strapped into a car with tight head restraints and tight containing seats.

If everyone were required to have racing type seats, like you see on TV where riders are restrained in tight seats with full seat belts and neck harness type seats, everyone would be a lot safer and there would be a lot less neck injuries. However, all cars are not equipped with these special features to prevent injury.

Thus, in a normal rear end collision, the car is pushed forward from the impact and the head snaps backwards, as it is not restrained. This movement is greater than the neck's normal range of motion and often the front neck muscles are torn. In another instant, the car's momentum stops as brakes are applied and the head is thrust forward to catch up with the body and as a result flexes forward farther than its normal range of motion also injuring the back of the neck muscles, causing injury to both sides of the neck.

Many people who suffer severe whiplash injuries as a result of a rear-end automobile accident, do not realize at the scene that their neck has been injured. The drivers are usually in shock and pumped up with adrenaline, which masks the injury and is why you may not feel the injury for a day or two as the muscles begin to repair themselves. Often times, an injured person in a car accident will then report to the police or to an insurance company that they have not been injured because of this.

After the car accident the neck slowly begins to stiffen up and within 6-48 hours the injured muscles go into spasm and become very painful. The "spasm" is nature's way of splinting injured muscles to allow them to begin the healing process. When a person's neck is x-rayed following a rear-end accident, there is usually no direct finding of injury as x-rays show only bony tissue and do not reveal the injured soft tissue. However, persons whose neck muscles are in spasm from an accident, have an abnormally straight neck which is known as the "straightening of the cervical lordosis," an objective finding.

Victims of whiplash injuries in car accidents often find the most relief and fastest relief by seeking chiropractic treatment.

Chiropractors can use a variety of treatment methodologies and modalities to treat whiplash injury including taking x-rays to show objectively that there is a straightening of the spine, indicating injuries to the cervical spine muscles. They can prescribe massage therapy to loosen muscles, often with a massage

therapist at their office. They can make adjustments to the vertebrae surrounding the injured muscles and ligaments to foster proper alignment in healing. They can order MRIs so that they can rule out major injuries to muscles that may require surgery.

Other people choose to go to physical therapists to rehabilitate injured muscles around the neck area and do a variety of stretches, icing, stimulation treatment, and weight bearing exercises. Physical therapy is good for creating a healthy exercise routine and stretching routine whereby you can maintain proper alignment of your neck and posture that you can use on your own following treatment.

Acupuncture treatment can be very good to release the tension and spasm of some of the muscles in your neck so that you experience less pain and inflammation in the neck region so your muscles can heal faster. More importantly, you will then be able to sleep better because you are no longer in pain and suffering from spasms in your neck due to this relief.

If you do not seek chiropractic, physical therapy, massage therapy, or acupuncture treatment, gradually over a period of six months or more, the muscles repair themselves on their own and create scar tissue. The scar tissue is thick and less resilient than the muscle tissue that it is replacing. As a result, there is a structural change in the injured muscle which, depending upon where the scar tissue develops and how thick it is, the person

may be left with a chronic condition that will be problematic for the rest of his or her life. For this reason, it is good to get immediately into a chiropractor or another physician right away following a car accident so that you can avoid chronic issues with your neck.

2. Concussions

Concussions are head injuries that can occur during a car accident if your head strikes something or is jarred very quickly causing your head to bounce around in your skull. Some possible signs that you are experiencing a concussion is that you have multi tasking issues, headaches, memory problems, or other head related issues. If you feel like you are experiencing concussion symptoms, contact your doctor immediately to rule out other issues like brain bleed, clots, or other issues.

Concussions are common in car accidents but unfortunately are very hard to treat. Many people that are diagnosed with concussions are told to rest and eventually it will go away. However, a lot of the long term problems associated with suffering a concussion are not readily known and there are not a lot of treatment options for people suffering concussions.

3. PTSD

Many people involved in car accidents may have problems returning to driving for fear of being involved in another car accident. Car accidents are very traumatic events and can often lead to nightmares and restless nights reliving the events of the car accident.

Many people who have suffered injuries in car accidents are diagnosed with post traumatic stress disorder (PTSD) because of the trauma that they have suffered. Car accidents are very scary and take time to recover from the fear of being involved in another one.

Fortunately, there are many good options to relieve your PTSD symptoms such as counseling from a psychologist or psychiatrist. It is amazing how many people suffer PTSD but never seek counselling that very effectively controls your emotions from constantly worrying you about being in another car accident.

If you feel like you are suffering from PTSD because you are scarred of driving, reliving the events of the car accident, or are kept up at night because of nightmares of the car accident, you should ask your doctor about referring you to a psychologist or psychiatrist. If you have PIP insurance you do not need a referral but can start seeing one right away at your choosing and bill PIP. However, if you have medical insurance as your primary method of paying, you may need a referral from your primary doctor.

4. Surgeries and Broken Bones

In some car accidents people suffer broken bones or need surgery to repair injured body parts. This can take months to years to heal and you should make sure your injuries are fully healed and you have gone through all the physical therapy and other rehabilitation programs before you accept any offer from the insurance company no matter how assured they make you feel.

