

WIN YOUR  
WASHINGTON STATE  
PERSONAL INJURY  
CLAIM



# How to Win Your Washington State Personal Injury Claim

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**The following information is provided so you may make good decisions regarding your personal injury case.**

*It is not legal advice – nor is it intended to replace the need for experienced legal advice.*

The following information will provide you with the most common mistakes that people make following a personal injury, as well as the steps you need to take to in order to have the strongest case possible. This information has been compiled for you to understand how a personal injury claim may be affected with the decisions you make and the actions you take.

This information should not be considered as legal advice or a recommendation on how to file a legal claim.

For legal advice, please call the office of a qualified attorney who can advise you of your rights and your options.

# How to Win Your Washington State Personal Injury Claim

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## Inside You'll Discover:

- #1 – Protecting Your Rights in the First 72 Hours
- #2 – How Comparative Negligence Is Handled In the State Of Washington
- #3 – Timing and Limitations for Suing the Government in the State Of Washington
- #4 – General Statue of Limitations in the State Of Washington
- #5 – How the Insurance Company Will Figure Out How Much Your Claim Is Worth
- #6 – Should You Handle Your Own Claim
- #7 – Will Your Claim Go to Arbitration or Court
- #8 – Working with a Lawyer
- #9 – Getting and Keeping Your Settlement

If you have been injured in an accident, chances are you are not only in pain, but angry and perhaps even depressed as well. Unfortunately, this is not the best state of mind to be in when trying to effectively organize the documents and other key information you will need to file an insurance claim. But don't worry, we can help. The following guide will walk you through the claims process and help to ensure that you receive all of the compensation that you are entitled to.

## **Section 1: Protecting Your Rights in the First 72 Hours**

### **Write Everything Down**

After you have been injured in an accident, it is important to write down as much information about the experience as possible. Be sure to include details about any injuries you suffered and how they have impacted your daily life. These notes will play an important role later on in the claims process when compiling all of the facts in your case and making a final demand for compensation. Remember, memories may become less clear over time, and key information may be forgotten, so the sooner you write down all of the details about what happened, the better.

# How to Win Your Washington State Personal Injury Claim

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It also helps to keep a notepad on hand throughout the claims process so that you can take notes about anything else that comes to mind that may affect your claim. It's not uncommon for details you may have looked over to pop into your mind while you're in the shower or trying to fall asleep, so keeping a notepad handy will ensure that no important details are missed.

## **Accidents Involving the Government**

Accidents involving the government are very time sensitive. In fact, some states require accident victims to file a formal claim in as little as 30 days in order to preserve their right to collect compensation. If you have been in an accident and you believe that any government employee or entity was even partially responsible, then you need to act immediately. This includes city, state or federal government employees or entities, or any public agency or division.

There are several different types of notes that you need to take for the claims process, including notes about the accident, your injuries, any economic or other losses and notes about conversations.

## **Notes about the Accident**

Once your head is clear, sit down and take notes on everything that you remember about the accident. Focus on key details like:

- How The Accident Happened
- What You Were Doing
- Where You Were Going
- Who Was With You
- Time Of The Accident
- Weather

You should also note any shocks, blows or twists that your body may have suffered immediately before, during and after the accident. It's also important to jot down anything that you may have heard someone say about the accident, including witnesses and anyone who was directly involved in the accident.

## **Notes about Your Injuries**

In the days following your accident, take daily notes on any pain or discomfort that your injuries cause, no matter how minor they may seem. Remember, even though you may not have any visible or serious injuries as a result of the accident, you may still suffer from loss of sleep, anxiety, discomfort, pain or other problems, all of which you can demand

## How to Win Your Washington State Personal Injury Claim

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additional compensation for. If you fail to take note of these immediately, you may not remember to include them when you demand a settlement weeks or months later. Having a written record of your pain and discomfort will also make it easier to describe your injuries in detail to the insurance company.

It's also important to write down your different injuries because it will be easier to report all of the important details to your doctor or medical provider when you receive treatment. Having detailed information on your injuries will help your doctor and insurance company to understand why a seemingly minor bump on your head or pain in your neck has developed into a more serious condition a few days or weeks after the accident. Relating these details to your doctor or medical provider will also serve as evidence during the claims process because they will become part of your medical record.

### **Reporting to the DMV**

In most states, you are obligated to report, in writing, any accident that results in physical injury, or that causes property damage over a certain amount to your state's Department of Motor Vehicles (DMV). Keep in mind that there may be a time limit for filing this report, often as little as a few days, so be sure to check with your insurance agent or local DMV. You should also ask whether or not you need to use a special form for the report.

### **Notes about Economic or Other Losses**

When you are the victim in an accident, you may be entitled to compensation for economic losses. But that's not all – you may also be entitled to compensation for any educational, social, family or other losses, including pain and suffering. You will need documentation, however, in order to make a strong case for compensation. That means you should begin taking notes immediately after the accident and record any losses that you have suffered as a result of the accident and the injuries that you suffered. For example, if you missed out on any job opportunities, work hours or meetings, those are considered losses. Other losses may include not being able to attend social or family events, gathers or vacations. Essentially you want to make note of anything that you would have enjoyed or benefited from, but were not able to as a result of the accident and your injuries.

### **Notes about Conversations**

You should also take notes about any conversations relating to your accident or claim no matter how brief or inconsequential they may seem. This includes conversations with witnesses or other individuals who were involved in the accident, regardless of whether they took place in person or over the telephone. It is also vital that you take notes about any conversations with medical personnel, insurance representatives and adjusters.

# How to Win Your Washington State Personal Injury Claim

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## **Confirming Letters**

During the claims process, you may be promised or given information that you want to ensure is not denied or changed at a later date. In order to prevent this from happening, you should immediately write a confirmation after the conversation and send it to the individual you spoke with. The confirmation letter does not have to be elaborate – it simply needs to briefly recap what was said. Before sending the letter, be sure to keep a copy for your own records. A sample confirmation letter is included below.

## **Sample Confirming Letter**

Jane Smith  
123 Main St  
City, State 12345  
January 1, 20xx  
Mr. John Doe  
Claims Adjuster  
Helping Hand Insurance Company  
City, State 12345

RE: Claimant: Jane Smith

Insured: Mary Jones

Claim No: 1234567890

Date of Loss: September 1, 20xx

Dear Mr. Doe:

This letter is to confirm that you will be making an offer of settlement on behalf of the Helping Hand Insurance Company no later than January 15, 20xx, as per our telephone conversation on January 1, 20xx.

Thank you very much for your attention to this matter.

Sincerely,

*Jane Smith*  
Jane Smith

## **Notify Your Own Insurance Company**

Most policies require you to report your accident to the insurance company within a reasonable amount of time in order to collect any compensation, so be sure to do this within

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## How to Win Your Washington State Personal Injury Claim

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72 hours of a vehicle accident. This will allow you to receive compensation for repairing your car, or for paying medical bills under the collision, uninsured motorist or underinsured motorist coverages. After notifying your insurance company by phone, you should also inform them of the accident in writing using a notification letter.

Keep in mind that you still need to notify your insurance carrier even if you plan on filing a claim against the person who caused the accident, rather than filing under your own policy. It is not always clear who was responsible for the accident, and it may take days or weeks to not only determine who was at fault, but who will be paying for your damages. In order to avoid any unnecessary complications down the road, such as having to file a claim under your own policy, always notify them about the accident in a timely manner.

### **Preserve Evidence of Fault and Damages**

The first 72 hours following an accident are critical to the claims process. You must accurately document your injuries as well as find and preserve any evidence of what happened.

### **Organization Is the Key**

Throughout the claims process, you will accumulate many different photos, medical records, letters and notes relating to your accident. It is important to keep this information organized because not only will it help to find things easier, but it will also help you determine what information you have and what information you still need to obtain.

It helps to separate all of your documentation into different categories. For example, you should keep all of your photos, witness statements and notes in one folder. In another folder, keep all of your correspondence with insurance companies in chronological order. Any documents that involve medical billing, diagnosis and treatment should also be kept together. Documents related to financial losses should also get their own folder.

Remember, there is no trick to organizing your information – the most important thing is that you know where everything is so that when the time comes, you won't have to hunt for it. Consider placing each category of documents in its own file, folder or envelope and clearly label the outside. Finally, be sure to keep them in a safe place because they are vital to the claims process.

### **Physical Evidence**

It may be possible to show who was at fault by presenting physical evidence as opposed to a verbal description of the incident. Examples of physical evidence might include a dent in a car that shows where it was hit, or perhaps a worn or broken stair that was responsible for

## How to Win Your Washington State Personal Injury Claim

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causing a fall. Physical evidence is also useful in helping to prove the extent of an injury because it can show just how violent the collision was. Torn or bloodied clothing is also an effective way to show physical injuries.

It's important to document this physical evidence immediately following the accident, or as soon as possible because otherwise the evidence may be repaired, destroyed, modified by time or weather or even lost. Preserving any physical evidence like defective products or a damaged car or bike as it was at the time of the accident will give you proof that you can show to the insurance company.

