

*A consumer information product of Ches Crosbie Barristers Accident and Injury Law*

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*No Case is Settled Until it's ...*

# SETTLED RIGHT

WINTER 2010

## What is my case worth?

This is a natural question for personal injury clients to ask and one that accident and injury lawyers often hear. Unfortunately, there is no simple answer in most cases, and if there were a simple answer, then the client probably would not need a lawyer. Every case is different and many factors influence the value of a case. Some of the main factors include these:

- In a traffic accident case, how clear was it that the other driver was at fault?
- How serious are your initial injuries?
- How long were you unable to work?
- Were you hospitalized, and if so for how long?
- Are any of the injuries permanent, or indefinitely persisting?
- Are there issues of contributory negligence, such as fail-

ure to wear a seatbelt in an auto case?

- Will the injuries interfere with your capacity to earn a living?
- Will the injuries interfere with your capacity to maintain a household?
- Are the injuries so severe that personal care will be required?
- Are there medical conditions which pre-exist the accident and which may subtract from the claim that the injuries and ongoing limitations are wholly caused by the accident?

A great personal injury lawyer takes all of these factors and more into account in determining the settlement value of your case.

As you can see, there is no simple rulebook for determining the worth of a personal injury case. *(cont'd on p. 3)*

## how to

### LOSE YOUR AUTO ACCIDENT CASE

It doesn't matter how good your case is, if you lie to your lawyer or the insurance company about past injuries and accidents, the judge is going to make sure you lose.

Remember, the insurance companies have access to vast databases about your private life, including past lawsuits, claims and injuries. Honesty is the best policy. Tell your lawyer all about past claims. Then he can deal with it. The worst thing is for your lawyer to be the last one to know!

**Breast Cancer Testing class members Beverly Green, Carol Anne Tricco, Maureen Kenny and Darryl Howell enjoy a much needed lunch break during the February 2, 2010 settlement approval hearing before Justice Thompson at the Supreme Court Trial Division. Justice Thompson reserved his decision for several weeks.**



## Safe Driving Contract Worth Considering for Young Drivers

All of us who have had teenagers in recent years have been thankful for the various restrictions placed on new drivers such as curfew times and zero tolerance for alcohol. These graduated licensing requirements have helped to save young lives and drive down the accident and injury rates.

Another example of legislative intervention to increase road safety and drive down the accident and injury rate is the ban on cell phones enacted by Newfoundland and Labrador in

2003. Accidents caused by distracted driving declined 23% in the three years following the Newfoundland ban, according to the Department of Government Services.

But not every precaution against road accidents needs legislation to back it up. A useful extension of safety practices can come in the voluntary form of a safe driving contract between parents and children licensed to drive a motor vehicle. I have provided a form of safe driving contract in our

website library, which you can change to fit the circumstances and the understandings which you may negotiate with your child. The value of the discussions around safety expectations and agreed safe practices cannot be underestimated. Give it a try with your child.

You can access the safe driving contract on our website at [www.ChesCrosbie.com/library](http://www.ChesCrosbie.com/library).

## Aim to Claim: things to know before calling your insurer

*“Reporting a loss can be anything but a peaceful experience.”*

I was pleased to be interviewed by Readers Digest for an article which appeared in their January 2010 edition, “Aim to Claim: seven things to know before calling your insurer.” The article was written by Stuart Foxman and quoted me in several places. As it points out, when the consumer buys insurance, he or she believes they are buying peace of mind. But reporting a loss can be anything but a peaceful experience. There are things to think about before making an insurance claim that can improve success. Here from Readers Digest are the seven things you need to know before calling your insurer:

When you sign on the dotted line for car, home or other property insurance, you believe you’re buying peace of mind. But will reporting a loss be a peaceful experience? Here are some things to consider before making an insurance claim.

