

▼ LAW

Sometimes innocent drivers are pulled into injury lawsuits

You have the misfortune of being injured in a multi-vehicle crash.

You settle your claim, and then three years later you are sued by one of the other motorists.

You didn't do anything wrong to cause the crash, and the motorist who sued you was speeding and did play a role in causing the crash. It takes another 2 1/2 years before the case is discontinued against you.

It can be upsetting being sued for something that isn't your fault.

What if some legal hocus-pocus results in the facts being turned on their



ACHIEVING JUSTICE
Paul Hergott

head and a finding of liability against you?

As bizarre as the sequence of events may seem, it is a true story.

I was approached, as a columnist, to explain it.

It seems horribly unfair and even dishonest to bring a lawsuit against a motorist in a multi-vehicle crash who was not at fault.

Things are not always

as they seem.

I don't know all the facts of this case, but I can tell you that I include innocent motorists in car crash lawsuits on a regular basis.

My motivation for doing so is not dishonest, though. Rather, it is to prevent an insurance company from squirming out of paying what I consider fair compensation to my injured client.

It shouldn't be necessary.

Because of the motor vehicle liability insurance monopoly in British Columbia, the insurance company paying the claims is the same, re-

gardless of who causes the crash.

It shouldn't matter who is named in the lawsuit.

The way our laws work, however, it does matter.

If you fail to name a responsible party in a car crash lawsuit, you risk saying goodbye to some, or all, of the compensation that you would otherwise be entitled to.

You may be really, really sure which motorist caused a crash. You saw it with your own eyes. You clearly remember which motorist was facing a red light and which was facing a green.

You tell your lawyer that the one facing the red is the one who was at fault.

A lawsuit is started. Four years later, there is a trial. You are still really clear about what happened.

The other witnesses, however, are less so.

The insurance company puts everything they've got into proving that the driver facing the green light was really the one who caused the crash.

The court is swayed. The case is dismissed against the driver you sued. Why would the insurance company do that? Isn't it going to have to pay regardless of who is found to be at fault?

Actually, no. Most people think that a claim for compensation for crash injuries is made against the insurance company. It's not.

The claim is made against the driver who caused the crash.

The insurance company steps in to defend the claim.

If the driver is ordered to pay compensation, the insurance company steps in and makes that pay-

ment. If you bring your lawsuit against the wrong driver, the lawsuit will be dismissed, and no one will be ordered to pay compensation.

The insurance company adds to its hundreds of millions of dollars in profits.

It is standard practice for personal injury lawyers to name all drivers as defendants in a car crash lawsuit.

This avoids the unfairness that can arise if the driver we name, who we think is at fault, is found at trial to not be at fault.

The fact that all drivers are protected by insurance means that none of them face any personal financial jeopardy.

It's a shell game. The dollars required to provide compensation for the injured victim come out of the same very

deep insurance company pocket regardless.

The collateral damage arising from this standard practice is that some completely innocent motorists are sued.

I deeply regret the distress this may cause and hope those innocent motorists are reassured that the insurance company will take care of everything, just like they do for the guilty ones.

The unacceptable alternative is the risk that another innocent motorist is deprived of compensation for his or her injuries.

This column is intended to provide general information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is a lawyer at Hergott Law in West Kelowna.

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▼ RECREATION

Ball fields get boost for semi-pro ball games

Up to \$10,000 will be spent to improve the Mount Boucherie ball fields on East Boundary

Road this year, but bigger and better improvements may be around the corner. West Kelowna council

has agreed to take \$10,000 from its contingency fund this year to make minor safety improvements aimed at accommodating nine Kelowna Jays baseball games this season, with the hope the club would move from Kelowna in 2011.

To accommodate games this year an outfield fence must be moved back, the backstop must be upgraded and a safety fence must be installed.

Bleachers could be rented for this season's games if needed.

However, the costs of accommodating the Jays in the long term could cost as much as \$623,000 for lighting, bleachers to seat up to 500 people and concessions upgrades.

Therefore, staff will continue to explore with the Jays the possibility of their moving to West Kelowna and how future upgrades would be paid for, including possible fundraising in cooperation with the Jays and West Kelowna Minor Baseball and potential grant opportunities.



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