### **Photographs**

Ideally you want to be able to preserve any physical evidence from your accident, but if you can't, then a photograph is the next best thing. Remember that regular photographs are better than Polaroids, however, because they show more detail and you will also be able to provide copies to the insurance company while keeping the negatives or original digital images. Be sure to take pictures from several different angles too, that way you can pick out which one most clearly depicts what you are trying to show the insurance company. It may also help to take a video.

The photos should be taken as soon after the accident as possible, that way you can accurately capture the condition of the evidence. It's also important to establish the time and date that the photos were taken, so have a friend watch you take the photos and sign a brief statement confirming when they were taken. Immediately take the photos in to be processed and ask the technician to be sure that the date is printed on the back of the photographs, on the digital file or on the receipt.

### **Pictures Are Priceless**

Don't underestimate the importance of having photographic evidence. It would very well be the key to receiving a fair settlement of your accident claim. Photographic evidence is important because:

- Photos accurately preserve injuries, evidence and scenes that may change over time.
- Photos can provide a more accurate description than words.
- Photos may reveal details that went unnoticed to the naked eye.
- Photos portray information in a dramatic way, without any distractions like light or sound.
- Insurance companies may try to dispute your account of the accident, but it's very difficult to dispute a photograph.

## How to Win Your Washington State Personal Injury Claim

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- Photos can help to focus your claim because you get to choose which ones you show to the insurance company.
- Photos are not just impressive – they demonstrate that you are serious about your claim and that you are well organized.

When you return to the scene of the accident, remember that you have the right to take pictures in public places. In the event that the area has been closed, seek out the person in charge. For example, if the accident took place in a shopping mall, ask the mall manager or security for permission to enter the area. Remain polite at all times, even if they deny your request. But if they do deny it, be sure to make note of the time and date, as well as who you spoke to and any reasons they may have given for denying your request to take photographs. At this point you will need to write to the insurance adjuster for the shopping mall, and demand that you be given permission to take the photographs. Be sure to mention that it is “bad faith” to refuse permission to the scene of the accident.

### **Car Damage Proves Injuries**

Car accidents often cause injuries that, while extremely painful, may not be medically obvious. These injuries, which typically involve muscles, joints or the spine, can cause a great deal of discomfort and lead to significant disruptions in daily life, despite the fact that they do not show up on imaging devices like X-rays. Because of this, your doctor or medical provider may be unwilling to go on record with their opinion about the nature and extent of your injuries. Unfortunately, this makes life easier for the insurance companies and makes collecting full compensation for your injuries very difficult, since there is no medical evidence of your injuries.

But that’s where physical evidence comes in. If you have strong evidence of the damage that was done to your car, this can help support your argument that you were also harmed in the accident. Any receipts or work orders for car repairs can serve as supporting evidence for your claim, but these often include only brief descriptions of the damage, so having clear photographic evidence of the damage will make your argument much stronger in the eyes of the insurance company. Be sure to take photographs before any repairs are done, and from several different angles, even if the damage is minor. Remember, even a minor fender bender can result in serious injury, so it’s vital that you capture any dents, big or small.

### **Returning to the Scene**

It’s important to return to the scene of the accident as soon as possible in order to gather evidence and take photographs of any conditions that may have contributed to the accident. Remember, accidents can happen in the blink of an eye, so it’s very easy to miss something

## How to Win Your Washington State Personal Injury Claim

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at the time it occurred. By coming back to the scene, you may find something that helps to explain what happened, such as a broken traffic light. You may also run into someone that witnessed the accident, or who may know of other incidents that have occurred in the same location.

Be sure to take photographs of the scene from a number of different angles, especially from what would have been your view right before the accident. It's also important to photograph the scene at the same time of day because lighting often plays a role in accidents. If your accident involved a vehicle, be sure to return on the same day of the week so that you can more accurately capture the amount of traffic that would have been present on the same day as the accident.

### **Witnesses**

When you're making your case to the insurance company, having an eye witness can be extremely beneficial. They may be able to provide key details that confirm your account of the accident and help to establish that the other party was at fault. Even if they did not witness the accident itself, they can still attest to the fact that you were injured if they saw you soon after the incident. If they overheard a statement from another person who was involved in the accident, this can also help your claim.

But keep in mind that witness statements are very time sensitive. You need to contact the witnesses and confirm their information as soon as possible after the accident, because details tend to fade very quickly. If you don't act fast, their recollection of the accident may no longer be useful to your claim. If it is someone you do not know, then you may also have no way of contacting them later.

### **Dealing with Witness-Strangers**

Even if you do not know a witness, they can still be very helpful to your claim. They may be able to help verify your account of the accident, and they may even be aware of dangerous conditions at the scene that are responsible for other accidents in the past.

In order to find these witnesses, try talking to the people that live or work within sight of the accident scene. If you don't have any luck, ask for a copy of the police report. These reports, also called an accident or collision report, will often contain the names, addresses and phone numbers of any witnesses that were at the scene when the police responded.

If you do find a witness that has information indicating that the other party was at fault, you need to take action immediately:

## How to Win Your Washington State Personal Injury Claim

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- Ask the witnesses for as much information as possible. Ideally you want to get names, addresses and phone numbers but remember, don't get pushy. After all, these witnesses are supposed to be on your side, so the last thing you want to do is irritate them.
- You should also ask the witnesses about what they saw of the accident, and where they were when they witnessed the incident.
- If the witness is cooperative, you should also ask if they would be willing to sign a statement that relates exactly what they told you. If they consent, take notes of the conversation, type them up and mail it to the witness so that they can check it for accuracy. To make things as easy and hassle free as possible, be sure to include a stamped envelope so that they can return the signed statement.
- If the witnesses are reluctant to get involved, as is often the case, at least try to have them verify and sign a handwritten account of the accident while you are there. Be sure to get an address or phone number as well so that you can prove to the insurance company that the statement came from a real person.

### **Witnesses You Know**

Many accidents involve witnesses that we know, such as friends, family or acquaintances. If they witnessed the accident or even just your pain and suffering following the accident, then you need to follow the same basic steps as described above for strangers. Fortunately, gathering witness statements from people that you know is generally much easier. But you still need to get their statement while the details are still fresh in their mind. You should also have them sign a typed or handwritten statement.

Keep in mind that insurance adjusters will often try to contact witnesses as well to collect statements, but you should not rely on these for your claim. In fact, you should try to contact the witnesses first in order to prevent false or distorted recollections from being planted in their heads. This may sound harsh, but it happens. It's also important to remember that witnesses are not required to speak to the insurance company if they don't want to get involved, but you should never tell a witness to refuse to talk, otherwise you can be accused of interfering with the investigation and that could jeopardize your claim. Leave the decision to talk to the insurance company up to them because an independent witness is always more reliable, and that means their statement will carry more weight.

### **Documenting Your Injuries**

In order to preserve the evidence of your injuries, you should immediately report them to your doctor or medical provider. You should also photograph any visible bruises, swelling, cuts or marks, as well as any bandages, splints, casts or other devices that you are using based on your doctor's prescription or on your own. This evidence is crucial because

## How to Win Your Washington State Personal Injury Claim

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without early documentation in the form of medical records and photographs, it may be difficult to prove the nature and extent of your injuries to the insurance company. Visible injuries for example will not look as serious after they have healed, leaving insurance companies to believe that you either exaggerated or invented the injuries.

### **Get Immediate Medical Attention**

While it's true that where you get treatment is first a foremost a medical decision, it's important to know that this can have a dramatic effect on how much your claim is worth.

### **Med-Pay vs. Medicare**

In general, if you are over the age of 65 and have Medicare coverage and med-pay (i.e. your own auto insurance policy), you are better off using med-pay to cover your medical bills. They both pay regardless of who is at fault, but unlike most med-pay policies, Medicare requires you to reimburse it out of any settlements that you reach in your claim. Check with your auto insurer to find out whether or not they have a requirement for reimbursement from third party claim settlements and if not; use med-pay for your medical bills.

It might seem like common sense to seek out immediate medical attention after an accident and to inform your doctor or medical service provider of any and all injuries, regardless of severity. Unfortunately, many accident victims only tell their doctor about their worst injuries, and some never seek any medical treatment at all. This means that they often have no medical records for their injuries, or only for some injuries and not others, and those undocumented injuries may lead to significant pain and discomfort down the road.

The high cost of medical treatment is partly to blame for these situations, because it makes victims reluctant to begin treatment if they don't believe their injuries are serious. But what they are forgetting is that if the other party was at fault, they, through their insurance company, are obligated to pay not only for all reasonable medical expenses, but also for any additional pain and suffering that you have been subjected to as a result of the accident. And the best way to prove your claim and receive fair compensation is to have solid medical records detailing your treatments. Even if you have to pay out of pocket for the time being, it is worth seeking treatment. Just be sure to keep track of all letters, receipts, bills and other documentation related to your medical treatments.

