
COMMON INSURANCE COMPANY ARGUMENTS

Excuses used by insurance companies to avoid paying a fair and reasonable settlement.

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Plaintiff - also known as the claimant, is the party who initiates a lawsuit (also known as a cause of action) in court. In personal injury cases the plaintiff is the injured party.

EXCUSES USED BY INSURANCE COMPANIES TO AVOID PAYING A FAIR AND REASONABLE SETTLEMENT.

If you have been injured in a car accident insurance companies may try to defeat or diminish the value of your claim with a laundry list of arguments. Here are just a few.

Blaming It The Condition of Your Vehicle.

- The plaintiff's vehicle was not equipped with a headrest, seatbelts, rearview mirror, or other safety devices and it is plaintiff's responsibility to provide his vehicle with such devices.
- Seat belts or other safety devices were available in the vehicle but not used by plaintiff.
- There were equipment defects in plaintiff vehicle such as: the tires were bald, brakes were not working, tail lights not working, turn signals not working, etc.

Using Your Medical History Against You

- The plaintiff had hearing or vision problems and wasn't wearing

glasses or hearing aid.

- The plaintiff had other physical defects, i.e., epilepsy, headaches, sickness, etc., which impaired driving ability and perception and reaction time.

Using Your Perceptions/Recollections Against You

- The plaintiff didn't notice the defendant until impact or immediately before impact and therefore was not paying attention.
- The plaintiff's recollection of time of day, accident timing, speeds, and distances are grossly inaccurate and indicate inattentiveness or incompetence in driving and at the very least diminishes his credibility.
- The plaintiff exaggerates the defendant's speed and other facts surrounding the accident which diminishes his credibility and makes him an unreliable or unbelievable witness.
- The plaintiff has difficulty describ-

ing events surrounding the accident in detail

Making You The Bad Guy & Blaming

You For The Accident

- The plaintiff had warning of danger within a sufficient time to avoid the accident if he were paying attention.
- The plaintiff could have avoided the accident if he were not exceeding a safe speed for the road/weather conditions.
- The plaintiff made an unnecessary and unexpected stop.
- The plaintiff made an unsafe lane change without warning.
- The plaintiff gave no stop or turn signal.
- The plaintiff was backing up under circumstances and/or at a location where a reasonable person wouldn't have anticipated same or where it was difficult for defendant to see same.
- The plaintiff was not at/in the intersection first.

- If the plaintiff and the defendant in the intersection at same time, the plaintiff was to the defendant's left, exceeding the speed limit, or was inattentive.
- The defendant was acting as any "reasonable person" would have—safe speed for conditions and therefore was not negligent—defendants actions were not a probable cause of the accident.

Shifting The Blame to Some Other

Cause

- An act of God or unknown person was responsible for the accident.
- The accident was “unavoidable.”
- There was an “emergency” that excused the defendant’s negligence.

“Nobody Knows For Sure”

- No independent witness was found who could corroborate the plaintiff's version of the accident.
- A witness cannot be found (plaintiff, not defendant has legal duty to prove by a "preponderance

of the evidence" each element of his case.)

- The witnesses dispute the plaintiff's version of the facts or substantiate the defendant's version.
- The physical evidence (lights, brakes, tires, etc.) was lost and it was necessary to have it examined by an expert to substantiate the plaintiff's version of the facts.

Mistakes

- The investigating police officer made errors in his report or erroneous conclusions that dispute the plaintiff's version of accident.
- The plaintiff did not obtain the services of an expert to substantiate the negligence of the defendant.
- The police was not called to the scene (inferring that it was just a minor accident).

Claiming That You Are Not Really Injured and/or Minimizing Injuries

- There was no complaint of pain at scene of accident by plaintiff.

- There is nothing in the police report to indicate that the plaintiff complained of pain at the accident scene.
- There were no physical signs or injury at scene of accident like cuts, bruises, etc.
- The plaintiff did not request an ambulance.
- The plaintiff did not go to the emergency room on the day of the accident or in the day following the accident.
- The plaintiff told the defendant or other people at the scene that he felt "Ok."
- The plaintiff made a statement to the insurance company that he was not injured in the accident.
- The plaintiff received no treatment for several days following the accident.
- There is no medical opinion substantiating medical causation between the accident and the plaintiff's physical or subjective complaints.
- Shortly after the accident, the

plaintiff's physical/health condition returned to "normal" i.e. what it was prior to the accident

- The plaintiff's complaints to his doctor were minimal.
- According to medical records the plaintiff exaggerates complaints related to the accident.
- According to medical records the plaintiff's complaints to his doctor were bizarre, exaggerated, and lengthy.
- According to medical records the plaintiff's complaints to one doctor differ from his complaints to other doctor(s).
- The plaintiff had full range of motion at the medical examination.
- The plaintiff was observed moving normally and without pain.
- The plaintiff's family doctor's opinion is that the injuries are minimal. The doctor did not prescribe physical therapy or any other treatment.
- The plaintiff did not see his regular doctor again.
- The plaintiff's injuries are totally "subjective". i.e., no indication of

injury from x-rays, orthopedic tests or observation.