These type of injuries are very severe injuries that may have long terms effects that require more surgeries in the future or a high risk of chronic arthritis in later life. For that reason, settling these types of injury cases is very difficult for an average person to do without the help of a personal injury lawyer who has access to similar cases with experts stating what type of future treatment or risk of future treatment you may need. Medical treatment is expensive and you need to be adequately compensated for your future care that you will not have if you settle early or without taking into consideration the long term effects of such an injury.

VI. COMPENSATION

Everyone injured in a car accident wants to know, “what is my case worth?” The truth of the matter is that every case is different from how the car accident happened, what kind of injuries you suffered, how much work you missed and how much lost wages you suffered, and how long it took you to heal and what kind of pain you dealt with. These are all factors that go into valuing a car accident injury case.

1. Medical Costs

Medical costs are the number one place to start when you are valuing someone’s case. The truth of the matter is that insurance companies value every case from the standpoint of how much medical costs you suffered and incurred from the car accident. Many insurance adjusters believe that two times the value of your medical bills is how much you are entitled to.

Medical costs include ambulance, emergency room, doctors’ fees, hospital bills, physical therapy, massage therapy, chiropractic treatment, surgeon bills, specialists, surgeries, anesthesiologists, medications, and others. These are often the bulk of the bills and costs of car accident injury cases.

You are entitled to compensation for all the medical bills that you have incurred no matter if your auto policy (personal injury

protection) paid the bills, you paid out of pocket, or your medical insurance covered the bills. However, if it wasn't you that paid for the bills or have to pay back the bills, if you do not have an attorney representing you, the defendant's insurance company will pay back these providers directly where as you would have been compensated for 1/3 of the bills if you had a lawyer through subrogation.

2. Lost Wages

You are entitled to compensation for your lost wages. Lost wages consist of using your vacation or sick pay to pay you for time taken off to nurse your injuries suffered in the car accident. Additionally, if you took Family Medical Leave Act (FMLA) time off for your injuries, you are entitled to compensation for your lost wages. However, you may have to pay back a portion of such wages already compensated through subrogation to your employer or other federal act.

Lost wages vary from person to person and that can make a world of difference from the case value of similarly situated injured people. This is why you see one person receive \$10,000 and another receive \$15,000 because of the difference in lost wages and how much they made at their job. Therefore, someone who makes more money and misses work will receive much more money than someone that doesn't have a high paying job and misses no work.

3. Pain and Suffering

Pain and suffering is a form of general damages that you receive from the insurance company. It is very hard to quantify in most circumstance but it is defined as compensation for what you had to go through dealing with pain from your injuries. What value would you place on having to stay at home icing your injuries, dealing with excruciating pain for weeks or months, or reliving the nightmare of the car accident every night keeping you awake?

There is generally no amount of money that anyone would take to go through something as severe as being injured in a car accident. Additionally, insurance company cannot take back these experiences that you suffered or make you magically good as new, or give you back the time of your life you lost with this terrible time in your life. Money is the only thing of value that can be given from the insurance company to make up for this to somewhat give you a more comfortable life for a little while.

Pain and suffering is kind of a going rate type of thing based on many other similar cases, as bad as that sounds. It is based on jury verdicts that people have determined and many cases that have settled over time. However, each case is different in many respects but insurance companies will try to fit them cookie cutter into other cases to create a value of your pain and suffering.

However, a personal injury lawyer will be able to fight for the most money in this category based on their counter experience to the insurance company to come to a fair resolution.

4. Permanent Injuries

Permanent injuries include scarring, lost function of limbs, lost limbs, lost function of mental capacity, and other severe injuries. Whenever someone suffers a permanent injury, their case value is much higher than other situated person because they have lost something from their life that they cannot get back.

Brutal scarring from cuts or surgeries that disfigure your face or body are compensated at much higher rates than mere soft tissue injuries. This is because something has permanently changed you and in a way taken away from you something you may never get back. This is very hard to compensate for because what was that worth to each person? Can they never be seen in public again for fear of ridicule? What does this do to someone's self conscious? What value is that? These are all worth a lot of money.

Loss of ability to walk or function like you normally do can really affect your life in traumatic ways. What is that worth? You may no longer have the ability to play sports and really enjoy life like you used to. This can be very painful and depressing eating at you constantly. Where you once were able to get out your frustrations of work and stress, now you cannot do that anymore. This is worth a lot money because no one would want to go through this or suffer these type of injuries.

VII. CONCLUSION

I hope this book has enlightened you to the process of your personal injury car accident case and has given you a good overview of a personal injury case. If you have suffered an injury in a car accident, I am very sorry you are going through this. I hope that you have someone to help you through this very difficult time in your life and I encourage you to have a personal injury lawyer represent, whether it is me or someone else. Dealing with insurance companies and getting the treatment, paying for the treatment, and obtaining fair compensation once you are fully healed is something you should not take on by yourself.

If you have any questions or want a free consultation on your case, please do not hesitate to call (206) 850-6716 or email andrew@lawcherin.com. You can also check out my website at www.lawcherin.com and see my blog or frequently asked question section for any personal injury questions. I update my blog usually three days a week with interesting articles on news worthy events evaluated from a personal injury standpoint, little known driving laws, and other valuable car injury and insurance related information.

Thank you for taking the time to read this book and educate yourself on personal injury law in Washington State.

-Andrew Cherin-