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# How to Win Your Washington State Personal Injury Claim

## Section 2: How Comparative Negligence Is Handled In the State Of Washington

### How to Figure Out Who Is At Fault

There are a number of different rules for determining liability, but they can be summarized by the following propositions:

- If the negligent party caused the accident while they were performing work related duties for their employer, then the employer may also be legally responsible for the accident.
- If the accident occurred on a property due to unsafe conditions, then the property owner is liable, regardless of whether or not they created the dangerous conditions in the first place because they are legally responsible for maintaining their property at all times.
- In accident cases involving defective products, both the manufacturer and seller are liable. This is true even if the injured party isn't aware of how the defect happened or who created or allowed it.
- Compensation may be reduced if the injured party was careless and that comparative negligence played a role in causing the accident.

### You Don't Need to "Prove" Anything

The beauty of liability insurance is that it covers virtually every business, home, vehicle or other property. This means that when accidents occur, you will generally deal with an insurance adjuster rather than a judge or lawyer. Filing a successful insurance claim is also relatively straightforward in many cases, and involves simply giving a clear and detailed explanation of the insured party's carelessness, as well as how that carelessness resulted in the accident.

Assuming that your explanation clearly demonstrates that the insured party was at fault and their carelessness caused the accident, the liability insurance company will pay a settlement that covers not only your medical costs, but also your pain and suffering as well as any lost income that resulted from the accident and your injuries.

Keep in mind that most liability claims never reach the courtroom. Instead, they are settled out of court. This means that when you are negotiating with the insurance company, you do not have to provide the same kind of legal "proof" that would hold up in a court of law. Instead, all you need do is provide a reasonable argument that demonstrates the negligence of the insured party.

## How to Win Your Washington State Personal Injury Claim

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In cases involving defective products, you don't even have to prove negligence because it is automatically assumed under the "strict liability" rule.

Insurance companies aren't stupid. They know that if you can provide a reasonable argument that shows the insured party was negligent, chances are a court would find in your favor. That means they would be on the hook for your damages as well as the attorney fees and court costs. Ouch. That's why the majority of claims are settled out of court.

### **Accidents across State Lines**

The laws that control accident claims vary from state to state. For example, there may be differences in the standards for comparative negligence or the time limits for filing a claim or lawsuit may be different. Normally this isn't an issue because you're only dealing with the laws in your state. But things can get complicated when you are involved in an accident in another state, or if someone from another state has an accident with you in your state.

In general, the laws in the state where the accident occurred are the ones that apply. The differences in state law, however, do not affect the insurance coverage. In other words, the insurance companies must honor any valid claims against the insured party. This means that a visitor to a state that has mandatory no-fault vehicle insurance can't be forced into accepting a no-fault settlement. The visitor is free to pursue a claim for full compensation just like they would in another state that doesn't have mandatory no-fault vehicle insurance laws.

### **Choosing Whom to Collect From**

Vehicle accidents often involve the carelessness of more than one party. For example, two other drivers may have been careless, or perhaps one driver and a city or state was careless in maintaining the roadway, which contributed to the accident. In accidents involving a business, both the tenant and the property owner may be held responsible. In accidents involving defective products, both the seller and the manufacturer are legally responsible.

When there is more than one negligent party, either party is responsible for paying you full compensation for your damages. Who pays and how much, however, is often left to the negligent parties to decide. If one of the negligent parties pays the entire claim, it is up to them to decide whether or not they should be reimbursed by the other party. In either event, the law does not allow you to collect full compensation from both parties.

This "joint and several liability" or "concurrent liability" works in your favor when you're the victim of an accident. For example, if one of the negligent parties is insured but the

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## How to Win Your Washington State Personal Injury Claim

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other is not, then you can seek full compensation from the insured party. Even if both negligent parties are insured, in the end you only have to settle with one insurance company. But don't rule anyone out just yet. Always consider everyone who might be responsible, then notify both companies of your intention to file a claim. Eventually one of the insurance companies will claim responsibility, or you will discover information about how the accident occurred, which will help you decide which company to pursue your claim against.

### **How Your Carelessness Affects Your Claim**

If your carelessness partly caused your accident, you may still be entitled to compensation. In fact, most states allow you to recover compensation from the other party or parties involved in the accident if their carelessness also partly caused the accident. Basically, the liability of each party will be determined by comparing their carelessness to that of the injured party. These percentages of liability will be used to determine the amount of damages that each party must pay. This is known as the comparative negligence rule.

#### Example #1:

Mary rear-ends John's car. If Mary was 100% at fault, John would be entitled to \$1,000 in compensation for his medical bills and loss of income. The problem is that the police report shows that John stopped short to avoid hitting a child that darted across the street near a school. Mary's insurance company claims that if John had been driving slow enough, which he should have been in a school zone, then he would not have had to jam on his brakes. Because John didn't drive slow enough, he is 10-25% negligent. This means that Mary is only 75-90% negligent, and is only liable to John for \$750-\$900 rather than the full \$1000.

#### Example #2:

When Mary rear-ended John's car, she sustained numerous injuries. If another party had been 100% responsible for Mary's injuries, then she would be entitled to \$2000 in compensation. Unfortunately for Mary, this is not the case. But in some states, Mary can still receive some compensation because she was only 75-90% negligent for the accident. This means that she could collect 10-25% of the \$2000 in damages (\$200-\$500) from John's insurance company because John was 10-25% negligent.

Determining a person's comparative carelessness is not an exact science though. During the claim negotiations, the insurance adjuster will analyze various factors to determine to what degree each party was at fault. Once your comparative negligence has been determined, then the value of your claim can be calculated.

## How to Win Your Washington State Personal Injury Claim

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There are three slightly different ways that comparative negligence is applied -- it all depends on what state the accident occurred in.

### **States With No Restrictions On Comparative Negligence**

Alaska	Arizona
California	Florida
Kentucky	Louisiana
Mississippi	Missouri
New Mexico	New York
Rhode Island	South Dakota
Washington	

There are no restrictions on how comparative negligence operates in the 13 states listed above. This means that you are entitled to receive compensation for your damages no matter how much you are found to be at fault. The compensation you receive will be based on the percentage of the other party's fault.

### **States With Some Restrictions On Comparative Negligence**

Arkansas	Colorado
Connecticut	Delaware
Georgia	Hawaii
Idaho	Illinois
Indiana	Iowa
Kansas	Maine
Massachusetts	Michigan
Minnesota	Montana
Nebraska	Nevada

## How to Win Your Washington State Personal Injury Claim

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New Hampshire

New Jersey

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

South Carolina

Tennessee

Texas

Utah

Vermont

West Virginia

Wisconsin

Wyoming

The 33 states listed above follow stricter rules than the previous 13 states. According to the modified comparative negligence rules, you forfeit any right to compensation if you are found to be 50% or more at fault. If your fault is less than 50%, then you are entitled to compensation based on the percentage of the other party's fault, as discussed earlier.

### **States With The Most Restrictions On Comparative Negligence**

Alabama

District of Columbia

Maryland

North Carolina

Virginia

The rules for comparative negligence are extremely strict in these four states and the District of Columbia. If your carelessness, however slight, contributed to the accident any way then you forfeit all rights to claim compensation.

In these states, you will have a hard time recovering any compensation because the insurance company only has to point to one small contributing factor to deny your claim. Keep in mind, however, that they may not be able to prove that you were even partly at fault and you may be able to receive compensation if your carelessness was not the direct cause of the accident.

### **Example of Comparative Negligence Case:**

Mary rear-ends John's car after John suddenly stops to avoid hitting a dog that dashed in front of his vehicle. There are no indications that John's driving was careless, however, according to the police report, one of his tail lights was out prior to the accident.

## How to Win Your Washington State Personal Injury Claim

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In this situation, the insurance company may try to argue that John was partly at fault for the accident because he failed to properly maintain his vehicle. If the accident occurred in one of the states with the most restrictions, then his contributory negligence would mean that he had no right to any compensation. John might claim, however, that at the time of the accident, Mary made no mention of his broken taillight, which means that it didn't contribute to the accident.

At this point, John will almost certainly receive at least partial compensation for his injuries because the insurance company has no way of proving that the broken tail light did in fact contribute to the accident in this case.

### **Witnesses Can Help Show Fault**

Witnesses to your accident, such as a passenger or bystander, can be very useful in verifying your account of the incident and establishing who was at fault. Keep in mind, however, that insurance companies may try to downplay the importance of your witness if they are a friend or relative – the implication being that they are sympathetic to you. But the reality is that many times the witness, usually a passenger, is going to be friend or family otherwise they would not be riding with you. If they do happen to be a stranger, however, this can make your case stronger because they are seen as being independent.

### **Liability in Specific Types of Accidents**

There is no special formula for determining fault. All you have to do is show that the other party was careless because of what they did, or what they didn't do, and how that negligence was responsible for causing the accident. In cases involving defective products, you don't even have to prove that the manufacturer or seller was negligent. All you have to do is show that you were injured by using the defective product in a normal way.

