

Washington Injury Guide



PHILLIPS LAW FIRM
— P L L C —

WELCOME TO PHILLIPS LAW FIRM

If you are reading this book you are likely among the thousands of Washingtonians who have been injured as a result of the negligence of either a person or a business. The vast majority of personal injury claims arise out of automobile collisions. When an auto collision occurs, time flies by as a victim tries to comprehend the events before him. Questions quickly race through the victim's mind...

What just happened?

Am I injured?

Is my child safe?

What about my other passengers?

Is my car seriously damaged?

Who will pay for this?

What was that driver thinking?

Anxiety only increases with each passing moment. This anxiety most often continues as you start dealing with insurance companies, attorneys, the claim process, medical providers, and rising bills. One way to reduce anxiety is through the gathering of information.

Information helps us better understand processes that may otherwise seem strange or unfamiliar. Information also helps us better protect ourselves. This book is written to

increase your understanding and protection and will assist you in dealing with any personal injury claim. While we primarily focus on information related to automobile claims, please know that the basic tenants of this book will apply to all injury claims. Information provides knowledge. Knowledge provides power. Our goal is to empower you when it comes to automobile claims and personal injury matters.

Your Safety Should Come First

While the information in this eBook will empower you, you cannot be empowered unless you protect that which is of utmost importance immediately following a collision: your own safety and the safety of any passengers.

The most important thing you can do following an automobile collision is to make sure that all the parties at the scene are medically stable and taken care of. Under most circumstances, you will want to contact the local police to assist with this. You will also want to contact the police in order to have the accident properly investigated and reported.

Once Your Safety is Secured, Gather Information

Remember that your safety comes first. Once this is secured, ensure you gather critical information while still at the scene of the accident, including at a minimum: the other driver's information, a copy of their driver's license number, and the vehicle license plate number.

Then What?

The answer to this question fuels our reasoning for providing the words ahead. Unfortunately, accident victims often discover that dealing with the aftermath of an accident results in more pain and frustration than the crash itself. It is our goal in this book to help provide a respite from this pain and frustration.

We know that you and your family should not deal with all the trials and tribulations that surround a personal injury event on your own. We are here to help. Our firm is here to assist in making your accident easier to understand and your access to justice easier to obtain.

Glenn Phillips

Owner of the Phillips Law Firm

UNDERSTANDING THE INSURANCE ASPECT OF A PERSONAL INJURY CLAIM

Personal injury claims are often complicated. Add to this fact the reality that most personal injury claims involve insurance related issues. The result? Complications just increased.

To say the least, insurance policies and insurance related laws are complex. Both can also easily confuse even the most insurance savvy persons among us. To help avoid and reconcile this confusion, understanding the insurance aspect of a personal injury claim deserves our most immediate attention.

Types of Insurance Coverage Inherent in Personal Injury Claims

Perhaps the best way to help clarify the confusing realm of insurance is to decipher the specific types of insurance coverage. There are many types of insurance that may be available to an individual involved in a personal injury claim. In automobile collisions¹, the most widely used insurance policies are:

- Personal Injury Protection, or PIP;
- Liability Insurance; and,
- Health Insurance.

¹ For claims not involving auto collisions, business insurance and/or property insurance can be prominently involved.

Let's take a closer look at each of these. We understand you may have specific questions regarding these policies. This is why we have included within our discussion the answers to the most popular questions we receive when it comes to insurance matters.

PIP Coverage

PIP coverage is one of the two types of mandatory automobile insurance coverage in the State of Washington (the second, liability coverage, is discussed below). PIP coverage is used to pay your medical bills and lost wages following an accident, regardless of who is at fault for the accident. This essentially means that no matter who caused an accident, your own insurance company will pay your medical bills and lost wages up to a maximum coverage amount.

Under Washington law, the insurer is obligated to offer each policyholder a minimum of \$10,000.00 of PIP coverage when they sell an automobile insurance policy. As discussed below, policyholders can increase this amount. For now, however, please note that a policyholder does not have to accept this offer. The policy holder is free to decline PIP coverage, but he must do so in writing. In fact, the insurance company must prove a policyholder declined PIP, or the company most likely will be required to provide it by default.

