



Discover Why More
Than 90% of
Injured Oregonians
Don't Recover Fair
Compensation

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Discover Why More Than 90% of Injured Oregonians Don't Recover Fair Compensation....

...And What to Do About It!

Each year, there are approximately 6 million car accidents in the United States. Roughly 40,000 of those accidents are in Oregon, and include approximately 36,000 injuries and 330 deaths.

Unfortunately, up to 90% of car accident victims and families do not recover fair compensation in a personal injury lawsuit. There are myriad reasons for these accident victims never receiving the compensation they deserve.

The purpose of this white paper is to explain why so many Oregonians never receive proper compensation for their personal injuries, and how to make sure that **YOU** do. After all, if you have been injured due to the negligence or carelessness of another person in a car accident or other injury, you deserve fair compensation for your injuries, pain and suffering, lost past, present and future wages, and more.

The reason that most injured Oregonians are not properly compensated is usually for one of five reasons:

1. Insurance company will offer to settle the first week and they are pressed for money.
2. The lawyer they hired has never litigated the case in front of a jury and the insurance company know it.
3. They simply do not file a lawsuit when they should (they probably did not even consult an attorney).
4. They chose to represent themselves and left thousands of dollars at the settlement table without knowing it.
5. You have not figured how to prove future medical and non-medical losses.

To Self Represent or Not Self Represent?

Representing yourself in a lawsuit is known as *pro se legal representation*. Not many Oregonians choose to do so. Those that do represent themselves end up regretting it.

Note: It is possible to successfully represent yourself in some car accident personal injury cases. It will require proper preparation and education. It is also not necessary to hire a personal injury attorney for every legal case.

- NOTE: A 1999 study by the Insurance Research Council found that the average claimant receives a settlement 3.5 times larger with a lawyer than without one.

That said, there are situations where you can and possibly should represent yourself. If you choose to do so, we want to be certain that you receive as much as possible.

As you decide whether you should represent yourself, please consider:

- How badly were you injured? If you are in a small fender bender and scraped your arm, you may consider a quick settlement with the insurance company to cover your medical bills and a bit extra for the inconvenience. In this type of case, it may not be worth paying 1/3 of a settlement to an attorney as a contingency fee.

However, if you are in a serious car accident and you must receive serious medical treatment and you lost income, and/or have experienced significant pain, **you are probably going to leave a lot of money on the table by representing yourself!** Oregonians who represent themselves in a serious car accident lawsuit almost always lose many thousands of dollars in compensation!

Why? When you are seriously injured, the stakes are much bigger: You want and deserve fair compensation from the insurance company. And the insurance company wants to avoid paying you as much as possible. That is when it can turn into a battle. You will want to have an attorney at your side that is experienced with aggressive negotiations that go on in big dollar personal injury lawsuits.

- How clear is it that it is the other party's fault? If the defendant caused the accident and you have witnesses that can back this up, you theoretically could get a fair settlement on your own.

Just as in the above situation, you will be in for a fight with a large insurance company if it is not obvious that the defendant caused your injuries. In many cases where Oregonians handle their own case, the defense may throw it back in your lap and say that you partially or entirely caused the accident! It is very difficult for a layman not experienced in these types of cases to win a successful settlement. You should call in the professional in this situation.

Vital First Steps in Self-Representation

Let's assume you are representing yourself in your car accident lawsuit. You will need to send a demand letter to the insurance company of the person at fault. Before you do so, there are several things you must do:

- Take photos of all property damage, where the accident occurred and your injuries.
- Obtain a copy of the police report.
- Seek medical attention for any injuries – as soon as possible. If you delay, the insurance company will question the severity of your injuries.
- Use your own personal injury protection to pay your first medical bills, and then your health insurance. Keep copies of all receipts.
- Never give a recorded statement to the other party's insurance company.
- Be certain you know the statute of limitations in effect for your case.
- Never write a word about the accident in social media. The other insurance company will certainly look for any statements you make that contradict your official story.

Also, before you send your demand letter you must estimate your damages. There are two major kinds of damages in personal injury lawsuits:

1. Damages That Can Be Exactly Calculated

Specifically, we are referring to what are known as special damages: property damage (repair or replacement cost), lost earnings, lost capacity to earn a living, medical bills and other financial losses.

These damages can be precisely calculated because they can be added on a calculator. However, lost earnings, while they can be calculated, are a bit more complex. Let's examine them.

