PERSONAL INJURY HANDBOOK

Straight Talk About Personal Injury Claims

MYERS & COMPANY
PERSONAL INJURY ATTORNEYS
ABOUT THE AUTHOR

Mike Myers

Mike’s been representing injured people for almost 25 years. He gets top dollar settlements because insurance companies know he’s willing to try cases.

Mike played soccer at Stanford and graduated with honors from law school.

He is AV rated by Martindale and has been named a SuperLawyer for the past 10 years. He’s one of the top personal injury attorneys in the Pacific Northwest.

Mike has recovered over $50 million for personal injury clients. He measures success by the results achieved for his clients.

Why write this handbook? Mike wants people to know their rights. He wants people to take advantage of opportunities. He doesn’t want people to overlook rights or miss out on the compensation they deserve.
Cars are getting safer. But they’re still the most dangerous technology we’ve invented. They kill and injure way more people than conventional, chemical or nuclear weapons.

The most common kind of accident is the rear-end collision. We all know the “following driver” rule. But does that mean that the following driver is always 100 percent at fault?

**Following Driver Rule... And What We Can Learn from It**

It’s the responsibility of the following driver to avoid a collision with the lead vehicle. But this duty is not absolute – it is excused when unusual circumstances exist or there is an emergency (not created by the following driver).

For instance, if the lead driver slams on his brakes and the following driver hits the lead car, the lead driver is (at least) partially at fault for the collision. The following driver can make a claim against the lead driver.

We recovered policy limits of $100,000 for a client who rear-ended the car in front of her. The car in front of her made a lane change in front of our client and then immediately slowed for traffic.

The following driver rule isn’t super-interesting. But talking about it—and the fact that there are exceptions to it—serves a good purpose. It points out that the “rules” we learn in driver’s education or think about in absolute terms aren’t necessarily black and white.
We see quite a few cases where our client has rear-ended the vehicle in front of them. Money can be extracted from these cases if the damages are significant.

**Drugs and Alcohol**

A lot of cases involve alcohol. There are basically two variations. Someone gets drunk and hurts himself. Someone gets drunk and hurts someone else.

**Recovering From Drunk Drivers**

A lot of people think that insurance doesn’t cover drunk driving accidents. And maybe it shouldn’t. But it does.

In most cases recovery is limited by insurance coverage. There are a couple of reasons for this but the biggest is that most people who cause accidents don’t have anything you could get if they filed a bankruptcy petition.

You have additional leverage with a drunk driver: a judgement against a drunk driver is not dischargeable (can’t be wiped out) in bankruptcy. But because drunks usually don’t have enough insurance or assets to compensate the people they hurt it’s important to find other sources of recovery.

**Bars and Restaurants**

Bars and restaurants can be held responsible if they let someone have too much to drink.

A bar served two drinks to a woman. She had four drinks earlier in the night. She drove the wrong way on the viaduct and hit our client. We recovered $1M from the bar.

In Washington the standard for imposing liability on bars and restaurants used to be “obvious intoxication”.

Every serious injury accident deserves intelligent and thoughtful analysis. Even if the facts seem insurmountable, there still may be a claim.
Most of these claims are the product of drunk driving. But drunks make all sorts of bad decisions. Something we see a lot is drunks attacking other customers at bars. If the bar over-served the drunk, they probably share in responsibility (and likely have insurance to cover the claim).

**Bystander Claims**

Sometimes it’s worse to witness a wreck than be in it. This is particularly true if the wreck involves a family member. Washington law recognizes what it’s like to witness a family member get hurt and allows recovery.

Bystander claims (negligent infliction of emotional distress) allow people to recover for seeing a family member get hurt or suffering right after an accident.

Many of these cases involve drunk drivers. Here are a couple of things from the MADD website:

- Client was stabbed by an intoxicated customer. We recovered a six figure settlement from the bar.
- We recovered $50,000 for a father who arrived on the scene after his daughter had been hit by a car.

Grief is not an event, but a process of experiencing the effects of a death or other loss. Grief is something that everyone experiences at some point in their lives. Traumatic grief is different and even more difficult. When someone is [hurt] suddenly and violently, grief reactions of family and friends can be intense, complicated, and long lasting. If your loved one was [hurt] in a substance impaired driving crash involving alcohol or drugs, you may feel angrier than you have ever felt and sadder than you ever thought possible.