Question: What Does PIP Specifically Cover?

PIP usually covers such costs as hospital expenses, physician and chiropractic expenses, physical therapy and certain other reimbursable expenses related to an accident. Additionally, most PIP policies cover wage loss (typically up to 80 to 85 percent of the claimant's normal weekly wages) beginning shortly after an accident.

Once your PIP coverage reaches the \$10,000.00 limit for all such benefits, you will no longer be entitled to any additional benefits. Policyholders do have the ability to purchase PIP insurance in an amount greater than \$10,000.00 per collision, and many of our clients have purchased PIP insurance in the amount of \$35,000.00 per collision. Not surprisingly, over the years the cost of medical care has risen, and after an automobile accident it does not take long to exhaust \$10,000.00 in PIP benefits.

Question: When does Coverage Begin?

Once an accident takes place, it is the policyholder's responsibility to ensure PIP coverage begins. A policyholder can easily begin coverage by signing and submitting a PIP application and an authorization for the release of any applicable records (e.g., medical bills/records, employment verification documents, payment records, etc.).

It is important to work with your attorney to ensure you begin PIP coverage. It's also equally important to work with your attorney to ensure your PIP bills are properly submitted (and paid in a timely manner). Keep in mind that

your PIP coverage comes from your own insurance company, not the other driver's insurance company. As a result, your own insurance company may occasionally question whether certain medical treatment, otherwise covered under a PIP policy, is in fact reasonable, necessary, and related to an automobile collision. If your insurance company determines treatment was not reasonable, necessary, or related, then it can deny coverage. Your attorney can help avoid this pitfall.

Liability Insurance

Liability coverage is a second type of widely used insurance coverage and is distinct from PIP coverage. The State of Washington requires all car owners to carry liability insurance coverage of at least \$25,000.00 per person. This means that if you were involved in an automobile accident, and you are found to be at fault, you will have \$25,000.00 worth of insurance to compensate an injured party.

Question: What is UIM and UM Liability Insurance

The State of Washington requires motorists to have liability insurance while operating a motor vehicle. The State also has strict penalties when this requirement is not met. Despite these penalties, thousands of drivers in Washington operate a car with no liability insurance. Underinsured motorist coverage (UIM) and uninsured motorist coverage (UM) are essentially liability policies that help manage the risk that you get hit by a driver with no or minimal insurance.

Both UIM and UM insurance policies act as a “substitute” insurance for the other driver who has no or minimal insurance. Both will allow you to make a claim against your own insurance company for the negligent conduct of the uninsured driver. An easy way to think of this is to simply note that your own UIM and UM policies will basically become the policies of the other driver, and you are able to make a claim against your own insurance company as if they were the insurance company for the other driver.

Health Insurance

Your health insurance policy may actually become an important asset in the event of an automobile collision. Generally, if you have PIP coverage, this coverage will be first in line to pay medical bills and any wage loss. After the PIP coverage has either been exhausted or denied, your health insurance may begin to pick up your costs for treatment of injuries. This treatment includes such care as: chiropractic care, physical therapy, and prescriptions. Unlike PIP coverage, however, health insurance policies usually have limitations on coverage like copays and deductibles, and annual limits on the number of appointments for certain types of providers (e.g. chiropractors).

Question: If Health Insurance is Important, what about Business Insurance?

The quick answer is yes. The typical auto accident scenario that may involve business insurance is when the at-fault party of the accident was driving a vehicle owned by a business. If this at-fault party was driving the business vehicle in the normal course and scope of his employment, then business insurance definitely comes into play. The specific policy at issue would be the insurance of the business that owns the business vehicle. Here, it is likely that the policy would cover any portion of a claim originating from the collision.

THE PRE-LITIGATION PROCESS

Most personal injury cases are resolved before a lawsuit is filed. This is often a good thing for early resolution typically means a claimant can avoid much of the expense, stress, and time associated with filing a lawsuit. The period prior to the formal filing of a lawsuit is normally known as the pre-litigation process. Often an attorney will perform the bulk of the work on a personal injury claim during the pre-litigation phase.

So...Let the Work Begin!

