

Personal Injury 101: The Non-Attorney Guide to Injury Cases in Illinois



***THE INSURANCE COMPANIES
ARE THE REAL “AMBULANCE
CHASERS”***

By

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If you can answer YES to these six questions I may be the lawyer for you.

- 1 Do you expect to have medical bills and lost wages that total at least \$2,500?
- 2 If you were in an automobile accident, is there visible property damage to your car?
- 3 Was the accident someone else's fault?
- 4 Did you seek medical treatment promptly after the accident?
- 5 Have you followed your doctor's instructions and attended your appointments?
- 6 Did your accident happen within the past 18 months?

If you can answer YES to each of these questions, call me at 815-569-4280.

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Printed in the United States of America.

ISBN: 978-1-5323-2218-1

MDB Publications
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I wrote this book so that you can be empowered. Read it in the quiet of your own home BEFORE you hire a lawyer and BEFORE you talk to the insurance adjuster. (Hopefully, you haven't signed forms yet!) You may learn that you do not even need a lawyer to settle your claim.

FOREWORD-WAR ZONE

In the 1950's, insurance companies launched a blistering, often misleading public relations campaign against innocent injury victims. These ads were intentionally designed to inflame anti-lawsuit sentiment among prospective jurors by mischaracterizing several legitimate high profile lawsuits as frivolous.¹

Insurers have systematically targeted potential jurors with anti-lawsuit propaganda through direct advertising. These ads demonize personal injury lawsuits and were designed to turn potential jurors against personal injury victims and their lawyers.

You too may have bought in to the insurance companies' spin, "that people who make injury claims are greedy and personal injury lawyers are corrupt", until you or a family member were injured in an accident. That's what billions of dollars in insurance company advertising will get you!

In another attempt to sway public opinion, insurance companies created "grassroots" organizations to spread their message. Cloaked as concerned citizens, these "new tort reform groups" ("the insurers") paraded themselves as "ordinary Americans" who were fed up with an increasingly lawsuit driven society. The insurers looked much more sympathetic to potential jurors by masquerading as concerned middle class Americans, rather than multi-billion dollar, Fortune 500 companies.

In the late 1980s, insurance companies and big business joined forces to take the tort reform fight to another arena. They lobbied politicians to pass legislation that imposed caps on damage awards. By 1986, more than 39 states had enacted legislation to limit injured victims' rights and damage awards. This joint venture by insurance companies and big business produced a chilling effect on juries and their verdicts.

RESEARCH SHOWS THAT AMERICA DOESN'T HAVE A FRIVOLOUS LAWSUIT CRISIS

The Rand Institute for Civil Justice, one of the most respected legal research groups in America, found that only 10% percent of injured people seek compensation, and just 2% file lawsuits. The Rand Institute also discovered that since 1991, tort cases make up a mere 6% of all lawsuits filed. Other reports have shown that:

- While populations have grown nationwide, personal injury lawsuits have decreased by 21%.
- Personal injury lawsuits represent only 1.3% of all civil dispositions.
- From 1992 to 2005, jury trials in personal injury cases have seen a 52% decrease.
- A survey of judges in Texas, where tort reform support runs high, found that 86% of them felt there was no need for legislation to limit lawsuits.

The frivolous lawsuit crisis is the handiwork of insurance companies and big business. They manufactured the crisis through a relentless and well-funded public relations campaign that intentionally miss-stated the facts and outcomes of several legitimate civil cases. The frivolous lawsuit crisis is just another boogie man trotted out by big corporate interests to scare us into giving up our rights.ⁱⁱ

WHO'S LOOKING OUT FOR YOU?

A lawyer is ethically obligated to look out for your best interest; we can lose our license to practice law if we don't. An insurance company owes you nothing. They do not care about you. Sometimes the best advice you can receive is that you do not have a claim that can be won. If that is true, I will tell you. I'll also tell you when I feel you are better off handling a claim without an attorney. However, if your case passes my test and I accept it, you will receive my personal attention. I will represent you aggressively, provide you with regular case updates, and help you determine if you should settle your case or go to trial.