Keep in mind, however, that while you are trying to prove the other party's fault, insurance adjusters may claim that you were negligent as well, or that you were using the product improperly when you were injured. Be sure to think about the facts in your case carefully so that you can plan your responses if this happens.

### **Car Accidents**

When it comes to vehicle accidents, the rules that address liability for damage claims also apply to injury claims as well.

### **Special Rules for No-Fault Policyholders**

## How to Win Your Washington State Personal Injury Claim

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No-fault auto insurance, otherwise known as Personal Injury Protection, is currently available in about a dozen states. These policies exist to prevent abusive claims. For example, they prevent people with minor auto accident injuries from filing claims for damages above and beyond what they are normally entitled to for their pain and suffering, medical bills and property damage. There are, however, some circumstances in which claims are allowed for damages that go beyond medical bills.

If you currently have a no-fault policy that allows you to file for damages against the person who was at fault in your accident, then you should proceed as explained in this guide, just as if you did not have a no-fault policy.

### **Traffic Laws May Help Determine Fault**

Determining fault simply comes down to figuring out who was careless and to what degree their carelessness caused or contributed to the accident. This process is made easier in vehicle accidents because there are specific laws and rules that drivers must follow and when these are broken, they can be used to help determine liability. These rules, which are detailed in each state's vehicle code, also apply to pedestrians, bicycles and motorcycles, not just cars.

The following examples demonstrate what role traffic rules play, if any, in a variety of accidents:

#### Example #1

John fails to stop his vehicle at a stop sign and hits Mary's car as she is driving through the intersection in a cross direction. John is clearly at fault in this case because going through a stop sign is a violation of traffic laws and was directly responsible for the accident.

#### Example #2

Mary changes from the left lane to the right lane without first checking to see if it is safe to merge. In order to avoid being hit by Mary, John, who was already in the right lane, swerves and hits a parked car. Even though Mary never actually hit John's car, she is clearly at fault in this case because her careless driving and violation of traffic laws was directly responsible for the accident.

#### Example #3

John hits Mary's car as he attempts to merge on the freeway. Even though Mary failed to give John room to enter, the traffic laws in the state in which the accident occurred state

## How to Win Your Washington State Personal Injury Claim

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that the entering driver must yield to the traffic that is already on the freeway. In other words, John is at fault for the accident.

### Example #4

Mary drives through a stop sign and hits John's car, but the accident report shows that John also broke a traffic law: he failed to signal his right turn. In this case, however, John's traffic violation did not cause the accident. Regardless of whether he turned or went straight, Mary would have hit him. In other words, signaling his turn would not have prevented the accident.

### Accidents with Several Causes

Sometimes it is difficult to argue that one particular action lead to an accident, especially if that action seems unimportant. What you can do, however, is argue that it was a combination of actions by the other driver that led to the accident.

### Example:

John hits Mary's car when he changes from the left lane to the right lane. John claims, however, that he had already changed lanes before the collision occurred and that it was Mary's fault because she wasn't paying attention. In cases like these, it can be difficult to determine exactly who was at fault, and as a result, Mary's insurance settlement may be lower than it would have been if John was clearly at fault. In other words, Mary may be on the hook for comparative negligence because at first glance, it appears that both parties were at fault.

Mary can make a stronger argument for liability against John, however, by proving that he committed numerous violations that, when combined, lead to the accident. For example, using a witness or the police report, Mary may show that John failed to signal that he was changing lanes and then changed lanes too abruptly. She may also show that he failed to give her the right of way or committed other traffic violations. If substantiated, these violations make Mary's case much stronger.

### Where to Find Help in Showing Fault

The best way to strengthen your argument that the other driver was at least partially at fault is to find official support that proves they violated one or more traffic laws.

### Vehicle Code

## How to Win Your Washington State Personal Injury Claim

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The state vehicle code, also sometimes called “The Rules of the Road” is a great place to look for support for your argument. You can find a copy at your local department of motor vehicles (DMV), public library or online.

Turn to the index in the last volume of the state vehicle code where you will find references to many rules of the road, some of which may apply to your accident. Note the exact wording of the rule as well as the vehicle code section number. You can use this information to strengthen your position when you negotiate a settlement with the insurance company.

### **Rule Violations that always mean liability**

In many cases, insurance companies will argue that the rules of the road that were violated in a particular accident didn’t actually apply to the accident or cause it. But there are a number of situations where insurance companies won’t even bother arguing because violating these rules of the road almost always mean liability.

### **Rear-end collision**

When your vehicle is hit from behind, the other driver is almost always at fault regardless of why you stopped. The rules of the road state that you must maintain a safe distance behind other vehicles at all times and be able to stop safely. In other words, if you can’t stop in time to avoid hitting the driver in front of you, then you are not driving as safely as they are.

The damage done to both vehicles can also help to prove how the accident happened. If your rear bumper is damaged and their front bumper is too, then clearly they rear-ended you regardless of what they say.

There are situations where the driver who rear-ended you is not at fault, however. For example, if two cars are stopped and a third vehicle slams into the second car, pushing it into the first, then the driver of the third car would be at fault.

There are also situations where, despite being rear-ended, your own carelessness may reduce your compensation when making a claim. This is called the rule of comparative negligence. If your brake or tail lights were out, for example, then your own carelessness in failing to maintain your vehicle may have played a role in the accident, especially if it occurred at night. You may also be negligent if you fail to move your vehicle over to the side of the road after having mechanical problems.

### **Police Reports: Powerful Support**

## How to Win Your Washington State Personal Injury Claim

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Police almost always make a written accident report when they respond to the scene of an accident, especially if there were injuries involved.

These reports often state what vehicle code section a driver violated and that it led to the accident. In these situations, it may also show that the officer issued a citation to the driver for violating the rules of the road. In some cases, however, the report may only briefly mention or describe the negligent driving.

These accident reports can be very helpful in proving that the other driver was at fault. Even if the report is not very specific, as long as you can find any mention of a vehicle code violation or careless driving, it will help your case substantially.

### **Left turn accident**

If you are making a left turn, you are almost always liable to any vehicles that are coming straight from the other direction, regardless of whether you hit them or they hit you. There are a number of exceptions to this rule, however, such as:

- If you can prove that the vehicle that was going straight was speeding, then they may be at least partially liable in the accident. Unfortunately, this is usually difficult to prove and if you're the one making the left turn then you will probably still be liable.
- The driver of the vehicle going straight can also be held at least partially liable if they ran a red light, but again this can be difficult to prove. You would need witnesses that were outside of the vehicles who clearly saw the accident.
- You may also escape some liability if you were forced to slow or stop while making the left hand turn. Keep in mind, however, that the rules of the road state that you must wait until you can safely complete the turn before ever moving in front of oncoming traffic, so your argument may not stand up.

Just like rear-end collisions, the damage done to both vehicles can also help to prove what really happened, regardless of what the other driver says. For example, if you hit another driver that was making a left hand turn in front of you, then the physical damage to both cars will clearly prove this and the other driver will almost always be fully liable for the accident.

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# How to Win Your Washington State Personal Injury Claim

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## **Section 3: Timing and Limitations for Suing the Government in the State Of Washington**

### **Claims against the Government**

If your accident was even partially caused by any government entity or employee, then you need to follow special rules when filing a claim. This applies to accidents involving any public agency or division, as well as any city, county, state or the federal government. For example, accidents might include:

- Any accidents caused by a local, state or federal employee that was driving a car or municipal bus during work time
- Any accidents caused by hazardous conditions in a building or on property owned and operated by any government agency
- Any accidents caused by a government employee while they were conducting official work

Filing a claim against a government entity is different from normal claims because governments get to set the rules that determine who can sue them, for what and how the claim will be handled. Typically this involves filing a written claim to the government entity that was responsible for any injuries and damages. You also have to do this within a relatively short period of time, usually 30 to 180 days, otherwise you may lose the right to collect any compensation.

### **Filing a Claim**

If you believe that any government entity or employee was even partially responsible for your accident, then you should file a claim. For example, if your accident involved another car and a municipal bus, then you should still file a claim against the city, even if you think that the driver of the other car was mostly at fault. This will allow you to seek compensation in the event that the driver of the other car was uninsured, or if it turns out that the bus was mostly to blame for the accident. If you wait too long to file your claim, then the narrow window of time mentioned earlier may expire, leaving you with a pile of bills and no way to seek compensation.

# How to Win Your Washington State Personal Injury Claim

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## Section 4: General Statute of Limitations in the State Of Washington

### Can You Still File

Filing a claim against a government entity can be confusing because each state sets their own time limits. In some states, you may have to file your claim within 30 days of the accident to be entitled to any compensation. Most states, however, allow claims to be filed within 180 days. If you are involved in an accident where a government entity or employee may be liable, then be sure to check your state's time limit so that you can file your claim on time.

