

Recovery & Resolution

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

Because the team of attorneys at Graham Lundberg & Peschel have many years of experience and knowledge of personal injury law, we are able to represent clients with highly complex cases. We want to share with you some examples of how complex a case may become and what we did to resolve them.

Borrowed Car Can Create Additional Insurance Coverage

In December 2000, a husband and wife were driving a car owned by their son down a two-lane road posted for 50 mph. A motorist fell asleep and crossed the centerline, hitting them head on. The severe impact caused our clients to be propelled head first into the windshield.

The woman was taken to the hospital by ambulance and diagnosed with forehead laceration, a closed head injury (concussion with loss of consciousness) and acute cervical strain. Subsequent dizziness caused her to fall, fracturing her ankle. The husband sustained a closed head injury and cervical, thoracic and lumbar strain, as well as a knee injury which necessitated arthroscopic surgery.

In January of 2002, our clients were in a second accident in which a driver crossed the centerline while pulling into a convenience store without yielding, resulting in a T-bone accident. Our clients' car was totaled and the wife was again taken to the emergency room. She was diagnosed with cervical strain and chest contusion. The husband was diagnosed with a shoulder impingement syn-

drome that failed to resolve with physical therapy. An arthroscopic surgery, subacromial decompression with debridement and bursectomy, was performed.

The issues facing this couple were what injuries were caused by each accident, which necessitated an apportionment or segregation by their physicians, and what insurance coverage was available to fully compensate them.

Because they were driving their son's car, which was insured by Allstate, that was deemed to be the primary coverage, which was \$10,000 PIP (personal injury protection) and \$100,000 UIM (underinsured motorist) coverage. Our clients personally had coverage

through Safeco, which consisted of \$35,000 PIP and \$100,000 per person UIM which was secondary to Allstate. Both tortfeasors had only liability limits of \$25,000/50,000. Fifteen months after the first accident, the liability carrier for the first accident tendered the occurrence limits of \$50,000 and the couple made an uninsured motorist claim with Allstate and Safeco. By that time the wife had

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Graham Lundberg & Peschel—Attorneys at Law
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Why We Closely Follow the Patient/Client Injury Status

Mr. Hoglund represented a client who had been involved in a multiple vehicle accident in 1998 and who first contacted him in 1999, initially more concerned with the injury claims of his two daughters than himself. When one has a claim with the Federal Government, the injured person is required to file a timely claim for damages. This case involved an accident with a driver in a U.S. Government vehicle. He thought at the time his own claim was worth less than \$50,000, and he had filed his own federal tort claim. This client presented to his physician in mild discomfort, but he was still able to maintain his normal lifestyle and to continue working full time in his capacity as an elementary school principal. He generally denied any significant physical problems and only complained of back and arm pain, which had been treated conservatively. He had also used a TENS unit. No doctor had mentioned surgery to him.

It is common practice for a plaintiff attorney to state a high amount of damages in federal tort claims to cover the eventuality of a person's condition becoming worse, but, as you will note in this case, close attention needs to be paid to the client's ongoing status. Regular conferences were held with the client, tracking his condition and how it was affecting his total life pattern.

By spring of 1999 plaintiff amended his claim to \$1.25 million, due to his physician recommending laser back surgery and the increasing medical bills. Ulnar nerve damage was diagnosed as well, and disk revision surgery was suggested. The client had undergone increased physical therapy and was taking regular pain medications, and he was now dealing with constant back pain. However, he continued to work full time and only cut back slightly

in his involvement with church and his children's activities.

A year later plaintiff again amended his claim for \$2 million, based on soaring medical bills. By this time he had undergone a number of serious medical interventions, including discectomy of L4-L5 and additional emergency repair surgery due to a spinal leak. Because of continued degenerative back pain unalleviated by facet blocks he was referred to another neurologist, who recommended further surgery, a microdiscectomy of L3-L4, and a laminectomy of L4-L5 and L5-S1. These were performed in October 1999. He continued with interventional pain therapy throughout the rest of 1999 and into 2000. In 2000, a myelogram and a discogram were suggested, the results of which prompted his neurosurgeon to recommend spinal fusion at the L3-L4 level, his fourth surgery, done in June 2000.

In 2002, after two more years of

continuing pain, therapy, injections, and numerous evaluations, plaintiff filed the final amendment to his claim for \$5 million, based on the now disabling nature of his injury and the fact that multiple back surgeries had left him unable to work full time. His medical bills now totaled more than \$200,000, and his back was still not stable. He went to a third neurosurgeon, who determined he needed yet a fifth back surgery involving fusion of L3-L4 and L4-L5.

The judge presiding in this case observed that in his amended claims plaintiff had clearly stated that long-term care and disability issues were still being evaluated and were not fully known. The judge ruled that the statutory amendment exceptions had been met, and, based on the evidence presented, he awarded a multi-million-dollar verdict to the plaintiff for damages, and awarded plaintiff's wife half a million dollars for loss of consortium.