Attorney Involvement Increases Value of Claim

A study conducted by Allstate Insurance Company states "our analysis to date suggests that attorney involvement creates SIGNIFICANT value for claimants."

Allstate is correct. In 1999, the insurance industry performed a study to find out if people who were represented by an attorney received more money than those who handled their own claim. The study was performed by the Insurance Research Council (IRCweb.org), a non-profit organization that is financially supported by leading property and casualty insurance companies. The mission of the IRC is to advance the insurance industry's vision on matters vital to insurance companies. The IRC found that people who hired an attorney received, on average, 3½ times more money than those individuals who settled on their own.

DECEITFUL INSURANCE COMPANY TACTICS

Insurance companies are wolves in sheep's clothing; they are the real "ambulance chasers". Insurers prey on injured victims immediately after they are hurt, when they are at their most vulnerable, and before they have a chance to talk to a lawyer. For years, one major insurance company made a "Quality Service Pledge" to claimants that said "we will provide you with quality service", and further that "your claims representative is dedicated to carrying out this pledge." The goal was to keep the claimant from talking with a lawyer before settling their claim. This was part of a stated company goal to "reduce attorney involvement in the claims process to achieve a higher rate of return on settlement claims" (this means increasing insurance company profits at the expense of the injured victim). If the claimant wanted to talk with a lawyer, the adjuster would use fear tactics (i.e., *the lawyer will take one-third of the check we are about to give you just for talking to them*) to discourage them from getting reliable advice. BIG LIE. Personal injury lawyers offer free initial consultations.

Washington Supreme Court Slams Allstate Insurance Company

The Washington Supreme Court in *Jones v. Allstate Insurance Co.*, 140 Wash 2d 291 (2002), hammered Allstate several years ago for its “Quality Service Pledge.” The pledge said: “because you have been involved in an accident with an Allstate policyholder, we will provide you with quality service Your claim representative is dedicated to carrying out this “Quality Service Pledge.” Allstate’s internal rules directed the adjuster to act as the individuals claim representative for unrepresented claimants.

In *Jones*, an injured woman settled her case with Allstate based on its “Pledge” and the extensive “help” the claims adjuster provided. Later, after she learned her damages were much greater than first thought, the woman tried to return the \$25,000 settlement Allstate had paid her and reopen the claim. Allstate said “no, you signed a full release.” The women filed a bad faith lawsuit against Allstate. Allstate asked the Washington Supreme Court to dismiss the woman’s case.

The Court, allowed the injured woman to proceed with her bad-faith claim against Allstate. It referenced Allstate’s own internal policy in its decision: “Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claims.” Basically, the Court determined that Allstate’s motivation behind the Pledge was profit driven, not the best interest of the injured victim.

The Washington Supreme Court condemned Allstate’s conduct stating: “Here, Allstate’s claims adjuster’s conduct fell below the standard when she advised the Joneses to sign a release of liabilities, did not properly advised the Joneses that there were potential legal consequences of signing a settlement check and the release of all claims or refer them to independent counsel, and did not fully disclose the conflict of interest she presented.”

KNOWLEDGE IS A POWERFUL WEAPON

Even if you do not need an attorney to represent you in your injury case, you should never settle the claim without understanding “the claims process or system.” There are many trap doors that an injured person must deal with during the settlement process. Insurance adjusters are highly trained professionals who are fully aware of these trap doors. They will never tell you about them. Why? They do not want to raise any red flags that will make you see an attorney. For example, the insurance adjuster isn't going to tell you that you **might** have to turn around and give your settlement check to your health insurance company to satisfy a statutory health lien. They don't care about you. The adjuster wants to settle your case for a small percentage of what it is worth, close the file, and increase his or her next quarterly bonus check.

The Insurance Companies Will Stop At Nothing to Destroy Your Claim

Progressive Insurance Company hired private detectives to join a church in order to discredit a couple suing the insurer. The detectives worked their way into and taped support group sessions the couple attended. Progressive's Chief Executive Glenn Renwick later apologized for the use of private detectives, stating:

“What the investigators and Progressive people did was wrong- period.” Renwick, head of the third-largest U. S. Auto insurer, said in the statement. “I personally want to apologize to anyone who is affected by this.”