In the pre-litigation process, the attorney and staff essentially work together to gather all the pertinent facts included within a specific personal injury claim. We often gather facts in a host of different documents, including:

- Police/accident reports
- Medical records
- Witness statements

In addition, we assist clients with insurance matters. For example, legal teams assist in:

- Identifying each and every insurance policy that may provide coverage
- Completing and submitting insurance forms (e.g., PIP applications)
- Submitting medical bills and ensuring their timely payment

Disclaimer: Never Assume an Adverse Party will Immediately Pay Medical Bills

Legal teams do spend a great deal of time helping clients submit medical bills in the pre-litigation stage. They also do or should do their best job in ensuring timely payment of these bills. However, an injured person should never assume that these bills will, in fact, get paid on time.

Put another way, never assume that following an event where you get injured that the other party and/or its insurance company will immediately begin paying your bills. This is simply not the case and is the source of great frustration for many an injured party (especially those without medical insurance). As stated in the previous chapter, it is critical to identify each and every policy of insurance, which will allow the injured party to have his or her medical expense and wage loss payments made, prior to settlement and/or a verdict from a judge or jury.

Settlement

In the legal arena, a settlement is simply a resolution between disputing parties about important legal issues. In a personal injury matter following an auto collision, you and the other driver may be able to reach a settlement on such items as medical bills, vehicle damage, and future medical treatment. During the pre-litigation process, legal teams spend much time and energy on trying to reach a fair settlement with the other driver. This is to avoid the stress, anxiety and uncertainty that an eventual lawsuit may cause.

Normally, the settlement process is initiated by the injured party's attorney putting together a settlement demand packet. This is a letter that basically outlines:

- The plaintiff's position as to how the accident happened
- Why the plaintiff believes the defendant is responsible
- The nature and extent of the plaintiff's damages

The damage category usually involves a claim for recovery of the expenses of medical treatment. This could include recovery of: prescriptions, wage loss, and any other economic damages. In addition to the economic damages, the plaintiff will also claim non-economic damages, which involve such categories of damages as: pain, suffering, loss of enjoyment of life, disability, and essentially all of the things that have happened to the injured party as a result of the accident.

Once the settlement demand package has been prepared, it is shared with the client who then approves for a submission to the defendant and/or its insurance company. The insurance company normally takes 30 to 90 days to review the demand packet and then contacts the plaintiff's attorney. The insurance company can agree to the settlement, deny it, or enter into negotiations regarding settlement details/demands.

The attorney normally will have a perceived value of the case, and like with any other negotiation, will start at a settlement demand number higher than the perceived value. For example, if the plaintiff's attorney believes the case is

worth \$50,000.00, they may start out with an initial demand of \$100,000.00. From the insurance company's standpoint, if they believe the case is worth \$50,000.00 they would probably start out dramatically lower (say, \$12,000.00 to \$15,000.00). During negotiations, the parties hold settlement discussions to see if they can narrow the gap and come to a figure that makes sense to both sides.

Please note that settlements can occur at anytime throughout the pre-litigation process, as well as, the litigation process. We discuss this later on in the litigation section of this eBook.

Disclaimer: Settling a Case with an Insurance Carrier may be Difficult

It's true that the pre-litigation process focuses on settlement. However, in general, current attempts at pre-litigation settlements are growing increasingly difficult. This is especially true when trying to reach a settlement with an insurance company.

Many years ago only the most complicated and substantial cases resulted in a lawsuit being filed. Now, a much higher percentage of injury claims turn into lawsuits because the insurance companies have made the claim process far more adversarial between them and the injured party. Many insurance companies have taken the position that it is much more profitable for them to force injured parties to seek their compensation through the court system as opposed to voluntary settlement.

The result is that anyone with a significant claim against an insurance carrier would be best served by consulting with a law firm experienced in matters of personal injury. In fact, there is an insurance study that states that injured parties who have retained the services of a law firm are more likely to receive **three to four times the amount of money in settlement** than those claimants who do not retain the services of an attorney. Yes, attorneys definitely help. This is especially true when they're involved early in the pre-litigation process of a claim.

