

# Recovery & Resolution

A LEGAL NEWSLETTER FOR  
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

## How Insurance Companies Minimize Payouts on Claims by Blaming Innocent Victims

*By Tara Eubanks, Attorney*

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Insurance companies have made a common practice out of placing blame or fault for an automobile collision on the innocent party. Washington law allows for "comparative negligence," or apportionment of fault between parties to a collision based on the circumstances, where the evidence supports such a finding. However, some insurance companies are saving millions of dollars by placing blame on innocent victims where the evidence does not support a finding of comparative negligence.

The ultimate goal of the insurance industry is to reduce the amount of money that it pays out on claims. When comparative negligence is claimed the ultimate payout on the claim is reduced by the percentage of fault allocated to the victim. Thus, it is becoming more and more common for some insurance adjusters to find a small percentage of fault on behalf of the victim of an auto collision even though the evidence may not support such a finding.

Recently, a King 5 news brief explained how insurers make a profit by placing blame on the victim in an automobile collision.

Two examples of this tactic were outlined in the King 5 news coverage. First, a 17-year old girl was killed in an automobile collision in March 2001 when she was coming home one night from a non-alcohol school party. At the same time, two schoolmates, who had just left an alcohol fueled party, were coming from the opposite direction. The two schoolmates were driving their cars side by side on a two lane road at speeds up to 70 miles per hour. The young girl did not see them until it was too late and there was a head-on collision.

When the girl's family brought a lawsuit

against the young drivers, Allstate Insurance Company submitted a report from a crash expert arguing that the girl had three seconds to evade the wrong way vehicle and might have lived if she reacted more quickly.

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**Plan to Attend This Free Educational Seminar...**

**Successfully Managing The Latest Insurance Company Tactics**

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# Ever Had Your Bills Reduced?

By Sean A. Ayres, Attorney

**H**ave your bills ever been “reduced” by a PIP carrier? Through the use of out-of-state practitioners, computerized databases, and “Audit/Utilization Review Companies,” many first party insurers are routinely discounting payment of PIP health care benefits. As advocates for your patients it is our obligation to challenge these actions by insurers to limit their duty to provide contracted PIP coverage.

Our firm recently represented a young gentleman who was injured in the “typical” rear-end collision. Our client suffered strain/sprain injuries to his neck and back and sought treatment with a chiropractor and massage therapist. All was well (the PIP carrier began paying for collision related care) until the carrier had continuing billing “reviewed” by a chiropractor licensed only in the State of Georgia. This “review” resulted in the PIP carrier reducing payment to the chiropractor and massage therapist by approximately 50%.

Fortunately, we were successful in convincing the offending carrier that such practice improperly reduced our client’s benefits, and the reduced billings were then paid in full by the carrier. Insurers are required to comply with the WAC’s, which can be used to enforce carriers’ obligation to pay. For instance WAC 284-30-395 (2) provides that:

*Within a reasonable time after an insurer concludes that it intends to deny, limit, or terminate an insured’s medical and hospital benefits, the insurer shall provide an insured with a written explanation that describes the reasons for its action and copies of pertinent documents, if any, upon request of the insured. The insurer shall include the true and actual reason for its action as provided to the in-*

*surer by the medical or health care professional with whom the insurer consulted in clear and simple language, so that the insured will not need to resort to additional research to understand the reason for the action. A simple statement, for example, that the services are “not reasonable or necessary” is insufficient.*

Dogged determination, a well placed phone call, or a pointed letter challenging the carrier’s

decision to reduce or terminate benefits can go a long way towards helping our clients and your patients. There is a definite trend towards a widespread use of the practice by auto carriers to limit or reduce first party benefits. The attorneys at Graham Lundberg & Peschel recognize these tactics, advise and warn our clients accordingly, and litigate aggressively when these attacks occur.

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## South Sound Paralegal Spotlight

**A** team of legal professionals working together to advocate for the injured while recognized in the community as providing the highest level of service.” The foregoing mission statement is exactly what you will find when you work with our outstanding paralegal staff in the South Sound offices of Graham Lundberg & Peschel. Judy Hanson-Earle, Patti Cryder, and Patricia Green are our exceptional paralegals in Tacoma and Port Orchard.

Judy Hanson-Earle has been a continuing inspiration to our Tacoma office since joining the firm in 1998. Her attention to detail is to be envied. The attorneys rely on her cheerful and diligent work ethic, and her dedication to our clients’ full recovery. In Judy’s spare time she enjoys reading, camping/RVing, movies, and time with her family and friends. Besides being a hard worker, Judy is also fun to work with. She always greets you with a smile.

Patti Cryder works in our Port Orchard office. She has been with GLP since 1999. She keeps the attorneys on their toes with her effective management of cases.

Always on top of things, Patti really gets to know all of our clients. They feel comfortable speaking with her and know she is there to help. Patti loves gardening, camping, shopping, and, of course, spending time with her best friend and husband, Greg. Patti’s dedication to excellence and great sense of humor make her a joy to work with. She sets the standard.

The newest member to our South Sound paralegal staff is Patricia Green. Patricia brings with her 25 years of experience in the legal profession, most of which is in plaintiffs’ personal injury work. She is dedicated to working on the plaintiff’s side. She states, “I refuse to work for any defense attorney, since I am dedicated to helping the injured.” Joining our Tacoma crew, she will definitely be an asset to the South Sound offices of GLP. In her down time, Patricia enjoys river kayaking, hiking, camping, traveling and reading. And, of course, she loves to spend time with her three terrific kids who also live in Western Washington. We welcome Patricia to our outstanding paralegal team in the South Sound.