This conduct is despicable but, unfortunately, standard operating procedure for insurance companies. Accident victims must be ever vigilant, because these companies will stop at nothing to destroy your personal injury claim. Progressive has been sued on this matter and based upon the admission of its CEO, should expect to pay millions.

BEWARE OF THE MEDICAL LIEN “BLACK HOLE”

If any of your medical bills were paid by your employer's health care plan, the plan may require you to pay them back out of your personal injury recovery. Your “insurance” turns out not be insurance at all, but rather a “loan.” This is known as “subrogation”, and Illinois law permits it.

There are other liens that may affect your total recovery. For instance, if any of your medical bills were paid by the United States Government (Medicare, Medicaid, or CHAMPUS-“free” military care), you may be forced to pay a portion of your settlement to the Government. The insurance adjuster, your new best friend forever, will never tell you about these liens because if you know about them, the insurance company would have to give you a bigger check to settle your case.

MORE INSURANCE COMPANY DIRTY TRICKS

The claims process is a war of attrition. Here are some other schemes insurance companies use to frustrate you and make you go away:

1 **Bad Faith Delay.** Often, you will find yourself in a financial squeeze after an accident because you are unable to work and have medical bills; even if your employer has a good health plan, you still have co-pays and deductibles. The insurance company is well aware of this reality and intentionally drags its feet processing your claim. The goal is to force you into a cash flow crunch so you will become anxious and settle the claim for much less than it is worth.

2 **Request Irrelevant Information.** Insurance Companies routinely request you to provide information that is totally irrelevant to your injury; the insurance adjuster tells you they cannot settle your claim without it. The company is more than happy to wait another six weeks for you to track it down while they are earning interest on the money they are NOT paying you.

3 **Question Legitimate Medical Treatment.** I've never met an insurance adjuster who went to medical school. However, they always know exactly what type of treatment you need and how long it should last because “their computer said so.”

4 **Wrangle over Reasonable Medical Bills.** Think about it. If the insurance company shaves 5% off your claim and the millions of other claims they pay each year, they increase their year-end profit by hundreds of millions of dollars. They get richer, you get hustled.

5 **Falsify Insurance Benefits.** You have \$150,000 in medical bills. The insurance adjuster tells you that there's only \$100,000 in coverage available to pay your claim. You hire me, we file suit and “mysteriously” find an umbrella policy with a million dollars of additional coverage! Don't you think the adjuster knew about the umbrella policy before we filed suit? Of course they did. All they had to do is read their computer.

Acting Like Your Best Friend Forever and Making False Promises. Watch out for the adjuster who befriends you, shows up at your house and promises to pay your future medical bills and lost wages. This is a tactic to stop you from hiring a lawyer. (Believe me; they won't come to your house once you hire a lawyer.) Those future medical bills and lost wages? Well, they'll pay them until their computer says “too much, too much, this claim is costing us too much.”

WHAT IS A PERSONAL INJURY CLAIM?

A personal injury claim means any incident where a person has been injured due to someone else's carelessness (negligence = carelessness). The list of potentially negligent or careless acts that can cause a personal injury could fill a book. Some common sources of personal injury claims are automobile accidents and substandard medical care (medical malpractice). If your case involves an automobile accident, and the only damage that occurred was that your car was banged up, you don't have a personal injury claim – you have a property damage claim. If you sustained a physical injury and your car was also damaged, then you have both a personal injury and property damage claim.

When someone's negligence causes the death of another, this is known as a “wrongful death” claim. The law of each state differs significantly regarding what can be recovered in a wrongful death case. You need an attorney who understands the specialized wrongful death laws of Illinois.