The Many Challenges of Multiple Accidents

Graham Lundberg & Peschel has represented many clients that have been involved in more than one accident. Recently we resolved cases where we represented a young woman who was involved in two motor vehicle accidents, one on March 26, 2001, and another one on June 18, 2002. The young woman was still treating for injuries from the first MVA when the second MVA happened. To top it off, the first MVA consisted of two tortfeasors, or wrongdoers, thus there were two third-party insurance companies to deal with, and the second MVA happened while she was on the job

so there was a Labor and Industries claim. She hired Graham Lundberg & Peschel to sort out the situation. We were able to get comparative fault determined between the two tortfeasors on the first MVA. We then had the treating doctor apportion our client's injuries and treatment between the two MVA's. With that we were able to get the medical bills paid under the appropriate first-party insurance and resolve all third-party claims. Many times in the multiple accident situations it is best to have an attorney so that fault and apportionments can be handled as the case progresses.

Multiple Attorneys

There are motor vehicle accidents which invite multiple plaintiff personal injury attorneys to be involved in a case where there are multiple injured claimants. The question then becomes whether each injured claimant should have his or her own separate attorney. The answer depends largely upon the circumstances surrounding the accident.

Two-Vehicle Collision — Fault-Free Driver:

In the event that there is a two-vehicle collision and one vehicle has multiple injured claimants, the first question will usually be to determine if one driver is 100% fault-

free. If the answer is yes, a single attorney may be able to represent all injured persons that were riding in the fault-free vehicle. All injured persons will usually have to consent to the joint representation, and they should be advised of other potential conflicts of interest that can arise. However, having one attorney can speed up legal claim resolution and expedite the health-care providers' contact with counsel, as only one attorney will be involved versus many.

Multiple Vehicles and Multiple Impacts — Disputed Fact Scenario:

If a claim arises involving three

or more vehicles and the facts of the accident are hotly contested, this will be a "red flag" indicating that each injured party may need his or her own attorney. Our office recently represented clients involved in a five-car rear-end collision where it was necessary to have separate legal counsel for our client, as well as separate legal counsel for the driver of the vehicle in which our client was riding.

These cases have a higher probability of being litigated and rarely settle without filing a Summons and Complaint at the courthouse.

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exhausted Allstate's PIP coverage and Safeco PIP took over payment for treatment.

As a result of the first limits settlement, both Allstate and Safeco waived any subrogation claim for reimbursement of PIP benefits. Approximately 18 months after the second accident the husband was offered and accepted the \$25,000 liability policy limits of the second tortfeasor and made yet another UIM claim, this time only with Safeco. Safeco made only a token offer and he has requested UIM arbitration. The wife's claim was settled for less than limits with the third party carrier.

In this case, the husband and wife were fortunate only in the fact that they were able to stack the PIP coverages for the first accident. The common law and policy language of Allstate and Safeco result in the denial of stacking (recovering from one source and then another in addition) in UIM cases. Thus,

both clients were tendered, and they accepted, their \$100,000 UIM policy limits from Allstate, but they could not recover from Safeco under the UIM coverage. On occasion, sometimes policy language allows the injured insured to recover from both UIM policies in a pro-rata

manner, but very often only to the top of the higher of the coverages. It is, of course, critical that the injured persons have legal assistance to determine what coverages apply and to pursue and recover benefits or settlements from the multiple applicable insurance coverages.





We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Our Attorneys

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 Angela DeWig
 Kenneth Barry Dore
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 Thelma James
 Heather Kelly
 Martha McDonald
 Becky Moilanen
 Lucinda Pieczatkowski
 Tom Reger
 Paula Rhyne
 Krystal Starwich
 Celine Cloquet Vogler

CONVENIENTLY LOCATED

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn 253-931- 1111**
- Bellevue 425-827- 1111**
- Burien 206-241- 1708**
- Everett 425-252- 1111**
- Federal Way . . . 253-946- 1111**
- Gig Harbor 253-853- 5005**
- Lakewood 253-274- 1111**
- Lynnwood 425-775- 1111**
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- Olympia 360-786- 1717**
- Port Orchard . . . 360-876- 5005**
- Puyallup 253-845- 1112**
- Renton 425-235- 1111**
- Seattle 206-448- 1992**
- Tacoma 253-627- 7701**

Or Call Toll Free

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800-422-4610

South Puget Sound area including Pierce, Kitsap & Thurston Counties
800-273-5005

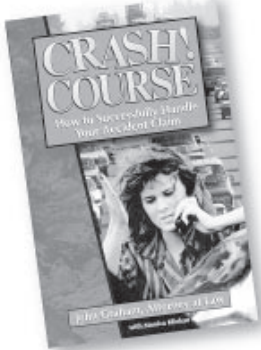
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