

THE IDAHO ACCIDENT BOOK

A Guide to Accident and Injury Cases



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Why Did We Write This Book?

Since becoming attorneys, we have received numerous stories and feedback from people who have had bad experiences with insurance companies after an accident. Many times, the person's own insurance company has caused most of the frustration. Unfortunately, most of these accident victims find themselves in a position where the time to file a claim has passed, or they settled for much less than they deserve. "I wish I had read your book before I was in my accident," is a response we hear regularly.

We recently handled a claim that perfectly demonstrates the vulnerability of Idaho accident victims. The case was complex and involved significant loss—a familiar scenario that insurance companies successfully manipulate. A man, let's call him Rob, lost his parents in a rollover car accident while traveling to visit family in Seattle. Rob's mother was ejected from the vehicle and died instantly from her injuries. His father suffered traumatic head injuries in the accident and passed away en-route to the local hospital.

Several weeks had passed since the accident. Rob and his family had completed the funeral services and were mourning the loss of their parents. The insurance company had called several times since the accident, but the family was not ready to speak with them at the time. When Rob returned the insurance company's call, the company's representative expressed condolences. He then told Rob that the family did not have a case and the case file was being closed.

In addition to the funeral expenses, Rob was left with bills totaling nearly \$45,000 for the life flight and the emergency treatment administered to his late father. Rob was at a loss and knew instinctively that his parents' case should not be closed.

Fortunately for Rob, a friend of his had seen how the insurance company had treated Rob, so he requested a copy of our book. He gave the book to Rob and suggested that he give us a call. Rob took his friend's advice.

We met with Rob and his family and listened intently to what they had to say. They spoke endearingly about how their parents came to America from a communist nation, sacrificing everything so their children could have a better life. We listened to each of the adult children talk about how their parents' deaths had impacted their relationships with other family members. The insurance company conveyed the clear message to Rob and his family that their parents' lives had no value. Having never dealt with a death in the family, let alone the loss of both parents, Rob and his siblings had many questions. We talked about insurance claims and wrongful death actions. Together, we outlined a plan of three specific ways we would present the case to the insurance company. We gathered photographs, witness statements, and medical bills. We also met with the insurance adjuster and we discovered that his reason for initially denying the claim was incorrect. When we challenged the adjuster on his rationale for denying the claim, he responded by offering a small settlement. Of course, the proposed settlement left Rob and his family in a substantially better position than the initial denial of the claim, but we knew that even this proposed settlement was insufficient.

We eventually settled the case, receiving the maximum amount allowed under three different insurance policies. This settlement came after the insurance company said the family didn't have a case. It was a pleasure to assist Rob and his family when they were clearly not in a position to find justice on their own.

Rob's case is not unusual. That, in a nutshell, is why we

have written this book.

Today, it is more difficult than ever for people to receive honest answers to their questions following an accident. If you have been in an accident, we would certainly like you to contact our firm and allow us to evaluate your claim. You will never be under any obligation to hire us. We have written this book, which is free to Idaho residents, because we want you to have this valuable information whether you hire our firm, another firm, or no attorney at all.

We are tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. For years, one major insurance company encouraged claimants not to hire an attorney. Many of our clients have told us that their adjuster advised them not to hire an attorney because “it won’t make a difference.” That statement is true on rare occasions. Insurance companies often mislead accident victims because they know the case is worth much more than they are offering, or what they plan to offer. (This is why individuals who work as insurance adjusters have actually asked us to represent them for their own injury cases!) You may not need an attorney to represent you in your case, but you should at least be aware of this important information from the start of your claim.

We also strongly believe that the information presented in this book will give you a realistic outlook on the value typically associated with accident cases in Idaho. Our guess is that you, like us, have had enough of outrageous lawyer advertisements in which attorneys snap their fingers or wave huge checks, making people think personal injury claims are “easy” or part of a “lawsuit lottery.” The information in this book will help you find the best lawyer for your case.

We are willing to share the information contained in this book because we do not like to see people accept a bad deal or

give up on fighting for their rights simply because they do not know how to proceed. This book outlines what you need to know and what you must avoid in order to preserve your rights and get what you deserve.

This information is now available to you without any pressure and without the appointment that most attorneys require you to make in order to receive basic information about accident cases. We hope you will read this book and become informed before you fall victim to those who will try to take advantage of you during a vulnerable time.

Legal Disclaimer

(You knew it was coming!)

We cannot give legal advice in this book. The suggestions and the warnings we provide in this book are not a substitute for consulting with or hiring an attorney. Please remember that we do not represent you, and we cannot give you legal advice unless and until you hire us, and we have agreed in writing to accept your case.