11 Questions to Ask the Insurance Company

- 1. Will you put in writing that the accident was your insured's fault?**
- 2. Will you tell me how much insurance the person who hit me has?**
- 3. If I give you a recorded statement, will you give me a copy of the recorded statement that you already took from the person who caused the accident?**
- 4. If I sign this medical release, will you immediately forward to me a copy of everything you get using my release?**
- 5. Will you tell me how much money you have set aside in "reserve" to pay my claim?**
- 6. Will you give me copies of the recorded statements that you have taken from any witnesses?**
- 7. Will you tell me now whether there is any "umbrella" insurance coverage available to cover my claim?**
- 8. Will you tell me whether you have already done video surveillance of me?**
- 9. Will you give me a copy of any "index" information that you already have from your computer system?**
- 10. Will you give me a copy of any financial information that you may have already obtained on me?**
- 11. Will you tell me which of my neighbors you have already interviewed?**

Good luck! My experience is that information sharing with insurance companies is a "one-way street." You give to them and they don't give to you! ⁱⁱⁱ

WHAT MUST YOU PROVE TO WIN YOUR CASE?

Just because you were hurt doesn't mean that you are entitled to money. You must prove that someone else was negligent or careless and that it was their negligence or carelessness that caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you wait too long to sue, you lose. If you had an injury BEFORE the accident, then you are only entitled to be compensated to the extent it made your injury worse. In Illinois, if you in any way contributed to your injury, your award may be reduced to the extent you were at fault. For instance, if a jury awards you \$100,000 but determines you were 25% at fault in causing your injury, the award will be reduced by 25%, or from \$100,000 to \$75,000.

THE LEGAL PROCESS IN PERSONAL INJURY CASES

The first thing you need to do is seek medical care; your family doctor is a good place to start. Next, all facts (accident reports, witness statements, photographs of the cars, etc.) need to be gathered and your medical records requested. After your medical treatment has ended, you and your attorney will develop a settlement strategy and attempt to settle your case with the insurance company. Your attorney will help you analyze the insurance company's best offer and compare it to what you might get by going to trial. Of course, you must know that every case (even "obvious" cases) can be lost.

Sometimes, attempting to settle with the insurance company before filing suit is not a worthwhile pursuit. Insurance companies are notorious for using pre-suit negotiation to find out as much about you, your lawyer and your doctor as they can, and then make a lowball offer.

It is a dangerous practice to wait until the statute of limitations has almost expired to file suit. While there are legitimate reasons to delay filing suit, there is no excuse to wait until the last moment just to see if the insurance company will settle your case.

Once the lawsuit is filed, both sides engage in a legal process called discovery. Each party is allowed to investigate what the other side is going to say at trial. The defendant will be permitted to access your medical and

work history, including your income records. You may have to give a deposition under oath or submit to a medical examination by a physician of the defendant's choosing. The defendant is also subject to discovery. He will answer written and oral questions about his own background, and give sworn testimony about the incident at issue.

MYTHS YOU MIGHT HAVE HEARD FROM FRIENDS, NEIGHBORS AND RELATIVES

- If you send the careless person's insurance company a letter and ask for a reasonable amount, you will get a reasonable settlement proposal.
- If the insurance company requests a recorded statement and you refuse to give them one, they do not have to settle with you.
- All Lawyers who advertise that they handle personal injury cases have the same ability.
- The insurance company of the person who hit you must pay your medical bills as they become due.
- All lawyers charge the same fees in injury cases.
- The court system is fair and will help you get rich.
- Just because there has been an accident that wasn't your fault, there must be some insurance company out there that will pay for your bills, lost wages and injuries.
- It is a good idea for a lawyer to refer you to a doctor.
- Illinois juries are generous.
- There is a formula for determining settlement value.