You should also never wait until the last minute to file your claim, even if you think you have plenty of time. Many accident victims miss out on compensation because they neglected to include key information when filing their claim, or perhaps they chose the wrong government entity to file a claim against. In either event, you may not have time to correct the error before the time limit expires.

# How to Win Your Washington State Personal Injury Claim

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## Section 5: How the Insurance Company Will Figure out How Much Your Claim Is Worth

### The Insurance Adjusters Damages Formula

When you file a claim, the insurance adjuster will begin the negotiations by first taking a tally of all medical expenses related to your injuries. These expenses are known as “the medical special damages” or “specials.” To calculate “general damages,” which include pain and suffering, emotional damage and permanent disability, the insurance adjuster will multiply the special damages by anywhere from one-and-a-half to three times or more, depending on the severity of the injuries. For minor injuries, one-and-a-half to three times is common. For more serious injuries they may multiply the special damages by five times or more, especially if they were particularly long lasting or painful. The insurance adjuster will then add in any income that you lost as a result of your injuries.

Once a total figure has been reached, which includes the medical damages multiplied by one to five times (or more) plus the lost income, then the settlement negotiations can begin.

Example:

John was injured in a car accident. The cost of his medical treatment was \$600 and his injuries did not result in any permanent effects. Using the damage formula and taking into account the fact that the injuries were not serious, John’s general damages would be in the range of \$900 to \$3000, which is one-and-a-half to three times the total of his medical damages of \$600. John also lost \$400 in income as a result of missing work due to his injuries, and this number would be added to his general injuries to arrive at a figure from which negotiations would begin.

At this point, the insurance adjuster would take the figure calculated above and factor in any other variables relating to the accident to determine how much compensation the insurance company is willing to pay John.

### Insurance Adjusters Don’t Reveal Their Formula

When it comes to negotiations, insurance companies always follow one key rule: never let the other party know what you are thinking. In other words, the insurance adjusters will not tell you how they went about calculating the value of your claim or what formula they used, if they even used one at all. During the negotiations, you should also follow the same rule and never let the insurance company know what you are thinking either. Instead, focus on negotiating the total settlement amounts.

### How to Document Your Loss

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# How to Win Your Washington State Personal Injury Claim

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## **Injuries**

In order to ensure that you receive a fair settlement, it is vital that you accurately document your injuries:

- If you experience any discomfort or pain while you are being treated for your injuries, no matter how minor it may seem, always report this to your physician so that they can add that information to your medical records.
- If you feel like you need medication in order to relieve any discomfort or pain associated with your injuries, then don't be stubborn – ask your physician for it. There is no reason to suffer needlessly.
- If you continue to suffer from your injuries and feel like you need further treatment beyond what was originally scheduled, then make another appointment. Remember, it is always better to err on the side of caution. Not only does this make sense in terms of your health and wellbeing, but it will further demonstrate the extent of your injuries and any additional treatments will be documented in your medical records.
- If you miss any daily activities because of your injuries, you should also document this.
- If there are any visible signs of your injuries, such as swelling or discoloration, then take photographs of them regularly and date them. Photographs are a powerful form of documentation when it comes time to negotiate a settlement.

Aside from taking the steps above, you should also consider keeping a diary of everything that you have experienced since the accident up until your settlement is reached. Be sure to keep track of even minor details like lost sleep and headaches or more serious issues like lost work and depression. These details will be very important when it comes time to discuss the damages to the insurance adjuster. Don't make the same mistake as other accident victims and just assume that you will remember all of these details. They may seem vivid shortly after the accident but memories have a tendency to fade very quickly. Documenting all of the details of your injuries will help to prevent the loss of any key information that can affect the amount of compensation you receive.

## **Pain and Suffering**

When it comes to determining the amount of pain and suffering you have endured as a result of your injuries, insurance companies mostly focus on the nature of the injuries and how long it took to treat them. But there are other factors they must consider as well:

## **Medication**

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## How to Win Your Washington State Personal Injury Claim

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If you are given medication to help relieve any inflammation, pain or other symptoms associated with your injuries, then this fact alone may be enough to convince an insurance adjuster of the seriousness of your injuries. This is particularly true when stronger medications are necessary and when they are prescribed for a prolonged period of time.

### **Length of Recovery**

In the eyes of the insurance company, the longer it takes for a person to recover from their injuries, the greater the pain and suffering. That's why it is so important to let the insurance adjuster know how long it took to recover. Your medical records are an excellent way to prove this, but only if you are diligent in reporting your progress, or lack of it to your doctor.

### **Residual or Permanent Injury**

The amount you are awarded for damages goes up significantly if you can prove that your injuries have left any long-lasting or permanent effects such as back or joint stiffness or scarring.

### **Scars**

Scars are a very common form of residual or permanent injury. Regardless of whether they were caused by the original injury or from medical treatments, they can result in the award of additional damages. This is especially true in cases where the scars are large and obvious, because not only can they cause cosmetic embarrassment, but also because scar tissue can make the area less flexible.

### **Back or Joint Injuries**

Many people that experience back or joint injuries will suffer from residual or permanent effects. Joint injuries typically involve dislocation or damage to ligaments or cartilage. Back injuries usually involve damage to a disk in the spine, or the narrowing or displacement of a vertebra. While these injuries may stabilize over time, there is the potential for continuing discomfort and pain, or the loss of mobility.

### **Consult a lawyer if you suffer serious permanent injury**

If you have suffered permanent injury as a result of the accident, you may be entitled to very high damages, far beyond those calculated with the damages formula that was discussed earlier. This is especially true in cases involving a bad back, limp, visible scarring and other serious disabilities that may require additional medical treatments in the future.

# How to Win Your Washington State Personal Injury Claim

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## **Physical and Emotional Distress**

When making your claim, it's important to remember that you are entitled to compensation not only for your pain but any physical and emotional distress as well. If you suffer from an upset stomach, trouble eating or digesting, loss of sleep or any side effects to the medications that have been prescribed to treat your injuries then you are entitled to compensation.

You're also entitled to compensation for emotional difficulties. Injuries often lead to depression, embarrassment, stress or strain on relationships. For example, your injuries may interfere with sexual relations, cause anxiety about the effect of the accident on an unborn child or prevent you from taking care of your children.

## **Life Disruption**

Medical expenses and property damage are relatively easy to document and place a value on. But accident victims often suffer other losses as a result of their injuries as well. Missing out on school or training, vacations, recreation, special events or sexual relations are all very real and considerable losses, and you are entitled to compensation for them. These losses fall into the general damages category and will help to raise the multiplier that is used to calculate your compensation. For example, instead of the insurance company using a multiplier of one-and-a-half, they may increase that to two or three times the amount of your medical specials because your injuries caused you to miss a vacation or special event like a wedding or graduation.

## **Missed school or training**

Usually when you miss school or training, you will have to make up the work at some point. This may mean giving up evenings or weekends, and for more serious injuries you may even have to repeat an entire semester. The difficulty you experience will affect how much your general damages should be increased.

## **Missed vacation or recreation**

Any time you miss a vacation due to your injuries, you are entitled to compensation. You're also entitled to compensation if your injuries prevent you from enjoying activities that you would normally participate in like hiking, biking or dance classes.

## **Canceled special event**

## How to Win Your Washington State Personal Injury Claim

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You're also entitled to compensation when you miss or have to cancel a special event. Keep in mind that this only applies to one-time events that will not be repeated such as weddings, graduations, funerals, conferences or reunions.

### **Loss of consortium**

If your injuries have prevented you from having sexual relations with your spouse, or your unmarried partner in a limited number of states, then you may also be entitled to compensation. Typically this "loss of consortium" must be for a prolonged period of a few months or more in order to be taken seriously.

### **Lost Income**

You are entitled to compensation for any income that you lose as a result of an accident or your injuries. This includes any income you lost while you could not work as well as time you missed while undergoing treatment for your injuries. This also applies regardless of whether you work part-time or full-time, whether it is a regular or occasional position, whether you are paid an hourly wage or monthly salary or if you are self-employed.

Keep in mind that lost income is only added after your other damages have been calculated using the damages formula discussed earlier.

Example:

You were injured in an auto accident. Your total medical expenses were \$400. You also lost \$500 in income as a result of your injuries. Since your injuries were relatively minor, the insurance adjuster uses a multiple of two when calculating your damages. But only the \$400 in medical expenses is multiplied by two, not your income loss of \$500. In other words, your compensation would be \$800 plus the \$500 in lost income, for a total of \$1300. This is only the starting number for the negotiations, however, and may go up or down depending on other factors.

### **Sick Leave and Vacation Pay**

If you take sick leave or vacation pay for the time that you missed as a result of your injuries, this does not disqualify you for compensation. You are still entitled to reimbursement regardless of the fact that you did not directly lose any income because using your sick leave or vacation pay is the same as losing the pay itself.

Keep in mind, however, that in order to receive compensation for any sick leave or vacation pay, you must be able to show documentation that proves how much time you

## How to Win Your Washington State Personal Injury Claim

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missed as a result of your accident and how much income you would have earned during that time.