Part I

Understanding Your Personal Injury Case

Myths:

The most common misconceptions clients have about personal injury cases are:

- If you write the insurance company a nice, reasonable letter, you will receive a reasonable settlement offer.
- If you are in an accident, you always need an attorney.
- When you are in an accident and the insurance company asks you to give a recorded statement, you have to give them the statement or they won't settle with you.
- You can't get a rental car unless you give a recorded statement.
- The insurance company for the person who hit you is obligated to pay your medical bills as they become due.
- If you are injured in an accident, and it was not your fault, there will always be an insurance company that will pay for your injuries, pain and suffering, and lost wages.
- The insurance adjuster is being nice now; once I ask for a settlement, he'll continue to be nice.
- Insurance adjusters will only obtain medical records relating to my accident if I sign their authorization form.
- Idaho juries are generous.

What is a Personal Injury Case?

If you choose to start a personal injury case, it means that you, or someone else, was involved in an accident and was injured. A personal injury, automobile accident, or wrongful death case is any type of claim in which a person was injured or killed due to someone else's negligence. If you are in an automobile accident, and the only damage was to your car, you may have a property damage claim but not a personal injury claim. Our firm does not handle cases with only property damage, but there are attorneys who handle these types of claims. We focus on accidents that involve serious physical injuries. If you are in an automobile accident, and both you and your car are damaged, you may have both a property damage claim and a personal injury claim. Our practice is focused in this area of law and we can help you with both claims.

If a person is killed by the negligence of another, then their surviving family members may have a wrongful death claim against the other party. The law of each state or jurisdiction differs significantly regarding what can be recovered in a wrongful death case. If you have specific questions about a wrongful death claim, please feel free to contact our office, and we will be happy to discuss them with you. Our contact information can be found in the back of this book.

How Do Insurance Companies and Adjusters Operate?

After an accident, all parties involved should contact their insurance companies. In Idaho, your insurance company will sometimes cover your initial medical bills (this is known as PIP, Med Pay or No-Fault Coverage). The at-fault driver's

insurance company is responsible for covering property damage, reimbursing your insurance company for your Med Pay claim, and covering your bodily injury claim. The bodily injury claim can include past and future medical bills, lost wages, future loss of earning capacity, loss of enjoyment of life, and pain and suffering.

It is important to understand that insurance adjusters have no obligation to inform you of your rights. Insurance adjusters are trained to take advantage of the lack of knowledge most claimants have about the legal system and the value of their accident claim. The adjuster on your case may seem like a nice and friendly person who is concerned about your welfare. In fact, they might actually be a nice person. However, never forget that an insurance adjuster's primary job is to protect the insurance company. Adjusters protect the insurance company by finding a way not to give you any money. If they have to pay you money, they try to pay as little as possible in order to resolve the matter and make it go away.

What Must Be Proven to Win Your Case?

Some people contact our office with the misconception that they should be compensated because someone else was careless or negligent. A personal injury claim requires two things: first, someone else was careless or negligent; and second, the other person's carelessness caused you harm. Unless someone else's carelessness caused your injuries, you do not have a viable case.

You must also understand that in Idaho, the law of comparative negligence controls how much money, if any, you can recover from someone who causes your injury. If the jury

finds that you were partially at fault in the accident, they will reduce the amount of money you can recover by the amount you were at fault. If the jury finds you were equally or more at fault for your injuries, you will recover nothing.

For example, if your damages total \$100,000 and a jury awards you that amount, but determines you were 20% at fault, your \$100,000 would be reduced by 20%, or \$20,000, leaving you with \$80,000. If the jury finds that you were 50% or more at fault in your accident, you will recover nothing. It may not seem fair, but it is the law in Idaho. After we evaluate your case, we will discuss the issue of comparative negligence with you to determine whether you have a case worth pursuing.

Do You Really Need an Attorney to Handle Your Case?

You do not need an attorney for every injury case. For example, if your automobile case involves minor physical injuries and little or no property damage, you can handle it on your own by utilizing the information provided in this book. If you decide to hire an attorney for a small case like this, the fees and costs may leave little or no financial gain for you after your medical bills are paid. This would not be fair to you. Of course, there are many factors to consider when deciding whether you should hire an attorney. We offer free consultations to help you make the right decision for your case.

What Are the Benefits of Hiring an Attorney?

Over the last two decades, billion-dollar insurance companies have created a perception that lawsuits are frivolous and unnecessary. This is false and misleading. Over time, however, their propaganda has had a tremendous effect on juries and their verdicts. This is called tort reform. Insurance companies have been successful in tainting the minds of jurors, resulting in juries low-balling injured victims and reducing the amounts of damages, if any, that they award.

Insurance companies have made their fortunes by taking advantage of individuals who are inexperienced with the insurance claims process. Today, injured victims must educate themselves regarding the claims process, their rights, and the insurance companies' obligations if they want to have any hope of receiving a fair settlement. In many cases, the best result will be achieved by hiring an attorney who specializes in this area of law to help you navigate through the claims process.