ⁱ "Fact v. Fiction." TortReformTruth. N.p., n.d. Web. 23 Mar. 2013

The McDonald's Hot Coffee Case

The most famous "frivolous lawsuit" of all time is the McDonald's hot coffee case. The storyline spread by big business is that a woman spilled hot coffee on her lap while driving and had the nerve to sue McDonald's for her own clumsiness. Of course coffee is hot, and it's not McDonald's fault if you spill it on yourself, argued tort reform advocates. The case also made news because of the size of her verdict, which was reported in the millions. What wasn't reported, though, was that the entire story was false. First, the elderly woman suffered third-degree burns which required eight days of hospitalization and multiple skin grafts. Second, the coffee served to her was 50 degrees hotter than normal coffee – a complaint McDonald's had received hundreds of times before and ignored. Finally, she only sued McDonald's when her request for a \$20,000 settlement to cover her out-of-pocket medical expenses was denied. She eventually recovered only \$640,000 after the jury determined that she was 20 percent responsible for the injury.

The Drunk Driving Phone Booth Accident

Ronald Reagan borrowed lawsuit propaganda from big business during a speech. He spread the story of a man who sued the telephone company after he was hit by a drunk driver while using one of their phone booths. What he did not say was that the man, who earned less than \$7,300 a year as a janitor, lost his leg in the accident, rendering him permanently unemployed. While he did sue the drunk driver that hit him and the bar who served her, he also sued the phone company because the booth was defective and dangerous. As the car careened towards him, the booth's door locked preventing him from escaping. Witnesses saw him frantically trying to open the door. The booth had been hit and damaged by another vehicle less than 20 months earlier.

The Ladder and the Manure

Many of us have heard of the man who set up a ladder with its base in frozen manure, which eventually caused the ladder to slip and the man to fall. Tort reform advocates claimed the man sued because the ladder didn't come with a warning that it shouldn't be set up in manure; that was an outright lie. The ladder never slipped, it broke with less than 450 pounds of weight on it. The man sued because the ladder had been rated safe up to 1,000 pounds.

ⁱⁱ "History." TortReformTruth. N.p., n.d. Web. 23 Mar. 2013

ⁱⁱⁱ Benjamin W. Glass, III; 11 Questions to Ask the Insurance Company; *Five Deadly Sins That Can Wreck Your Injury Claim*. 4th ed. Tarentum: Word Association, 2008. p. 26.

THIS BOOK IS NOT LEGAL ADVICE!

The Illinois Attorney Registration and Disciplinary Committee requires that I inform you that this book is for informational purposes only and is not legal advice. I'm not your lawyer unless we both sign a written agreement for me to represent you. Please do not take anything in this book to be legal advice about your case. Each case is different, and an attorney can only give you quality legal advice after he or she has completely investigated your case.

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If you do not get my monthly newsletter, request to be added to its mailing list. You can also request it for your family and friends. They too can learn how to deal with insurance company dirty tricks, learn to find the best lawyer to handle their case, and read the “inside story” about the frivolous lawsuit lie. You can also get some practical advice about buying insurance from someone who does not sell insurance.

Just send a request by either e-mailing me at mdb5107@gmail.com or faxing me at 815-459-4075. You can also send a request by U.S. Mail to Mark D. Brynteson, 2969 Rolling Meadow Court, Belvidere, Illinois, 61008. If you request the newsletter for your family and friends, I'll send a note with their newsletter letting them know that you ordered it for them. Don't worry, I don't spam! If they don't want to get it, there's a toll-free number to call and get off the free subscription list.

ABOUT THE AUTHOR

Mark Brynteson has been representing individuals against insurance companies since 1989. He limits his practice to accident, injury and wrongful death cases. Visit his web site at www.bryntesonlaw.com. It provides a lot of information about Illinois car accident cases, settlements and verdicts.

Mark Brynteson grew up in Northern Illinois. He has a Bachelor of Science Degree in Biochemistry and earned his Law Degree from Regent University School of Law in 1989. He is the father of four, ages 16-26 and has been married to his wife Cindy for 29 years.



MY CASES AND VERDICTS

You can see a sampling of the cases I have handled during my career by visiting my website at bryntesonlaw.com. Please do not construe these results as a representation of what YOUR case is worth. All seasoned trial lawyers have won cases they should have lost, and lost cases that they expected to win. I am no different. Once a case is in the hands of the jury, it is out of my control. However, lawyers that have significant trial experience in big cases and a noteworthy record of settlements and verdicts have the advantage.