If you see a family member get hurt or arrive on the scene right after they’ve been hurt it makes sense to make a claim.
Claims Against Friends and Family

A lot of people would rather not make a claim against friends or family.

But we ride with family and friends. And accidents are bound to happen.

The first instinct is to suck it up. But it’s important to remember that friends and family have been paying insurance premiums for years to make sure that they have coverage just in case this type of accident occurs. If you decide not to make a claim in this situation, the only one who wins is the insurance company.

Working with an attorney makes sure to minimize the impact on friends and family and maximizes benefits under their insurance policies.
Motorcycle accidents are different than other motor vehicle accidents in a few important ways:

- Motorcycles stop and handle differently than cars
- Driver perception of motorcycles is totally different than driver perception of cars or trucks
- Accident reconstruction involving motorcycle accidents is much more complex than car or truck accidents
- Witnesses frequently misperceive what happened: for example, they don’t appreciate that high RPMs mean the rider downshifted to slow down and avoid a crash

Maximizing value takes more than just a good attorney. It takes a good attorney who is experienced in handling motorcycle cases.

**No License? No Problem.**

Some people think that they can’t bring a claim if they’re involved in an accident and don’t have a valid driver’s license.

An endorsement is required to ride a motorcycle, but it isn’t required to make a personal injury claim after a motorcycle accident.
If you’re hit by a left-turning driver, it doesn’t matter whether you have a sus-
pended license or even no license. You have a personal injury claim against the driver who turned in front of you.

**Liability Waivers and Releases**

A lot of groups have members sign waivers before rides. Sometimes they want to “protect” the group. Sometimes they’re not really sure why they have members sign the waiver but it seems like the right thing to do.

Most of these forms release not only the group but also all participants on the ride. Is that really in everyone’s best interest?

Probably not. Here’s an example from one of our cases:

Wife is riding with husband. Husband turns to look at a bald eagle. Husband is still looking at the eagle when he runs into the rear-end of a garbage truck. Wife is seriously injured.

Husband carried liability insurance. He bought it specifically for situations where someone got hurt because he made a bad decision or wasn’t paying attention.

But even though he purchased insurance and paid premiums for years, his wife may not be able to collect anything because the waiver cuts off claims against not only the group that organized the ride but also all participants (like her husband).

Several riders and passengers were hurt in a group ride. There was a waiver. We proved the waiver was unenforcable and recovered policy limits. It’s possible to navigate around waivers but they shouldn’t be used.

That isn’t what anyone—except the insurance company—wants.

The solution is pretty straight-forward: Either don’t use waivers for group rides or make sure that they only release claims in excess of available insurance coverage (so people who pay for coverage can use it).
INSURANCE

We’ve talked about insurance already. But it deserves its own section. It’s a huge component of personal injury cases.

One of the biggest issues—particularly right after an accident—is getting medical bills paid.

Med Pay, PIP and Health Insurance

Med Pay is a form of no-fault insurance (it doesn’t matter who was at fault) that you find on motorcycle, homeowners, and some commercial policies.

Personal Injury Protection (PIP) is associated with auto policies. It pays for medical expenses and wage loss regardless of who caused the accident. It also covers pedestrians and bicyclists who get hit by insured drivers.

Most people think that they have only $10,000 in coverage total. Not the case. Even after $10,000 is spent on medical expenses you can recover $10,000 for lost wages and $5,000 for services you can’t perform because of your injuries. (Needless to say, many PIP adjusters don’t share this information).

Some people worry their health insurance won’t pay if they’ve been in an accident. Fortunately, that’s wrong. Health insurance will pay if there’s no PIP or Med Pay (or after PIP or Med Pay is exhausted).

Uninsured Motorist and Under Insured Motorist (UIM) coverage helps out if you get hit by someone who doesn’t have insurance or doesn’t have enough insurance.
Almost 20 percent of drivers in Washington are uninsured. Probably 50 percent more carry the state minimum coverage ($25,000). If you’re in a serious accident there’s approximately a 70 percent chance the driver who hits you isn’t going to have enough coverage.

UIM coverage also applies to hit and run accidents (hit and run drivers are classified as uninsured) and if you get hit while walking or riding a bicycle.

We live in a high-stress society. People feel like they have a license to act like idiots when they’re in their cars. Old women feel no compunction about giving other drivers “the finger” Johnny Cash style. It’s not surprising that there are a lot of road-rage collisions.