Lost earnings are the amount of money that you have lost – past/present/future – due to your injury. This also is referred to as lost earning capacity.

Let's also assume you make \$50,000 per year and that your back was seriously injured by a car that ran a red light. Now you only can work part time and earn \$25,000 per year. You have lost your earnings of \$50,000 and lost the earning capacity of \$25,000 per year each year for life. Your work life expectancy is based upon the US government statistics of how many years a person will most likely be able to work. This is based upon your age, sex and race, usually.

The challenge in this example is to determine what \$25,000 per year for a future time is worth. Lost future earning capacity is normally calculated by its present value; this means we determine the current value of a future income stream as if you had it in your checking account today.

So, how much money does your employer have to have in the bank today to pay your salary for the next 20 years or so. As you can surmise, this is a very complex calculation that is normally determined by an economist that a personal injury lawyer hires. If you choose to represent yourself, you truly risk botching this calculation and losing thousands of dollars each year for many years.

2. Damages That Cannot Be Exactly Calculated

These damages refer to pain, suffering and mental anguish that come from your injuries. There is no precise guideline to determine what your pain and suffering is worth. So, how to value it in a settlement?

Most insurance companies calculate pain and suffering with a multiple of your special damages. However, a jury cannot do this, and there are many other ways to determine the value of pain and suffering:

- How serious the injuries were?
- Whether you are a good or bad witness
- Whether the jury likes you or not
- If the jury thinks you are honest or not
- If the jury thinks one of your witnesses is dishonest
- Whether you have a criminal record that can be used in court
- Whether your injuries are easy for the jury to understand
- If your medical treatments seem to be mostly physical therapy and chiropractic treatments
- And much more...

Sending the Demand Letter

Sending this letter to the insurance company for the other party is where the serious negotiation starts. If you are representing yourself, it is best to send the letter only once the investigation of the accident is finished, and the extent of your injuries is known.

The letter should be sent only after you have taken a complete look at how the injuries have affected your life. Only then can you make a reasonable claim. This letter should detail:

- Why the defendant is liable for your injuries
- The nature of your injuries and the necessary medical treatment
- The financial losses you have incurred related to your injuries
- Any other losses that were incurred, such as pain and suffering

Considerations

You might hesitate to settle your claim because you have seen big jury awards on TV, but going to court is fraught with risk, especially when you represent yourself. The jury may decide to give you nothing. So, consider your settlement offer with this in mind.

Common Pro Se Representation Mistakes

Many people simply do not realize how valuable the experience of a personal injury attorney is. Some of the most common mistakes people make when representing themselves in a civil lawsuit include:

1. Not adhering to the statute of limitations: This is the strictest procedural rule that deal with Oregon car accident claims. The statute of limitations is the timeframe in which you must file a lawsuit. In Oregon, the limit for a personal injury suit is two years from the date of the accident. If you do not meet this deadline, you will be permanently barred from filing your lawsuit.
2. Not responding to discovery requests: Each party in a civil lawsuit must respond to requests for information and documents from the other party during the discovery process. At times, the other side may ask for information that you are not legally required to provide; you can object in some cases. However, discovery requests can NOT be ignored. Any disputes about what documents you have to provide must be solved. If the two sides cannot resolve this via negotiations, a motion to compel may be filed by the defense. If you do not provide the information at that point, the court could preclude you from providing evidence on that issue. This type of sanction can torpedo your claim, so you need to certainly reply to all discovery requests.

3. Failing to join indispensable party: You should know that there are occasions where the court could dismiss the case if certain parties are not listed as defendants.
4. Shared fault: The person or business you are suing may argue that you are partially to blame for the accident. In these cases, Oregon follows a modified comparative negligence rule. That is, the amount you receive will be reduced by the percentage you are at fault. If the judge or jury determines you caused more than 50% of the accident, you get nothing.
5. Not filing suit in time when suing the Oregon government: An injury claim against the state must be filed within 180 days.

To summarize, you CAN represent yourself, but going it alone in your personal injury case is often risky and can cost you a lot of money at the end. However, we wanted to explain to you how it is theoretically possible to represent yourself in some car accident lawsuits.

If you decide to represent yourself, it is extremely important to keep all the above facts in mind to maximize your settlement.