THE LITIGATION PROCESS: Complaint through Discovery

If a personal injury claim does not settle during the pre-litigation process, then litigation begins. Many are overwhelmed by this process as it is one primarily understood by lawyers and not lay people. What we hope to accomplish in the next two sections is to give you a general idea of how litigation works. We do this in order to lessen anxieties, illustrate your level of involvement in the litigation process, and further your understanding as to litigation timelines.

This first section discusses the initial stage of the litigation process, which includes:

- Filing a lawsuit; and,
- Conducting discovery.

Conducting discovery essentially involves three important items:

- Interrogatories
- Requests for Production
- Depositions

Fasten your seatbelts for we're about to cover all of these stages and items for your convenience, understanding and overall benefit!

Filing a Complaint

In the event that your personal injury claim is not settled during the pre-litigation process, you will need your legal team to file a lawsuit. The lawsuit is made up of the “complaint” (which sets forth the allegations of general negligence against the person who caused your injury) and the “summons” (which tells the other party they have been sued and must answer the complaint). Once a complaint and summons are prepared, they need to be served on all other parties and filed with the appropriate court. Once a complaint and summons are formally filed, the lawsuit begins. The injured party is identified in the complaint as the “plaintiff,” while the party alleged to be responsible for causing the incident is identified as the “defendant”.

Conducting Discovery

Once the lawsuit is filed, the discovery stage of litigation commences. Discovery is nothing more than the portion of a case when the parties undertake formal fact gathering. The discovery process is simply an exchange of information between the parties involved in a case about the witnesses and evidence that may be introduced later at trial.

Discovery is actually a good thing that helps promote a sense of fairness within a legal complaint. Discovery gives the parties to a lawsuit the opportunity to learn all of the evidence that may be presented at trial. This prevents a “trial by ambush” where one party is precluded of learning information until it is sprung upon them at trial.

Let’s take a closer look at interrogatories, requests for production, and depositions.

1. Interrogatories

Each party to a lawsuit has the opportunity to require the other party to answer written questions under oath. These questions are called interrogatories. They're asked to gain further information about the facts of a case and the background of the answering party.

The specific interrogatories asked can vary depending on the facts of a matter. However, questions are often asked that concern: the identity of a party, the event or accident at the core of the lawsuit, and the particulars of any injuries a plaintiff sustained.

The following are a few sample interrogatories often asked in cases involving an automobile accident.

- What is your full name?
- What is your date of birth?
- What is your address?
- For the past ten years, please provide the names of any and all employers; and, for each employer, the dates you were employed and the position you held.
- As to the events leading up to your automobile collision, how fast was your vehicle traveling just prior to the accident?
- What were the weather conditions at the time of the accident?
- Did your vehicle have any mechanical problems prior to the accident?
- Do you know of any witnesses that saw the collision take place?

- You are claiming you were injured as a result of the accident. What type of injuries did you sustain?
- Where were you injured?
- Have your injuries been resolved?
- What medical doctors, if any, have you received care from for the injuries sustained?
- What was your medical history prior to the collision?

The above questions are only some of those typically asked of a plaintiff in an auto accident case. We ask similar interrogatories of defendants, including questions about their personal history, their recitation of how the collision or event occurred, and questions about all applicable insurance coverages.

2. Production of Documents

Requests for Production, or RFPs, are often served upon a party at, or near, the same time as interrogatories. RFPs are made in order to gain possession of particular documents. Examples of some documents often requested include:

- A copy of a person's valid drivers license
- Tax returns
- Medical records
- Witness statements
- Pertinent insurance policies

Keep in mind that the term "documents" here means more than pieces of paper, and can include photographs, videos, emails and other electronic documents. In injury litigation, the defense is entitled to obtain the injured party's medical

records, medical billings, diagnostic records such as X-rays, MRIs, and like documents. If the plaintiff is making a wage loss claim due to the collision, the defense will ask the injured party to provide any wage loss documents including pay stubs, tax returns, and even an employment file.

3. Depositions

Following the exchange of interrogatories and the initial production of documents, the next phase of litigation is usually the taking of depositions. From a timeline standpoint, depositions usually occur about five to six months after a lawsuit is filed. A deposition is simply a time when a party to a lawsuit, or a potential witness, provides testimony regarding the facts of a case.