There’s a general rule that insurance doesn’t cover intentional conduct. But UIM policies are the exception to the rule. They cover road rage incidents.

A lot of motorcyclists think that since Washington law doesn’t require insurance to ride a motorcycle, they don’t need to buy it. But without liability insurance you can’t get UIM coverage. And then what happens if you’re hit by a guy who just got fired from his job or found out his wife got knocked up by the neighbor? Better safe than sorry.
Most premises liability cases involve some sort of fall. Slips, trips and missteps cause most of these injuries.

**Stairs**

Motor vehicles are the most dangerous technology we’ve ever invented. Do you know the second most dangerous technology? Stairs.

There are some accidents that just can’t be avoided. But most can. Especially on stairs. Stairs are designed, built and maintained in a very controlled environment. There aren’t very many variables or wildcards.

Here are some basic rules:

- Step nosings should be marked and slip resistant.
- Nothing should camouflage a step nosing (like patterned carpet).
- Short Flight Stairs (three or fewer risers) should be avoided where possible.
- Handrails must be secure, at the right height and the proper circumference.

When stairs aren’t safe, people fall and get hurt. There is almost always something that could have been done to make stairs safer.
Sidewalks

A lot of injuries are caused by falls on sidewalks. Most of the time it’s a trip and fall injury caused by a stub-toe (a compromised section of sidewalk that has either been raised or broken by a tree).

Usually the adjoining landowner is responsible for maintaining the sidewalk. But there are cases where the City can also be held responsible (and sometimes the City is the adjoining landowner).

The City of Seattle has a policy that requires any defects causing a height differential of .5” to be fixed.

This is consistent with the way other cities handle the problem. A lot of landowners take the easy way out and install an asphalt shim. They fail over time and the problem re-emerges. The concrete should be ground down if the height differential is less than 1”. If it’s more than 1” the sections should be replaced.

Stores and Businesses

There are all sorts of falls in stores and businesses. But most of them involve some form of slipping and falling.

There are special rules that apply for “self-service” establishments, standards for matting at places where water is tracked in, and protocols to avoid accumulation of ice on walking surfaces.

Auditorium Falls

We’ve handled a surprising number of auditorium falls. Auditoriums are unique. The overhead lighting is turned down and there needs to be adequate location-specific lighting and other cues to help people navigate stairs.

Landlord-Tenant

Landlords owe a special set of duties not only to their tenants but also to guests of their tenants. Sometimes rental agreements include attorney fee provisions so you can recover not only damages but also fees.
ACCIDENTS AT WORK

In Washington you can’t sue your employer or co-workers if you get hurt on the job. Your only option is to file a workers’ compensation claim. But it’s a whole different story if you get hurt by someone else.

Who is “someone else”? Claims can be brought against, e.g., product manufacturers, employees of other contractors working at a job-site, the driver who causes a car accident, etc.

If you get hurt by someone other than your employer or co-worker you need to file what’s called a third-party claim form. That lets the Department of Labor and Industries know you’re going after the person who hurt you.

Some people wonder why they should make a third-party claim if they already have a workers’ compensation claim open. Here’s why: Workers’ compensation only provides for (some) medical treatment and a portion of lost wages. It doesn’t provide any benefits for general damages (pain, loss of enjoyment of life, etc.). And it doesn’t provide benefits for spouses (loss of consortium).

Almost every injury at work should be reviewed by an attorney for a potential third-party claim.
Pedophiles and other abusers are predators. They maneuver into positions where they can take advantage of vulnerable people and probably won’t be reported.

Most of the time there is a two or three-year limitation on bringing a personal injury claim. Sometimes it’s longer when a child has been injured. But basically there is no statute of limitations for childhood sexual abuse in Washington. Washington has the most liberal statute of limitations for childhood sexual abuse in the country.

Washington courts have allowed cases to go forward where “the victim may know...that he or she was molested, and may even know that some injury resulted, but may not know the full extent of the injury or that the abuse might have been prevented...”.

It’s basically never too late to bring a claim. Bringing claims helps protect other people from abuse. Bringing claims changes policies.

We recently settled a case against a church where the abuse happened in the 1970s.
There are over 16,000 nursing homes in the United States. Over 1.5 million residents live in nursing homes. Almost 70 percent of nursing homes have for-profit ownership.