Why You Should Consider Hiring an Attorney

Now let's review why it IS a good idea to have a personal injury attorney representing you:

1. Years of experience: An experienced personal injury lawyer has probably handled a case like yours many times. He can probably tell you right away if it is worth the time and expense to sue.
2. No fees if you lose: Most personal injury attorneys work on a contingency basis; that is, they do not get paid if you recover nothing.
3. Less bureaucratic red tape: Legal procedures are complex and can be daunting for the layman. The experienced lawyer can navigate the maze of paperwork quickly.
4. Investigators on call: Most attorneys have an investigative team they will assign to your personal injury case. They will be able to determine how to make your case worth as much compensation as possible.
5. Objectivity: When you are in pain and stressed, it may not be the best time for you to deal with the complexities of personal injury law. A lawyer is more objective about your case and will not be prone to making rash decisions. For instance, many Oregonians representing themselves often sign for the first settlement offer. This is nearly always a mistake! Insurance

companies always start low with the hope that you will make a rash decision and settle. An attorney will usually advise you to wait and continue negotiating to get a better settlement.

6. Alternative dispute resolution: Complex, long trials are usually not needed to resolve personal injury cases. A good attorney knows if your case can best be resolved with alternative dispute resolution methods or ADR. This saves time, money and stress. Mediation and arbitration are examples of ADR.
7. Experience with attorneys: An attorney with years of experience will be adept at working quickly and efficiently with the other side. This is very important during fact finding when the parties must exchange documents.
8. Experience with insurance companies: Personal injury attorneys work every day with insurance companies. They will not be confused by their money-saving tactics. Nor will they feel any pressure to settle for a low offer.

The Last Reason Oregonians Don't Receive Fair Compensation

At the end of the day, there is one major obstacle between you and a fair settlement: the insurance company. It is their job to pay you as little as possible; that is how insurance companies remain in business and profitable for their shareholders.

If you are representing yourself, the insurance company can play games with you to get you to accept a low offer. **To them you have no teeth, they know you cannot do much to hurt them.** With an attorney, this is not going to happen.

Here are some common tactics insurance companies will use to reduce the size of your settlement:

Getting a Recorded Statement from You

The insurance company for the other party may contact you and try to get a statement from you. There are very few situations where providing a statement to the other insurance company is going to help you. The goal is to get you to admit part of the blame and/or to downplay your injuries. These conversations are usually tape recorded and can be used in the trial if needed to discredit you.

Providing unnecessary statements to the other side's insurance company is one of the primary dangers of representing yourself. It is how many Oregonians end up settling for far less than they should.

Pretending to Be Your Friend

Claims adjusters like to pretend they are your friend and want to help you. Don't be mistaken: The adjuster for the other party is not your friend and wants you to receive as little compensation as they can get away with.

One thing insurance companies will do to innocent Oregonians who represent themselves is to send out checks for lesser amounts, such as the amount to fix your car. You may still be getting medical treatment for your injuries (of course, medical bills are much higher than car repair bills). What they are doing is sending you lesser amounts of money with the hope to appease you long enough until the statute of limitations runs out. Two years after the accident, you no longer can file a lawsuit.

Putting Hidden Clauses in Routine Documents

An insurance adjuster may want access to your medical records to review your doctor's post accident evaluation. Insurance companies have been known to sneak clauses into the paperwork you sign that could give them access to years of your medical records. They will then try to claim your injuries are due to previous injuries before the accident

Spying

Insurance adjusters may have private investigators take photos or videos of you doing physical activities, such as playing with your kids. Then they will use them as evidence that you are not injured.

Using Social Media

DO NOT POST ANYTHING RELATED TO THE ACCIDENT OF ANY SOCIAL MEDIA! Some insurance companies will follow you on social media to find any possible evidence that you are not really injured. If you had an attorney, he would tell you to have your privacy preferences on the highest possible settings and to beware of friend requests from people you do not know.

Delaying Your Case on Purpose

The insurance company knows you are hurt and if they delay, you may get so frustrated that you accept the first offer they make. Insurance companies also know there are statutes of limitations in effect (two years in Oregon). A delay could

make you miss the deadline to file a claim. Your attorney would make certain that your case is never unduly delayed by insurance company tricks.

We hope that this white paper has given you a solid overview of how you can theoretically, in some situations, represent yourself in a personal injury claim. Also, we wanted to stress the many risks that the go-it-alone legal strategy has, and in the end, many accident victims are better off to retain a personal injury attorney.

Herron Law
www.HerronLawFirm.com
5285 Meadows Road, Suite 204
Lake Oswego, Oregon 97035
admin@portlandinjuryfirm.cim