### **Lost Opportunities**

You're also entitled to compensation for any income opportunities you missed out on as a result of your accident and injuries. This includes job interviews, sales meetings and other work opportunities. While it can be difficult to prove that these led to a loss of income, your final compensation will most likely be higher just by making the insurance adjuster aware of the fact that income opportunities were missed. Of course how much it affects your claim will depend on how strong your proof is and how much the missed opportunity may have cost you.

### **Damaged Property**

If someone is liable to you for any personal injuries suffered in an accident, they are also liable for any property damage that they caused. Claims for property damage are most common in auto accidents and include not only the damage done to the car, but also the contents as well. For example, you can include the value of anything that you were wearing or carrying in the car at the time of the accident, such as jewelry, watches and clothes.

Keep in mind that property damage claims are not included in the formula for determining injury compensation. Instead, property damage is calculated separately and compensation is usually awarded much more quickly than injury claims.

### **Examples of What Claims Are Worth**

The examples below show how compensation is calculated in a variety of circumstances. Even though they may not apply to your circumstances, reading through these examples will give you a better idea of how a host of different factors go into determining what a claim is worth.

Example #1 – Auto accident, short-term soft tissue injury, extra damages for missed special event

Mary's car is rear-ended at a stop sign. This caused her neck to snap forward, but she was unhurt otherwise.

Later Mary develops a stiff neck and a headache. After an examination and x-rays, Mary is instructed to wear a cervical collar and stay at home in bed until she can move her neck without discomfort.

## How to Win Your Washington State Personal Injury Claim

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This forces Mary to miss three days of work as well as a birthday party for her close friend in another city.

Mary is able to return to work the following week and is back to normal after about four weeks.

The cost for Mary's medical specials (i.e. medical expenses) is:

Emergency room/doctor visits	\$750
X-rays	\$190
Prescription medication	\$58
Cervical collar	\$65
Total	\$1,063

Mary's injuries are considered to be soft tissue, since there were no broken bones, dislocations, wounds or other observable injuries. This means that a multiplier of one-and-a-half to three times the medical specials will be used to calculate damages, which results in compensation of between \$1595 and \$3190 plus her lost income. Mary earns an hourly wage of \$14 and missed three days of work, which lead to \$392 in lost wages.

Mary is entitled to full compensation in this case because there was no negligence on her part. She may also be awarded with additional compensation because she missed her friend's birthday, which is considered to be a special event.

Mary would also receive compensation for damage to her car, but this is calculated separately.

Example #2 – Auto accident, soft tissue injury, large amount of bills for diagnosis, extensive physical therapy

John's car is hit by another vehicle after the other driver runs through a stop sign. After being taken to the emergency room, X-rays reveal that he did not suffer any broken bones in the crash, so he is referred to his normal doctor.

In the days that follow, John develops a very stiff back and a headache. John's doctor sends him to an orthopedist, which takes more X-rays and discovers that John is suffering from lumbar spine strain. The orthopedist prescribes physical therapy, muscle relaxants and pain medication.

## How to Win Your Washington State Personal Injury Claim

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John returns to work after four days, but still experiences a lot of pain and misses two more days of work. John also undergoes physical therapy, starting with three days a week for the first two weeks and then two days a week for another two weeks. After five weeks he completes his physical therapy and is advised by the orthopedist that he should be fully recovered after a few more months.

The cost for John's medical specials (i.e. medical expenses) is:

Ambulance	\$250
Emergency room	\$280
Emergency room x-rays	\$180
John's doctor	\$260
Orthopedist	\$1110
Second set of X-rays	\$280
Physical therapist	\$840
Medications	\$70
Total	\$3270

John missed a total of five days of work. He used his sick leave for the days that he missed, so technically he isn't out of pocket any income, but he is still entitled to compensation. To determine the value of the missed work days, his gross monthly salary of \$2300 is divided by 21, which is the number of work days in the month that he missed. This figure is multiplied by five since that is how many days he missed. Using this formula, John's lost income is \$550 or \$110 per day that he missed.

John only suffered soft tissue injuries in the accident and none of them are permanent. Because of this, his damages will be calculated using the low end of the damages formula. John's damages will also be low because most of his medical expenses were for diagnosis rather than treatment.

John shouldn't have any trouble collecting full compensation for his injuries, however, because his pain and suffering were confirmed by two separate doctors. He also did not have to undergo any long or unusual treatment, so the insurance company will consider his expenses to be legitimate.

## How to Win Your Washington State Personal Injury Claim

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Using a relatively low multiplier of two to three times his medical specials, John's compensation would be around \$6500 to \$10000. He also lost \$550 in income because of missing work, bringing his total compensation up to \$7050 to \$10550. The other driver in the accident was also clearly at fault, so John's settlement would not be reduced in any way due to comparative negligence.

Example #3 – Bicycle-Car Accident, hard injury, long recovery period, extensive physical therapy, lost unofficial work time, considerable disruption of daily activities

Mary is riding her bike when a car suddenly changes lanes in front of her. Mary crashes into the back of the car and falls off her bike onto the ground.

X-rays at the hospital show that she didn't suffer any fractures in her injured ankle, but she did crack her wrist, which had to be put in a cast. Mary also suffered a concussion in the crash, despite wearing a helmet and is admitted to the hospital overnight for observation just to be safe.

After seeing the orthopedist, Mary is told that she strained the ligaments in her ankle and will need to start physical therapy for it next week. She will also have to undergo physical therapy for her wrist once the cast is removed.

After two weeks of physical therapy, Mary can again use her wrist for normal, albeit light use. Two months of physical therapy have done little to help her ankle though and the orthopedist decides that additional therapy will not help. Mary stops going to therapy and does not ride her bike for over six months.

Because of her injuries, Mary missed eight days of work. The cast on her wrist also caused her to fall behind on a number of projects and she had to work three weekends in a row in order to catch up.

The cost for Mary's medical specials (i.e. medical expenses) is:

Ambulance	\$260
Emergency room	\$560
Emergency room x-rays	\$260
Hospital room	\$840
Orthopedist	\$360

## How to Win Your Washington State Personal Injury Claim

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Physical therapy (wrist)	\$320
Physical therapy (ankle)	\$1600
Total	\$4200

A formula of four to five times specials would probably be applied in this case because Mary suffered several serious injuries, including a concussion, long term ligament damage and a broken wrist. The lengthy physical therapy for her ankle, however, might reduce Mary's claim slightly because insurance adjusters are usually very skeptical about extended physical therapy. The formula could very well be pushed over five times special though simply because of how serious the accident was and the fact that Mary was knocked unconscious, despite wearing a helmet.

Mary earns a monthly salary of \$2800, and since she missed eight days of work, she is entitled to compensation of \$1064. Mary was also forced to work three extra weekends because of her injuries, and that "lost" time might be considered as well when the settlement is calculated.

Because of the severity of Mary's injuries, her potential settlement would be around \$16800 to \$21000 after multiplying her medical specials of \$4200 by four to five times. This settlement would be reduced slightly because of the prolonged physical therapy, but that would be easily offset by the long recovery time and the fact that Mary was either unable or afraid to ride her bike again for over six months. Mary's lost income of \$1064 would also be added, as well as additional compensation for the extra weekends she had to work.

Mary's total settlement would be in the \$14000 to \$20000 range, depending on her comparative negligence.

### Example #4 – Non-auto accident caused by employees, permanent hard injuries

John parks his car in a parking lot that is shared by a shopping center and an office building. During their lunch break, the company's softball team is outside practicing on the grassy area next to the building. One of the players hits the ball into the parking lot and it hits John in the mouth, breaking one of his front teeth and pushing it up and through his upper lip.

John's front tooth requires a permanent cap and he also has a small but noticeable scar where the tooth pierced his lip.

The cost for John's medical specials (i.e. medical expenses) is:

## How to Win Your Washington State Personal Injury Claim

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Emergency room	\$750
Dental work	\$2400
Doctor	\$520
Total	\$3670

In this case, the formula used to calculate damages would be in the range of three to five times medical specials because John's broken tooth and scar are both "hard" and painful injuries. The formula may even go above five specials because his tooth will require future dental work and the accident left a permanent, visible scar. This means that the value of John's claim would be in the range of \$15000 to \$25000.

John is also entitled to compensation for any lost income as a result of missing work because of the accident. He would also receive compensation for any work time he missed while going to see his dentist and doctor for treatment. All of these lost wages will be added to the compensation he receives for his medical damages show above.

Also, since John was in no way negligent, his settlement would not be reduced in any way.

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# How to Win Your Washington State Personal Injury Claim

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## Section 6: Should You Handle Your Own Claim

Now you want to be compensated, or at least to have your medical bills paid.

While most people will hire a lawyer, it is possible to handle your personal injury claim without one. You will need to have some basic information on how the accident claims process works. This information, along with some patience, will go a long way towards your goal of getting your claim paid. You will need to keep all of your records and information well organized.