Depositions usually take place in a conference room. Testimony is elicited by an attorney that asks the person being deposed (known as the “deponent”) specific questions. The deponent answers the questions and a court reporter takes down both the question and answer word for word. If the deponent is one of the parties to the lawsuit, usually they will have an attorney present in the deposition as well.

If you are called to testify at a deposition, your legal team will prepare you and explain in more detail how the process works. The following are a few helpful tips normally given to clients:

- **Answer Questions Truthfully:** A party or witness testifies at a deposition while under oath. This

means that the person must answer all questions honestly.

- **Be Respectful:** If you testify at a deposition, the opposing attorney will be asking you questions. At times, the opposing attorney may ask difficult questions or seem to recycle questions using different words. While the process may be somewhat intimidating, stressful, and even infuriating, it's important to be respectful at all times.
- **Think Big Picture:** After your deposition, the opposing attorney will write a report about the deposition usually for the other driver's insurance company. He will include in the report not only the facts that you testified to but also how you presented as a witness. The report becomes an important part of the company's evaluation of your case and deciding whether they want to settle the case and how much money that they will value the case. Translation? Think big picture during the deposition and remember that respect and professionalism can go a long way in producing a more favorable settlement.
- **Dress Appropriately:** It goes without saying that if you are well groomed and dress appropriately, the defense attorney will perceive you as someone that presents well and, therefore, a greater risk to his client and their insurance money.

In addition to the defense taking your deposition as the injured plaintiff, your attorney may want to take the deposition of the defendant. That deposition is usually taken if the defendant is not taking responsibility for the

event. It is also not unusual in injury cases for one or two of the medical professionals to have their depositions taken in order to ferret out the nature and extent of the injured person's injuries.

THE LITIGATION PROCESS: Post-Discovery

The discovery process normally takes approximately nine to twelve months to complete. There are often opportunities to settle claims during the discovery. However, at the end of discovery, if the case hasn't settled, usually the parties will attempt to a settlement or the case will be prepared for trial. Let's look at both possibilities.

Settlement

We discussed the demand and settlement process in the pre-litigation section. Sometimes we are unable to prepare a demand during pre-litigation, or the discovery process in litigation reveals new or different information than before filing suit. In such cases, new demands can be prepared during litigation in an effort to settle without more litigation or a trial. Post-discovery, the parties to a case will have gained access to a host of information they did not have prior to litigation that may help move the parties to settlement. It can still take several weeks for the other side to evaluate a demand in litigation, and accept it or make a counter-offer. Remember, while most cases settle during pre-litigation, most cases that require litigation also settle before a jury trial. Often settlements occur by the parties engaging in simple back-and-forth negotiations. There are other ways settlements can be accomplished, including through a process called mediation.

Mediation as an Important Tool to Help Settlement Efforts

Settling a legal case can be very difficult at times. Fortunately, the legal system has a useful tool to help parties in their settlement efforts. This tool is known as mediation.

Mediation is nothing more than a meeting with: a mediator, the plaintiff (and his/her attorney), the defense attorney, and often a representative for the insurance company that insures the defendant. The mediator is a neutral person, either a retired judge or a lawyer, whose job it is to facilitate negotiations and attempt to get both sides to fully articulate their positions and reach an agreed upon settlement. The mediator normally will identify for the parties their respective strengths and weaknesses within a case and use them to encourage both sides to settle. The mediator has no stake in the outcome and his job is to merely help facilitate resolution of the matter, but mediators take their job seriously and work hard to resolve the dispute.

Trial

In the event settlement efforts fail, a case goes to court for trial. Both the injured person and the defendant have the right to have their case heard by a jury of their peers, or the option to have the case tried only before a judge. A trial is quite extensive and involves such acts as:

- Ensuring a judge/jury is neutral and impartial
- Providing an Opening Statement
- Presenting Evidence
- Questioning Witnesses
- Providing a Closing Argument

- Deliberations to determine liability and damage rewards (if any)

As for witnesses, a trial normally means that both the plaintiff and the defendant will have to testify as witnesses. Further, at least one or two medical witnesses from the plaintiff's side, and also a medical witness from the defense, will testify regarding injuries and treatment. The plaintiff also can call family, friends or other "lay witnesses" to testify as to the plaintiff's condition before the event and how it changed afterwards.