## How Insurance Companies Minimize Payouts on Claims by Blaming Innocent Victims, continued

Allstate Insurance Company was placing fault on an innocent victim who lost her life as a result of this collision.

A second example given in the King 5 brief was of a driver traveling through an uncontrolled intersection with the right of way. While moving through the intersection he was struck by an uninsured driver who received a ticket for failing to yield. The man's insurance company, State Farm, settled with him but cut his claim by 25%, the amount State Farm claimed he was at fault. State Farm argued that because

of visibility and the position of the damage on the two cars, he could have done more to avoid the crash. When this man later took his case to Small Claims Court a Judge ordered State Farm to pay 100% of his damages.

This tactic is used by many insurance companies to reduce payouts on claims and more often than not is unsupported. If your patient is being partially blamed for a collision it is very important that he or she contact an attorney to discuss whether there is sufficient evidence to substantiate a claim of comparative negligence.

## Did You Know?

Graham Lundberg & Peschel, P.S., Inc. successfully handles traumatic brain injury cases? Brain injuries can result from two primary mechanisms of injury in an automobile collision, construction accident or other trauma:

1. Contact either from an object striking the head or contact between the brain and the skull; or
2. Acceleration/deceleration as a result of the unrestricted movement of the head and the brain within.

The structural changes to the brain are typically widespread damage to axons and blood vessels, as well as acute subdural hemorrhage. Primary injuries from a contact related injury often include skull fractures, contusions of gray matter, and lacerations of brain tissue. Primary injuries from an acceleration/deceleration injury typically involve shearing injuries (diffuse axonal injuries) and intracerebral hemorrhages. Often overlooked symptoms in either mechanism of injury are dizziness, seizures and hearing loss.

Traumatic brain injuries require that our clients treat with multiple health care providers, and the road to full recovery is often complicated and long. A skilled and experienced attorney that understands traumatic brain injuries is critical to helping your patient make a full recovery under Washington Law from such an unfortunate injury.

Our firm has the experience to properly evaluate and resolve traumatic brain injury cases. Our firm works with many of the top neuropsychologists in the Puget Sound region and we have a reputation for obtaining good results for our clients that have had the misfortune to sustain or to suffer from brain injuries through no fault of their own.

Our attorneys and staff have worked as a team to advocate for persons with traumatic brain injuries. Our firm handles all aspects of traumatic brain injury cases from beginning to end, including investigation, working with the appropriate experts, trial preparation, litigation and resolution.

## SUCCESSFULLY MANAGING THE LATEST INSURANCE COMPANY TACTICS

Graham Lundberg & Peschel welcome you and your office staff to attend a **FREE** Educational Seminar.

Join us in a discussion regarding:

- **WAC Compliance**
- **Apportionment of Fault**
- **Comparative Negligence**
- **Audit & Utilization Review Companies**

**This is one seminar you cannot afford to miss! Seating is limited so sign up today!**

Thursday, **August 24**  
Everett – Holiday Inn

Wednesday, **August 30**  
Tacoma – La Quinta Inn

Thursday, **August 31**  
Bellevue – Red Lion Bellevue Inn

Thursday, **September 7**  
Port Orchard –  
McCormick Woods Country Club

Thursday, **September 7**  
Renton – Holiday Inn

Wednesday, **September 13**  
Tacoma – Holiday Inn Express

Thursday, **September 14**  
Seattle – Best Western Executive Inn

Enclosed is an RSVP form. Plan to attend this informative seminar!

- All Seminars: 12:30 – 2:00 pm
- Complimentary Lunch Will Be Served
- Doctors of Chiropractic, Massage Therapists, and Physical Therapists will earn 1.5 CE credits
- Registration is limited to four attendees per office





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.

### 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
- Lacey**.....360-786-1717
- Lakewood** .....253-274-1111
- Lynnwood** .....425-775-1111
- Marysville** .....360-658-1111
- Port Orchard** ..360-876-5005
- Puyallup** .....253-845-1112
- Renton** .....425-235-1111
- Seattle** .....206-448-1992
- Silverdale**.....360-876-5005
- Tacoma** .....253-627-7701

*Or Call Toll Free*

North Puget Sound area including Island, Skagit, King & Snohomish Counties  
**800-422-4610**

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

or visit us online...  
[www.glpattorneys.com](http://www.glpattorneys.com)

#### Attorneys

- John M. Graham
- Scott F. Lundberg
- Brian J. Peschel
- Kenneth B. Golden
- Cydney Campbell Webster
- John D. Webber
- Sean A. Ayres
- Jason G. Epstein
- Tara L. Eubanks
- Jin K. Lien
- Carrie D. Umland
- Rodney G. Zerr

#### Paralegals

- Patricia Clanton
- Patti Cryder
- Leslie Gesterling
- Patricia Green
- Judy Hanson Earle
- Lorna Holland
- Maya Jenkins
- Danielle Pugliese
- Grace Stephens
- Heather Webb

#### Administration

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- Jessica Holman
- Lap Huynh
- Heather Kelly
- Kevan Keshvadian
- Ann Maki
- Lindsey Martin
- Becky Moilanen
- Martha McDonald
- Charles Quackenbush
- Melanie Shotts

## We Rewrote the Book!

# "Crash Course 101"

The 4th Edition of

"Crash Course" is Here!

by John Graham, Attorney at Law



In the North Sound area call (800) 422-4610 for your complimentary copy.

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*We Provide the Highest Level of Service.*

**Free Consultation: 1-800-422-4610 | Visit our Web site: [www.glpattorneys.com](http://www.glpattorneys.com)**



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