Few people realize that they can handle personal injury claims themselves. For small claims, the insurance company may not want to go to court any more than you do. Some personal injury claims can be simply handled by an insurance adjuster. This adjuster normally has no legal training. The success of a claim is normally based on common sense.

There are good reasons to try to handle your own claim. Not only will you save the legal fees but you can also save on some of the costs that some lawyers charge, in addition to their contingency fees.

Another reason to handle a claim yourself is that you know all of the facts. You know what happened better than anyone else that you will be dealing with. You also know the injuries that you sustained, and what has happened since the accident. You know all of the medical treatments, medications, and side effects. You know how you feel, and where you hurt.

Of course, many people are not prepared to pursue their case themselves. Cases get complex. You may be handling personal issues arising from the accident. Or you may be concerned that the insurance company has legal experts on staff or retainer that handle cases like yours every day. And they have a strong motivation to delay or deny your claim.

That's why many people turn to an attorney if they anticipate that their claim is worth a significant amount of money.

### **How Much is My Claim Worth?**

The amount of compensation that you are entitled to is based on a few simple factors such as the type of accident, your injuries, and your medical costs. The amount an insurance company will pay for a given injury, normally falls within a fairly narrow range.

Once an insurance adjuster realizes that you know the claims process and procedures, and that you are well organized, they will normally settle your claim right away. Many times for smaller cases, the settlement offer will be roughly the same, whether you have an lawyer or not.

# How to Win Your Washington State Personal Injury Claim

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## How Do You Know if You Can Handle Your Own Claim

You need to learn the procedures of how personal injury claims are handled. You will also need to keep meticulous notes of everything that has happened, and everything from that point on. These records are your evidence in the event that you need to go to court. And the insurance adjuster knows that if you keep good, well-organized records, that they really don't want to go to court. Because they also know that juries sometimes award significant amounts.

There are times when it is a good idea to hire an experienced lawyer. When you are hurting both financially and physically, an experienced personal injury lawyer can be a strong ally.

If your injuries are very serious, then the amount of your compensation could vary greatly. An experienced personal injury lawyer can be a real benefit with these cases. The lawyer will have a good idea about how much was awarded on similar cases.

If the insurance company refuses to negotiate with you in good faith, even the threat of a lawyer may work wonders. Sometimes it is good idea to have a lawyer to help you with all of the complex legal rules. For example when suing a government entity, there are always additional rules to follow.

There are no concrete rules as to when you should hire a lawyer. Your decision will be based in part on how you feel, and how things are progressing as you negotiate with the insurance adjuster. There may come a point in time when you feel overwhelmed by the whole process, or when the adjuster starts dodging your calls and refuses to talk with you. Or maybe the insurance adjuster offers you a ridiculously low amount. You may want to hire a lawyer, or at least get an hourly consultation on your claim.

There are certain times when you really should hire a lawyer. If you are permanently disabled, or have received serious long term injuries, then you really should consider an experienced personal injury lawyer. Permanent injuries and serious injuries both normally come with huge medical bills, and long term health problems. These unknown factors in these serious cases make it harder to figure out exactly how much a claim is worth. An experienced personal injury lawyer will better be able to anticipate future medical bills, and medical problems.

For example if you have serious injuries and your medical costs are in excess of \$10,000, the range of compensation can be between \$20,000 and \$100,000. An experienced lawyer could help a great deal on a claim such as this. And any fee that an experienced lawyer will charge should easily be covered by the additional funds that they would collect. Many times the additional funds are obtained by the lawyer considering your problems, projected into the future.

## How to Win Your Washington State Personal Injury Claim

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Many people will want to hire a lawyer when their medical bills reach a couple thousand dollars. Other people are confident enough in their abilities to handle the claim themselves, and save the attorneys fees. Even with medical bills of \$10,000. Only you will know when you are no longer comfortable, and need some help.

Other reasons to hire a lawyer are, the insurance company denies liability, the insurance company denies coverage, or you are trying to collect from a government entity. There are many rules when suing governments. It is possible to sue, and win, against governments. But if you miss one deadline, or make one mistake, your chances are slim to none. More than likely, none.

# How to Win Your Washington State Personal Injury Claim

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## **Section 7: Will Your Claim Go to Arbitration or Court**

If you have a vehicle accident claim against your own insurance company, and you are unable to settle, then your policy may require you to go to arbitration. Arbitration has the same rules as small claims court, but with financial limitations. Arbitration is limited by the dollar amount of the policy. Either party may initiate the arbitration procedure. Both sides are bound by the decision. If you win, the insurance company must pay the amount of the decision, in full. If the decision goes against you, you must accept the arbitrator's decision as final.

There are no appeals to binding arbitration.

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# How to Win Your Washington State Personal Injury Claim

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## Section 8: Working with a Lawyer

So you have decided that for whatever reason, you need a lawyer. Maybe the insurance company was stonewalling you, or making ridiculous offers. Or maybe you have very serious injuries, or a complicated case. Maybe you need a lawyer that is experienced in courtroom procedures. An experienced personal injury lawyer can help you out a lot in these areas.

No matter what the reason is, you need to know how to work with, and choose a lawyer. Whether you want to hire a lawyer for an hourly consultation, or turn your case over completely, you want an experienced personal injury lawyer.

One of the best ways to check out a lawyer is to meet with them. Make sure that the lawyer you meet with is primarily a personal injury attorney. The profession of law is very specialized. You want to stay away from lawyers that have worked for insurance companies. They may side with the insurance company out of habit. You also want to stay away from new lawyers and lawyers that are jack of all trades. You want an experienced lawyer that eats, sleeps, showers and lives personal injury cases. And you want them to have worked on behalf of the plaintiff, not the insurance companies. If you are talking with a lawyer that was drafting wills, or defending criminals in court yesterday, then you are probably in the wrong office.

Another good way to find a good lawyer is to ask your friends. If they have good things to say about the lawyer, then make an appointment for a consultation. And if your friends, or their friends, have had problems with a lawyer, you will know that too.

One of the best ways to find an experienced personal injury lawyer is to ask your lawyer. For example, if you are in the real estate business and have a lawyer, ask her whom she would recommend to her mother, if her mother was in a car accident.

There are also referral services from the local bar associations. The only problem with these is that they pretty much give you the next name on the list. You have no way of knowing the experience, or background, of the lawyer.

When you sit down and talk to potential personal injury lawyers, make sure and bring all of your paperwork. Any police reports, medical papers, proof of income lost, correspondence with the insurance company, and a copy of your demand letter, if it has progressed that far. Most personal injury lawyers do not charge for the initial consultation. Make sure and ask about charges when you schedule the appointment for your consultation. If they charge for the initial consultation, you may decide to go to the next one on your list.

## How to Win Your Washington State Personal Injury Claim

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When you are looking for a lawyer, try to find one at a small firm. Large firms tend to rack up expenses. Your file can also easily get lost or shuffled to the bottom of the pile. If a large firm has 1,000 personal injury cases, how important can yours be? If the firm only has 10 cases, they will try and work the insurance company for all they can on every case.

This works to your benefit as this will increase the amount you receive. Insurance companies know that large firms tend to spend less time on each of their clients cases. They also know that it is easier to get a low ball offer accepted, at a large firm.

There are several important questions that you should ask, while you are at your consultation with the lawyer.

1. How long have you been practicing law?
2. How much of your practice is personal injury?
3. Do you represent the claimant, or the defendant (insurance companies) more often?
4. Do you have any experience with this insurance company?
5. Any experience with this insurance adjuster?

You also want to ask who will be working on your case. At almost all law firms, paralegals do most of the paperwork. And sometimes new attorneys do some of the legwork, and research. But when something important needs some attention, you want to make sure that an experienced personal injury lawyer will handle the matter. So on your first visit with the lawyer, make sure and ask which lawyer you will be dealing with directly. Also ask which lawyers will be working your file, and have primary responsibility for the case.

If other lawyers will be working on your case, or be responsible for your case, ask to meet with them too. Ask which parts of the case would be handled by which party. What tasks will the lawyer hand over to a paralegal? What will they personally handle?

A good line of communication is important between you and your lawyer. You want to make sure that the lawyer listens to you and your wishes. If you suggest a certain path, you want the lawyer to consider the path, and either take it or explain why it would be a bad idea. You will also be more comfortable if the lawyer explains things to you, in a way that you can understand.

After you talk with a lawyer they may give you an opinion on your case. They may also tell you how much they believe that your case is worth. Then you can talk about the way you would like your case handled. You can tell them that you want as much money as possible, no matter how long it takes. You may tell them that you want to keep expenses low and get

## How to Win Your Washington State Personal Injury Claim

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a settlement offer as soon as possible. You may fall in the middle somewhere, or you may even change your mind as you get into the case.

You want a lawyer that will take your case the route that you want to go. If you just want to get it over with quickly, your lawyer should respect that. But you should always respect your lawyer's opinion too. If your lawyer believes that you can get a lot more money in court, you should seriously consider listening to your lawyer. You hired him/her for their experience. Take advantage of their experience by listening to, and seriously considering, their suggestions.