### 1. IS THE CLAIM WORTH IT?

Depending on the amount of your loss and your deductible, you might not even want to make a claim. Your \$400 bike is stolen and you have a \$300 deductible? Coming out \$100 ahead may not

be worthwhile if it means you’ll lose your claims-free discount. So think hard and check your policy first.

In other situations—for example, making repeated claims for minor water damage in your basement—the insurance company could say you’re ignoring the root cause and potentially will refuse to sell you that coverage anymore. “Insurance isn’t a maintenance contract,” says Bob Fitzgerald, executive vice-president and chief marketing and underwriting officer at Aviva Canada. You need to do your part.

By law, you must report any car accident resulting in an injury or damage over a certain dollar amount, which varies by jurisdiction. However, for minor at-fault accidents, which could affect your insurance premium (how much you pay per year for coverage), dealing with repairs on your own could be wise, says Leonard Sherman, spokesperson for The Co-operators Group.

### 2. FILING YOUR CLAIM

Delays in reporting an incident can hamper an insurance adjuster’s ability to investigate. With a car accident, for instance, the memo-

ries of witnesses can fade. Back to that basement flood: The insurer could also wonder if a loss was bigger than it needed to be. Did you take steps to, say, minimize damage after a flood? Where’s the evidence of the original loss? Did you try to fix a loss on your own and possibly make it worse? “Your delay could make it difficult to assess damage,” says Brian Maltman, executive director of General Insurance OmbudService, “The insurer may even deny the claim because it has been prevented from being able to properly deal with the loss.”

### 3. TELL THE TRUTH

Being honest won’t work against you, even if you’re to blame for the loss. But fudging the details, let alone outright deception, will come back to haunt you.

Often when making a claim, you are at fault—“There’s no stupidity exclusion in a policy,” says Lindsay Olson, a vice-president for the Insurance Bureau of Canada in British Columbia. “People make errors.” But withholding the facts could make it harder for insurers to probe a loss, be construed as deliberate misrepresentation, label you as what The Co-operators Group’s Sherman calls a “moral

## Aim to Claim (cont'd.)

hazard"—what else are you lying about?—and could even nullify your claim.

### 4. DON'T SETTLE TOO QUICKLY

Sometimes, you just want to get the incident behind you. But resolving a claim too quickly could mean an inadequate settlement.

Generally, for injuries where pain and damage can linger, don't settle until "the point of maximum medical improvement," says St. John's, N.L., lawyer Ches Crosbie. With other types of claims (such as fire, where you might not be certain of the property loss), give yourself time to gather all the necessary information. Then take time to consider the offered settlement to determine if it's fair. If not, go back to the insurer.

Remember, insurance is not for a quick cheque, "it's to reimburse you for what you've lost," says General Insurance OmbudService's Maltman.

### 5. BE YOUR OWN BEST ADVOCATE

An insurance company may not be on your side, but that doesn't mean they're against you. However, Bruce Cran, the president of the Consumers' Association of Canada, calls the relationship "adversarial." As he notes, people making claims want everything they feel is coming, and not a penny less. Insurers want to pay out what they feel they must, and not a penny more.

Settling claims is about balancing interests and being fair, which can be open to interpretation. Read your policy carefully to understand your responsibilities and rights. Clarify what you're expected to do (for example, quantify a loss and get receipts) and what your insurer will do for you. Justify your requests. Yes, the insurance company has obligations, but ultimately you're your own best advocate.

"You're an active participant in the claims settlement process," says the Insurance Bureau of Canada's Olson. "It won't just happen around you."

### 6. DO YOU NEED A LAWYER?

In cases involving serious injury or in disputes over claims involving significant sums, it may be prudent to consult a lawyer. Whether guiding you through the legalese of insurance contracts or helping you avoid lowball offers, a lawyer can protect your interests.

In the relationship between the insurer and the policy holder, lawyer Crosbie says, "There's a power and knowledge imbalance—a lawyer redresses the imbalance."