As explained earlier, not every case requires an attorney. That being said, handling an insurance claim on your own—especially when you are trying to heal from serious injuries—can be one of the most confusing, time-consuming, and stressful things you have ever done. Not only will good personal injury lawyers deal with the insurance company so you can focus on getting the medical care you need, but they will also get a better settlement for you than if you were to handle your case by yourself. A recent study by the Insurance Research Council confirms that injury victims with an attorney receive three and a half times more than those without legal representation.

Another benefit to hiring a personal injury attorney is the

manner in which they are paid. Most lawyers charge by the hour or require their clients to pay an up-front fee for their services. This type of fee structure can be financially impossible for injury victims, many of whom are facing mounting medical bills and are unable to work because of their injuries. Fortunately, most personal injury attorneys work on a contingency fee basis, meaning that they will never charge for their services until they win or settle your case. If the case is successful, you pay them a percentage of your recovery. If the case is unsuccessful, however, you will not be responsible for their efforts.

Who Will Pay My Medical Bills After The Accident?

In Idaho, you have the option of purchasing PIP or Med Pay insurance coverage. This coverage makes medical treatment available for each person involved in an accident. This is coverage through your insurance company. This means your own car insurance company will pay for some of your medical bills, even though you didn't cause the accident. Using this coverage will not affect your insurance rates because you didn't cause the accident. After your insurance company has exhausted the Med Pay coverage, they will be reimbursed by the insurance company of the driver who caused the accident.

What Happens After My PIP or Med Pay Coverage Is Exhausted?

As it pertains to your injury case, the at-fault driver's insurance company will not make payments "along the way" for the medical bills or other expenses incurred. Instead, at the time

of settlement, they will pay you one settlement check for all your damages and losses. What this means is that you, the accident victim, have to find a way to cover payment of those medical expenses until your case settles. Paying for unwanted expenses after an accident can be extremely frustrating, particularly when the accident wasn't your fault! There are several options available to help you cover these costs until your case is settled:

1. Health insurance

If you have health insurance coverage, it is best to instruct the medical provider who is diagnosing and treating your injuries to forward your bills to your health insurance company for payment.

Pros: Even though the medical bills are accident related, the health insurance company will pay the bills and keep them from being sent to a collection company. Having your bills sent to the collection company will have a negative impact on your credit.

Cons: Some policies require payment of co-pays or deductibles and often cover only 80% of the medical expenses, leaving you responsible for the other 20%. You may have to pay these co-pays and deductibles to ensure they are not sent to collections. However, you are entitled to reimbursement at the time of settlement for every expense paid out-of-pocket.

2. Set up a lien with the medical provider

A lien is an agreement that is often available in cases where an attorney represents you for your injuries. It is a written, binding agreement between the client, medical provider, and attorney, which specifically indicates that the medical provider will wait for payment until the case settles. The attorney agrees

to pay the medical provider before the client, and the client agrees that, no matter the outcome of the case, the bills will eventually be paid by the client.

Pros: If your attorney is able to set up a lien with your medical providers, you will not have to worry about paying the medical bills until your case settles.

Cons: Some medical providers refuse to accept liens or wait for payment until the time of settlement.

3. Pay cash/monthly payments:

Pros: If you pay all of your medical expenses up front with cash, you can typically receive a cash payment discount. If you are unable to pay the whole bill at once and decide to make minimum monthly payments instead, you can keep the account current and avoid having the account sent to collections.

Cons: Not everyone has the resources to pay cash for unanticipated medical expenses.

4. Let the bill go to collections and then try to set up a lien with the collection company:

Pros: Even if the medical provider will not accept a lien, some collection companies will.

Cons: Some collection companies that accept liens will still record the overdue payment on your credit report.

We recognize that none of the options above are very attractive, particularly for those who don't have health insurance. Just remember that the at-fault insurance company doesn't get off the hook—they are responsible for all accident-related

treatment at the time of settlement, and you'll be entitled to reimbursement of all your out-of-pocket expenses at that time.

Do I Ever Have to Pay Back the Medical Bills That Were Paid by My Own Health Insurance Company?

Believe it or not, the answer is often “yes.” There are state and federal laws that may require you to reimburse your own health insurance company or your employer’s health plan from any money you recover in your personal injury case. It is important that you and your attorney review the terms of your insurance policy to see if you’re required to repay any of these costs. Your insurance company’s right to be reimbursed for medical bills from your settlement or verdict is known as “subrogation.” This is a complicated area of the law, so you should discuss this issue with your attorney as soon as possible after your accident.

We are often successful in reducing the health insurance company’s subrogation claim, which we give back to you as our client. For example, if you have \$15,000 in medical expenses paid by your health insurance plan, we can often negotiate with your health insurance company to accept a reduced amount of \$10,000 as payment in full. The additional \$5,000 goes to you.

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