Most people want to hire a lawyer on a contingency fee. A contingency fee agreement is where the lawyer represents you. Instead of you paying hourly, the lawyer gets paid after the case settles. A standard contingency fee is between 33% - 40%. If you have worked your case at all, you may want to ask about a clause in the agreement limiting the fee if the lawyer puts in less than XX hours of work.

Let's say that you are close to getting the insurance company to make a reasonable offer. You then hire a lawyer. The lawyer sends one letter. The insurance company sends an offer for the exact amount that you were asking for. With a standard contingency fee agreement you just paid the lawyer 33%-40% for writing one letter. And they had their paralegal write the letter.

If you have worked the case then you have obtained all of the documents that the lawyer would normally get. Many times these lawyers will accept a reduced contingency fee, based on the amount of work that you have already done.

Another thing you could consider is paying by the hour. You can set a limit on the hourly fee. Say you want to pay up to \$2,000 hourly. If they do not get a settlement offer after you spend \$2,000, then the agreement turns into a contingency fee agreement. If they do get an acceptable offer, then you have paid the lawyer in full and get to keep the entire offer.

Paying your lawyer hourly is another option. You may be able to get a lawyer to consult with you on your case, or just handle certain parts of the case, on an hourly basis. Understand that many times lawyers will not want to consult on part of your case. Lawyers are very cautious by nature. If a lawyer consults on part of your case without knowing the entire case, it may jeopardize your entire case. Then you would get mad and threaten to sue them. So if you have trouble finding a lawyer to comment on part of your case, this is why.

If you hired a lawyer using a contingency fee agreement, then you need to make sure that it is stated in the agreement if any of the costs will be deducted after, or before, the contingency fee is deducted. Some costs would include filing fees, hiring experts, and paying for medical records.

## How to Win Your Washington State Personal Injury Claim

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It is to your benefit to have the fees deducted before the lawyer's fee is calculated. If the lawyer refuses to make this adjustment, then you should consider taking your case somewhere else. Many contingency fee agreements include standard fees. These fees include long-distance calls, copying, and court filing fees, costs for things such as hiring experts or investigators, travel, lab tests, and expert evaluations.

You and your lawyer should go over in advance what additional costs there will be, if any. A good way to control these costs is to add a clause to the agreement limiting the dollar amount. Anything over this amount and the lawyer must get your permission to incur the costs. This will help control the costs without limiting your lawyer.

You will also want to be clear about who pays the expenses if you don't win? Or what if your settlement, or award, is less than the expenses? This is something that you should negotiate with your lawyer at the beginning. And as always, get it in writing.

As your case progress there may be questions that arise. For example you and your lawyer may need to discuss ongoing expenses, how fast your case is resolved, how much time you will personally spend on the case, and incurring major expenses. When you first talk to your lawyer tell them that you don't want to limit their work but that you want to control the expenses and the time that it takes to settle the case, as much as possible. If your lawyer balks at this idea, then maybe you should move on the next lawyer.

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# How to Win Your Washington State Personal Injury Claim

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## Section 9: Getting and Keeping Your Settlement

Once the insurance adjuster makes you an acceptable settlement offer, you need a couple of steps to make it final. Ask the adjuster to send you a letter confirming the settlement offer and terms. Send your own confirmation letter to the insurance adjuster right away and keep a copy for your records. That way, if the adjuster gets fired, or transferred, you have created a record of your understanding. Your letter simply reiterates what was said on the phone along with the dates and numbers. If the adjuster's letter doesn't arrive in one week, call the adjuster and check on it. It may have slipped the adjuster's mind, or the letter may be held up for other reasons. It may just be sitting on a desk somewhere.

A couple weeks later you should receive a form in the mail. The form will be titled Release of All Claims, Settlement and Release, or something similar. This form serves two purposes. It commits you to the settlement offer. Once you sign the form, you can seek no further damages from this accident, or at least this defendant. The form also outlines their settlement offer to settle your claim. If the numbers are correct, you will sign the form, make a photocopy, and return the form by Certified Mail. This way, you will have a copy for your records and a signature of the person that has received the original document.

The next step is to get your check. You can ask the adjuster how long it normally takes for them to process checks. This can normally take anywhere from 3 to 4 weeks as the settlement form passes through all the red tape. If you don't receive your check in 4 weeks, then it's time to call the adjuster. It may just be that the paperwork has been held up, or that they have a backlog of paperwork.

Either way, be nice when you talk to the adjuster. The adjuster has completed their job but may still help you out by checking into the problem. If the adjuster tries to brush you off or make excuses, gently remind the adjuster that the check is already overdue. Ask the adjuster where in the process the check is and who you should call, if anyone, to speed things up a little. If you are nice, most adjusters will help you out.

If after another 4 weeks your check doesn't arrive call the adjuster again. Tell the adjuster that your check has still not arrived and ask for the name, and number, of the person that is the head of the claims department.

Call the supervisor of the claims department. Give them the name of your adjuster, your claim number, the amount of the settlement, and the date you returned the form. You can even give them the name of the person that signed for the Certified Mail. Then firmly demand that they issue you a check.

## How to Win Your Washington State Personal Injury Claim

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No matter what the supervisor says, immediately send them a letter. Depending on what the supervisor says, this letter will either be demanding payment, or confirming the supervisors promise to get your check in the mail. Send a copy of this letter to the adjuster, and a copy to the supervisor. After this letter has been received, call the supervisor again and ask for the status of your check.

After 30 days, you can file a complainant with the consumer complaint division of your state insurance commission. Call the commission first to get the correct address to mail the forms to. Send them copies of all correspondence including notes on all phone calls. If you can get them to call the insurance company, a check will be mailed soon.

### **Liens on Settlement Money**

After you get the settlement money you may discover that there are liens on the funds. Liens on your settlement funds can be from many places. Any company that places a lien on your funds has to send you a notice. If your auto insurance company has paid any medical bills, they will probably want to get reimbursed. Likewise your HMO, or medical insurance company, will place liens for any medical bills that they have paid. Medicare and Medicaid will also place liens for medical care expenses that they have paid.

These expenses are supposed to be paid back in full, but many times you can negotiate a reduced payback. HMOs and health plans are accustomed to the practice of compromising a lien, and are happy to work with you on a reduced payment. This reduction can save you thousands of dollars. HMOs and health plans are willing to compromise for several reasons. They would not have received any compensation, beyond your monthly payments, had you not received a settlement. Also they only have the right to be reimbursed for the amount that you got paid for your medical bills.

You can easily argue that you received only partial payment for your medical bills and the rest was for pain and suffering. Since the dollar amount is not laid out in the settlement offer, it is hard for the company to prove that you received 100% compensation for medical bills.

One thing that you should keep in mind is that auto insurance companies will not always send the lien papers right away. But even if they arrive later, you are still obligated to pay the lien off, even if you have spent the money.

And last but not least you can't forget the government and taxes. You may owe taxes on your settlement, or a portion of your settlement. But any portion of the settlement that is for pain and suffering should be tax free. Compensation for pain and suffering is not classified as income, and is therefore not taxable. However any reimbursement for lost wages will be

## How to Win Your Washington State Personal Injury Claim

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taxable. If you took a medical deduction on your taxes, and your settlement reimbursed these medical expenses, then this portion of the funds will be taxed.

You can handle your personal injury claim yourself. You will need to learn, and understand insurance claim procedures. You will need to keep good, accurate, records. You will need to keep track of dates so you don't miss any deadlines.

Many times, a few simple letters and phone calls with the insurance adjuster, will get you a settlement offer. This is of course assuming that you keep good records, and can intelligently present your case for why they should pay.

After you receive an acceptable offer, the insurance adjuster will send you a letter confirming the offer. You will send your own letter to the adjuster confirming the offer, keeping a copy for your records. After 2 weeks you should have received the letter that the adjuster sent. A couple weeks later you will receive a Settlement and Release to finalize the offer. You will sign the Settlement and Release form and then return it to the insurance company. The insurance company will send you a check in 2-4 weeks. This is the perfect scenario of what should happen. That doesn't mean that it will happen that way.

Should you use an attorney? Only you can decide, but there are many things to consider. There are deadlines that need to be met for you to protect your rights. For example, in some jurisdictions when dealing with the government, you only have 30 days to file a formal claim. Every jurisdiction has statutes of limitations. If you let a statute of limitation pass, you will lose any chance of winning your claim.

An experienced personal injury lawyer knows these rules and statutes. An experienced personal injury lawyer will make sure that all of the rules are followed, and all of the deadlines are met. Many times, especially in the case of serious injuries, an experienced personal injury lawyer can get you more money. They can also make your life easier before the settlement, by dealing with collection agencies and medical providers. They will protect your rights.

**To Learn More About Your Personal Injury Claim and How to Get a Full and Fair Settlement, contact a Personal Injury Attorney.**