

# *Informational Article*

Landye Bennett Blumstein LLP

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Landye Bennett Blumstein LLP provides a number of informative articles to give our clients and friends general guidance regarding legal issues. These articles are not legal advice, they are strictly informational. When the need arises you should seek complete legal advice about your legal rights.

## **Personal Injury and Wrongful Death Claims**

Since our formation in 1955, Landye Bennett Blumstein LLP has provided legal advice to many people injured in accidents and to the families of accidental death victims. Severe injuries or the loss of a loved one are traumatic and difficult events. Having someone to protect their legal rights in difficult times allows victims to concentrate on the emotional and medical needs of themselves and their families. This article provides some general advice on what to do if you or someone you know suffers serious injuries in a motor vehicle accident. Similar issues arise in other types of accidents.

**What to do first.** Make sure those who need it are given proper emergency assistance. If safe to do so, move the vehicles out of traffic. Exchange information with other drivers; if there are witnesses who were not involved in the accident, it is extremely important to obtain their names, addresses and phone numbers. Later, notify your insurance company and file a report with the state motor vehicles department if the accident resulted in personal injury, death, or property damage in excess of \$2,000 if in Alaska, \$1,000 if in Oregon, and \$500 if in Washington. This report must be filed as soon as reasonably possible in Alaska, within 72 hours in Oregon, and within four days in Washington.

**Don't give statements to anyone except your insurer.** You are required to cooperate with your own insurance company. You may be asked to give a statement to its representatives. However, before you give anyone a statement, be sure you know with whom you are speaking. Sometimes, investigators from the other person's insurance company may try to manipulate your statements about the accident. If you do give a statement, ask for a copy and keep it in your records.

**The other party's insurance company may say the accident was your fault. What to do.** In Oregon, no matter whose fault the accident was, you are entitled to benefits from your own insurance company for lost wages and medical care and treatment. These are called Personal Injury Protection (PIP) benefits, and every automobile policy written in Oregon must have them. There are monetary and time limits for these benefits, but they are rightfully yours. You need to contact your own insurance company to apply for them. Similar no-fault/PIP benefits may be available, but are not required, for insurance policies in Alaska and Washington. Second, you are not required to accept the other insurance company's claim that the accident was your fault. If the accident was the other driver's fault, even partially, you may be entitled to compensation from the other driver's insurance company. Even though the accident may have been partially your fault, you may still be entitled to reduced compensation from the other driver. This law of "comparative negligence" applies in Alaska, Oregon and Washington, with some differences in application among the three states.

**Discussions about settlement without an offer do not extend the time for filing suit.** In most cases, you have only two years from the date of your accident to file a claim in court. If you wait beyond that time, your rights are lost forever and you will not receive compensation from the other driver (or the other driver's insurance company), no matter how badly you were hurt or how much the other driver was at fault. Waiting to discuss settlement until the two-year time limit is almost up can lead to a very low "take it or leave it" offer. If you settle under these circumstances, you may not receive a fair settlement. On the other hand, if you reject the "take it or leave it" offer and are near the end of the two-year limit, it may be difficult to find a lawyer who can properly file the claim in time. It's best to seek legal advice early.

**Contingency Fee Agreement.** Most lawyers handle accident cases on a contingency fee basis. The lawyers get paid a fee only if they win compensation for you. If you receive no compensation, the lawyers receive no fee.

**If the other driver is uninsured or under insured, and has no assets, you may still be able to collect compensation for your injuries.** Every insurance policy issued in Alaska, Oregon and Washington protects you from the uninsured or underinsured driver. You simply make a claim against your own insurer for those benefits. You will be required to prove the other party's fault and the extent of your injuries (sometimes in arbitration, rather than a court trial), and your recovery will be limited to the benefits in your policy. The minimum benefits are currently \$25,000 per person, \$50,000 per accident in Oregon and Washington, and \$50,000 per person, \$100,000 per accident, in Alaska.

**Are there time limits for making such a claim?** Usually, suit must be filed within two years from the date of the accident, but in certain cases, it can be much shorter. You should seek legal advice as soon as possible to determine the applicable statute of limitations. Laws concerning injuries for which a governmental body may be a defendant typically allow much shorter periods in which to file suite. Similarly, non-motor vehicle accident claims have statutes of limitations of varying length. Remember, once the statute of limitations has run, you have no right to recover damages.

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Landye Bennett Blumstein LLP has nine trial lawyers skilled in handling a wide variety of personal injury and wrongful death claims. Our experience includes automobile and aircraft accidents, construction site and maritime injuries, motorcycle mishaps, longshoremen injuries, environmental incidents, and product-related injuries.

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The article is not, and is not intended to be, legal advice. It provides a general discussion of basic legal principles. Landye Bennett Blumstein LLP provides advice only when clients request assistance on particular issues or transactions.

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