### 7. RESOURCES AVAILABLE TO YOU

Is a particular loss covered? What's it worth? What does that clause really mean? If you encounter misunderstandings, disagreements

or other problems with a claim:

- Get clarification from the broker or agent who sold you the policy.
- Talk to the adjuster or claims specialist, or this person's supervisor.
- Ask for the insurance company's internal ombudsperson. Every federally licensed insurance company must have one.
- For home, auto and business, contact the General Insurance OmbudService ([www.giocanada.org](http://www.giocanada.org)) or the OmbudService for Life and Health Insurance ([www.olhi.ca](http://www.olhi.ca)). They can help cut through the red tape and impartially resolve disputes between you and your insurers.

Don't worry about a claim being denied, seeing your premiums rise or being blacklisted if you raise a fuss. It's your right to complain—and it's often necessary. "An insurance policy is proof of a legal contract, but there can be grey areas when it comes to settling claims," says Sherman, from The Co-operators Group. "Every claims settlement is to some extent a negotiation."

## Ches Crosbie named Personal Injury Lawyer of the Year

The peer review publication Best Lawyers in Canada has named Ches as Personal Injury Lawyer of the Year for 2009. This honor was given to ten personal injury lawyers across Canada. It is based on ratings given by other lawyers who are knowledgeable about personal injury practice. A lawyer cannot buy a rating by Best Lawyers.

"I am very pleased to receive this recognition," says Ches, "particularly since lawyers in small provinces like ours seldom get national recognition."

## What is my case worth (cont'd.)

A great accident and injury lawyer learns all of the facts of the case which may affect settlement value, knows the awards made by courts in Newfoundland and Labrador in comparable cases, and knows the attitudes and approaches of the defence lawyers and insurance companies with whom settlement will be conducted and has a professional relationship with them.

A great injury lawyer also has a professional working relationship with the medical doctors and other healthcare

providers involved in your care, knows how to document the case to maximize settlement value, and knows that in a serious injury case it takes time for doctors to be in a position to state a confident prognosis about the future.

These are some of the skills and knowledge that a great personal injury lawyer applies to establish what your case is worth.

## Do you recognize this person?

The first person to correctly name this important Canadian diplomat by calling Sheri Geehan at 579-4000 or toll free 1-888-579-3262 will earn a **free gift**.



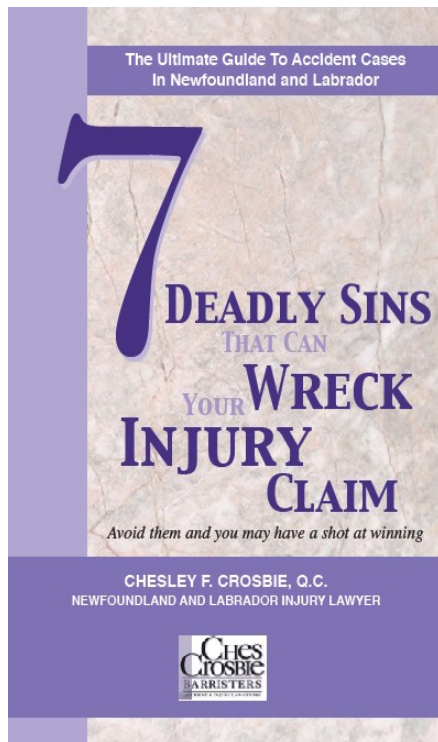
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comments and articles  
appear at  
Ches Crosbie's  
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## FREE Information for Accident Victims

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***7 Deadly Sins That Can Wreck Your Injury Claim*** covers a wide array of accident claims topics such as, who should pay your medical bills and lost wages. The book also details how to work with a claims adjuster, medical treatment considerations, and how to determine if you really need the assistance of a lawyer.

***Why Most Medical Malpractice Victims Never Recover a Dime*** is 50 pages of information that will give you good, solid information about malpractice lawsuits, and help you to improve your odds of winning in the tough, hard fought world of medical malpractice.