- The plaintiff received minimal treatment for a minimal time period after the accident.
- The plaintiff saw a chiropractor after the accident and not a "real" doctor (i.e., M.D.)
- The plaintiff only received chiropractic care and massage after the accident.
- The plaintiff has a psychological condition instead of an injury.
- The plaintiff is malingering, or the plaintiff's subjective complaints are not supported by objective findings of injury.
- The plaintiff was examined by a doctor recommended by the insurance company ("independent" medical exam) soon after the accident and was found to be uninjured and not in need of any treatment.
- The plaintiff had a chronic injury or condition as documented in the past medical records or she has unrelated medical problems as

such as arthritis or congenital.

Minimizing the Severity of the Accident

- The property to damage to either or both vehicles involved was minimal.
- The plaintiff's vehicle was equipped with shock-absorbing bumpers, headrests, seat belts, which made impact injuries impossible or improbable.
- No other persons involved in accident had injuries.
- The defendant claims he was only going 5 mph or less.
- The damage repair estimate shows only \$1,000 of damage to plaintiff's vehicle.
- The plaintiff's airbags never deployed so the forces had to be minor.
- The defendant's airbags never deployed so the forces had to be minor.

Using Your Medical History Against You

- The plaintiff made errors in recalling his medical and/or employment history to the insurance company which can be "discovered" by defense during litigation.
- The plaintiff had prior complaints of pain to the same area of his body before the accident.
- The plaintiff received medical treatment to the same areas of his body before the accident.
- The plaintiff had seen a chiropractor or massage therapist before the accident.
- The plaintiff had a subsequent injury, which was the cause of continual problems instead of the accident in question.
- The plaintiff had no complaint of pain at the physical examination.
- The plaintiff received mental health counseling or therapy before the accident so perhaps his complaints following the accident are psycho-somatic.

Minimizing Financial Impact Caused by Your Injuries

- The plaintiff's doctor did not recommend time off of work yet plaintiff took time off work.
- No doctor has stated that the plaintiff would lose work time in the future.
- The plaintiff had a poor attendance record at work prior to accident.
- The plaintiff would have been terminated, on strike, or laid-off even without accident.
- The plaintiff had no job at the time of the accident and can't substantiate that he was applying at various places.
- The plaintiff's earnings (W-2 and tax records) indicate a smaller earnings history than he has claimed.
- The plaintiff was paid in cash for prior employment and can't document his past earnings and/or has no tax returns.
- The plaintiff's employer has no official record (i.e., W-2) or other means to substantiate plaintiff's employment.

Pulling Out all The Stops – Other Common Defenses

- The cost of treatment was excessive and the period during which plaintiff was treated was excessive in light of the “standard” or “customary” charge for such services.
- The injuries should have healed within 3-6 mos., so any treatment after that is excessive or unnecessary.
- The plaintiff went to work contrary to his doctor's advice and thereby aggravated his injury and/or caused prolonged period of disability and/or treatment.
- The plaintiff's doctor no longer in area or otherwise unavailable.
- The plaintiff allowed the "Statute of Limitations" period to expire, thereby forfeiting possibility of recovering anything for his claim.
- The plaintiff was partially at fault and should recover less under the rule of “Comparative Fault.”
- Plaintiff has history of filing lawsuits for the purpose of collecting

compensation.

- The plaintiff has a history of mental illness or emotional problems making him unreliable.

There are dozens of other arguments that insurance companies commonly use to avoid paying a fair and reasonable settlement for your injuries. It is the insurance adjustor's job to find as many of these defenses and arguments as possible for the limited purpose of defeating or minimizing your claim. He will question you very carefully. It all starts when the adjustor wants to "take your statement". Once you give a statement, and provide any information that might support one or more of these "arguments" it can be very, very difficult to later change the insurance company's mind – even if their argument is totally untrue! Information you give to the insurance company early on in the claim can cause irreparable damage later on. Therefore, be very careful when speaking to the insurance adjustor!

ABOUT THE AUTHOR

CHRISTOPHER M. DAVIS

Washington attorney Christopher Michael Davis has been representing individuals in accident cases and against insurance companies since 1994.

In 2006, he was named a Rising Star Attorney by Washington Law & Politics magazine (this recognition is given only to the top 2.5% of lawyers age 40 and under in Washington State). In 2007, Washington Law & Politics named Mr. Davis a Super Lawyer (the top 5% of lawyers in Washington). Mr. Davis speaks at Continuing Legal Education seminars on topics related to personal injury. He teaches and instructs other lawyers in Washington State on topics such as jury selection, proving damages and developing winning trial techniques.

Mr. Davis has been licensed to practice law in Washington State since 1993. He has obtained millions of dollars in verdicts and settlements for his clients. Mr. Davis is a member of numerous professional organizations, including the Washington State Trial Lawyers Association, American Association for Justice, and the North American Brain Injury Society.

If you believe you or a loved one has been wronged, contact Mr. Davis today for a FREE, no obligation consultation at 206-727-4000.

Davis Law Group, P.S.

The personal injury attorneys and trial lawyers at the **Davis Law Group, P.S.** are dedicated to protecting your interests and handling your case with personal attention, aggressive advocacy, professionalism, and compassion.

We have been successfully representing injured people, car accident victims, and wrongful death cases in Washington State for almost 15 years. We understand that sustaining traumatic and life changing injuries is emotionally devastating. We strive to balance this concern with the unique and rigorous demands of the legal system. We understand that the selection of your personal injury attorney is an important decision, and which may have far reaching consequences.

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