Accidental injuries and abuse are a big problem. And it’s just getting worse.

Reporting injuries and abuse can be tough. But it’s the first step to hold facilities accountable and make conditions safer and healthier for everyone.

Residents of nursing homes and assisted living facilities can encounter quite a few challenges:

- Falls
- Neglect
- Physical Abuse
- Psychological Abuse
- Sexual Abuse
- Fraud

Nursing homes and assisted living facilities owe their residents duties under tort, contract, and landlord-tenant laws. If they breach those duties, residents are entitled to recover damages for their injuries.

In particularly bad cases, Washington’s Abuse of Vulnerable Adult Statute (RCW Ch. 74.34) comes into play.
The Vulnerable Adult Statue increases exposure and risk for nursing homes and assisted living facilities. In addition to recovering damages for injuries it is also possible to recover litigation expenses including reasonable attorney’s fees.

That kind of begs the question: Aren’t attorney fees recoverable in every case and why are they so important? Unfortunately attorney fees are usually not recoverable in cases. In the United States, the loser typically does not have to pay the winner’s fees.

We handle most of our cases on a contingent basis so clients don’t really see the bill. But the “bill” in most nursing home and assisted living facility cases is substantial. In fully litigated cases it’s not unusual for both sides to invest over $100,000 in attorney time.

**The risk of having to pay not only for damages but also attorney fees encourages a lot more settlement and, even more important, rethinking policies and procedures to protect residents.**

Risk motivates defendants to settle. Large settlements are frequently the result of pressure exerted under the Vulnerable Adult Statute.
WHAT AND HOW MUCH CAN I RECOVER?

Here are the big categories in a personal injury case:

• Property Damage: This includes damage to your vehicle, loss of use and diminished value. Loss of use is huge when it comes to motorcycles and can be recovered even if you’re too injured to ride.

• Medical Expenses: These include both past and future expenses. You can recover the reasonable cost of treatment, not just the amount you paid out of pocket.

• Lost Income and Loss of Earning Capacity: Lost income is what you lose up until the time of trial. You have to be employed (or self-employed) at the time of the accident to recover lost income. Loss of earning capacity is a little bit different. It measures what you can’t do because of your injuries. *Even kids, unemployed, and retired people can lose earning capacity.*

• Pain: This includes pain after the accident, during the healing process, and after the healing process is complete/as good as it’s going to get. One of the most challenging things for a jury to do is put a price on pain.

• Loss of Enjoyment of Life: This is different than pain. Pain is the addition of something negative. Loss of enjoyment of life is the subtraction of something positive.

• Disability: Disability has a pretty severe connotation. In personal injury it doesn’t mean “total disability”. It means that something is different than it was before. That can include a difference in range of motion, strength, dexterity, etc.
• Disfigurement: This means that something looks different than it did before. It includes things ranging from scars to limps.

• Loss of Consortium: This is one of those claims where you can recover when someone you love is hurt or killed. Children, parents, and spouses can recover for loss of consortium. Consortium is a broad term and includes fellowship, cooperation, emotional support, love and companionship.

HOW LONG DO I HAVE TO FILE AN INJURY CLAIM?

In Washington, most people have three years to bring a personal injury lawsuit. If they don’t, the “statute of limitations” bars their claims.

But injuries to children are treated differently. We mentioned the special statute for childhood sexual abuse. And, in fact, there are different rules that apply to all claims stemming from a childhood injury (from a motor vehicle accident to a playground injury).

In most cases the statute of limitations does not start running against children until they turn 18 years old. Even if children were injured a long time ago, it may be possible to bring claims for their injuries if they are under 21 years old.

Children aren’t the only ones who get a break. It’s also possible to bring a claim if you suffered a significant disability as a result of the accident. The basic rule in Washington is that the statute of limitations is tolled when a plaintiff is disabled so that he can’t understand the nature of what would be involved in pursuing personal injury claims.

Finally, even if the statute has run on a claim against an at-fault driver, it still may be possible to bring a UIM claim. The statute of limitations for many UIM policies (since they’re contracts) is six years rather than three. Even if you’re too late to sue the at-fault driver, it may be possible to salvage the UIM claim.
AFTER THE WRECK: RULES OF THE ROAD

Here are the “rules of the road” if you’re in a wreck.

• Don’t give recorded statements to adjusters.

• Take photographs of visible injuries before they heal.