Most cases arising from an average automobile collision can be tried in three to four days. Cases with more catastrophic injuries or more complexity can last several weeks. Those cases are rare and they are normally resolved at settlement unless the defendant is arguing that he has no liability or responsibility for the event, or the insurance company believes the damages are so high that a trial is necessary to fully resolve a particular damage award..

Arbitrations used for Lesser Valued Cases

Not all litigated cases will go to a formal trial. Some cases can go to what is known as arbitration. In the more populous counties of Washington, arbitration is available for cases that are valued at \$50,000 or less.

Arbitration is essentially a "mini" informal trial whereby the court appoints an arbitrator, usually a practicing attorney, to hear the case like a judge or jury would. The plaintiff and the defendant typically submit reduced evidentiary information and documents and appear in the

office of the arbitrator to present their respective sides of the case. The arbitrator hears the evidence and testimonies and then makes a ruling within a relatively short period of time. The parties have the opportunity to agree with the ruling, negotiate a settlement based on it, or appeal the arbitrator's ruling to the Superior Court where a full jury trial can be held a few months later. A vast majority of arbitration decisions are accepted by both parties; and, whatever amount is awarded to the plaintiff is usually paid by the insurance company and the case is closed.

PHILLIPS LAW – WHERE EXPERIENCE, TRUST AND DEDICATION RESULT IN TRUE DIFFERENCES...AND REAL LEGAL SOLUTIONS

It is our sincere hope that the information found in this book has increased your understanding of automobile accident claims and personal injury claims. We also hope that the information has reduced the anxiety that these claims can undoubtedly cause. Even if helpful, please understand that automobile accident claims, and other injury claims, should not be handled alone. You need quality legal representation to help ensure you have full access to the legal system and that your rights are fully protected.

This is where we come in. Phillips Law Firm is a firm of experienced lawyers with decades of experience in personal injuries and wrongful death suffered in a car accident. We are a full service law firm that has been serving Seattle and surrounding Western Washington for many years. We are dedicated to getting you the *justice and compensation that you deserve*. We have a no fee promise. If we don't collect, you don't owe a dime.

How Our Auto Accident Attorneys Will Handle Your Case:

- **Listen** – Every story is as unique as the client, and not every car accident is the same. Tell us your experience and we will tailor a case around your individual situation and your needs.

- **Deal with the insurance company** – While you cope with your accident injuries or loss of a loved one, we will speak to insurance company representatives on your behalf.
- **Collect evidence** – This includes accident reports, witness accounts, medical reports, and any subpoenaed documentation regarding your car accident.
- **Accident reconstruction expert** – These scientists perform a detailed analysis of the car accident scene to determine specific elements of the collision and provide an accurate description of what happened in your car accident injury claim.
- **File a Lawsuit** – This is the official court filing of your complaint and intent to seek just compensation from the negligent parties involved in the car accident.
- **Represent your best interests** – This includes seeking workers compensation in case you were on the clock at the time of the car accident and also further compensation for post accident care.
- **Seek justice** – Justice includes making sure that the negligent party is properly held accountable for their actions—particularly for drunk driving or driving recklessly such as speeding that resulted in your car accident.

- **Seek compensation** – We will negotiate with the negligent individual(s) and their insurance company(s) to secure proper compensation for your car accident including:
 - Medical expenses
 - Pain and suffering
 - Lost wages
 - Quality of life compensation
 - Extended care compensation
 - Wage garnishments (if needed)
- **Further needs** – Our legal services don't end with your case. If you have further needs we keep your information on file and we enjoy retaining relationships with our clients and their families. We have many repeat clients and referrals from clients that we proudly serve.

Get Started With Your Free Car Accident Case Evaluation!

At Phillips Law Firm our Seattle injury lawyers are dedicated to getting you the justice and compensation that you deserve from your car accident. Call Phillips Law Firm at **1-800-708-6000**, we are waiting to assist you 24/7. We offer free case evaluations and have a no fee promise. If we don't recover anything for you, you don't owe us anything. Simply contact us today and allow us to start working for the person that matters most...you!