• Take photographs of property damage before it’s repaired.

• Seek medical attention as soon as possible after an accident.

• Keep in mind the insurance adjuster is concerned about one thing: settling the claim for as little money as possible.

• Even though Washington has a three-year statute for most negligence claims, don’t wait until three years has almost passed before hiring an attorney. Memories fade and the passage of time may make it impossible to serve the defendant. (And there are some claims that have a limitation period that’s less than three years.)

• Have your attorney put your UIM carrier on notice even if you “think” the at-fault driver has sufficient coverage. Some states have UIM notice provisions giving injured people only 60 days to contact their insurance carrier.

• Tell your attorney about all of your prior neck, back, or other health problems. The other side will find out about it and it’s not nearly as big a deal if dealt with up front early rather than much later.

If you have questions about what to do make sure to call us right away. We’re happy to help.
HIRING A PERSONAL INJURY ATTORNEY

Attorneys working for corporations charge up to $1,500 an hour. Statistics show that cases leading up to 3-5 day trials cost over $100,000. How does the average person compete with corporations like insurance companies?

Enter the contingent fee agreement. Contingent fee attorneys advance all the costs necessary to pursue a case and get paid a fee only if there’s a recovery.

Contingent fee agreements allow ordinary people to be able to hire attorneys with top notch qualifications so they can go head to head with corporations.

When you hire an attorney to handle a personal injury case, make sure that personal injury is the focal point of their practice. Just because an attorney handled your divorce or got you out of a DUI isn’t a good reason to hire them to handle your injury case.

Make sure the attorney you hire focuses on personal injury, is AV rated by Martindale, and is an Eagle Member of the Washington Association for Justice.
CLIENT TESTIMONIALS

“Mike was a really great advocate for my case. He was very fast at responding to my questions and got the ball rolling within days of taking it on. Both he and his staff were good communicators as well as helpful at getting answers for me. I felt taken care of as well as respected.”

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“I wanted to thank you for all of your help with my case. I really appreciate you guys sticking up for me and all of your hard work.”

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“Mike was my lawyer for a car accident case. Samantha also worked with me as well and both are compassionate, hardworking, and always kept me updated on the status of the case. I was never left wondering what was going on and there was consistent communication throughout. I highly recommend Mike and his team and would hire him again if needed.”

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“I am so thankful that I chose Mike Myers as my attorney! Mike and Samantha went beyond all of my expectations and were able to settle my case for over limits, and in a relatively short amount of time. Mike was aggressive with the other insurance carrier and wasn’t going to let them cheat me. They had great communication with me and they were always available to answer at any time!”

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“Well, there aren’t enough superlatives that can be bestowed upon Michael Myers and his talents and work that he bestows upon his clients. In my wife’s case, which was somewhat problematic, he demonstrated and used all the wonderful qualities and attributes that make him such a wonderful attorney. My Father was an attorney, and a very good one, so I have first-hand knowledge of the life of a lawyer. To top off a wonderful experience was the manner in which Michael created what I perceive a genuine friendship which I will treasure always.”
“I am very pleased that Myers and Company represented me during my first-ever personal injury that occurred over a year ago. He helped me to understand the long legal process in order to achieve the best settlement outcome from beginning to end. He used all communication methods (email, online video, phone) after my relocation to another state to keep me informed on the progress. This sudden life-altering injury was a very stressful period which led to major changes in my life. Mike and his firm were sensitive and very supportive of my needs during the entire time. I am very happy that we can finally put this incident behind us with the net funds for rehabilitation. Thank you very much Mike!”

“Mike handled a tricky case for us against the City of Bellingham, Whatcom County and the State of Washington. We were delighted with the result which far exceeded expectations.”

“I talked with 3 attorneys and decided to go with Mr. Myers. He knew exactly what to do. He’s very smart, professional and personable. Oh, and he was able to settle the case for 3x what the other 2 attorneys estimated it would settle for. Thank you Mr. Myers!”

“Working with Mike and his team through my injury claim was truly a relief, low stress and easy. The payoff was more than I thought is was going to be, and they always answered my questions quickly, professionally and thoughtfully. Thank you all.”

“Mike and his team were extremely helpful after I was hit on my motorcycle. I can’t imagine going through all this by myself and am thankful for the help of Myers & Company to get me back on my feet and help me fight for what’s rightfully mine.”