

Settling Your Injury Case...



Without a Lawyer

How to maximize the value of your
claim under \$10,000

The information provided in this report is for informational purposes only.

Shulman DuBois LLC does not represent you.

This is not formal legal advice and there has been no formation of an attorney/client relationship.

If you need legal counsel, please contact us at 503-222-4411 to discuss your case.

Thank you.

We at Shulman DuBois LLC would like to thank you for downloading this report. We hope it will be helpful to you.

We want to make this easy and free for you. But the truth is, we can make it free, but we can't make it easy. It just isn't. **If at any point you decide you want some help, please don't hesitate to call us at (503) 222-4411. Your call will always be free,** and we're happy to help you with any questions you may have.

Important disclaimer: Please note that you are not currently a client of this firm. If the insurance company does not make a reasonable offer within the time limit, please call us promptly, as we may be willing to take your case at that time. As of now, however, we do not have a signed agreement, and we are not your attorneys. This letter is meant to be general educational material only. We cannot possibly cover every scenario, and without knowing your case inside out, we cannot, and will not, give you legal advice. **This process can get complicated fast. If you hire us, we will stand behind our work. If you do not hire us, you cannot hold us responsible if the free information in this paper gets you into trouble.** It's good information, but we can't possibly cover every possible scenario.

Here's what you need to do:

1. Check the statute of limitations.
2. Make sure your case is really a "smaller case."
3. Decide what to do about PIP.
4. Figure out what to do about Health Insurance.
5. Make sure your case is still really a "smaller case."
6. Get organized.
7. Gather medical records and bills.
8. Gather property damage records.
9. Write the "20.080 demand letter."
10. Mail the letter and supporting documents to the appropriate people.
11. Wait.
12. Collect your money or hire a lawyer.

The following pages will guide you through the process.

1. Check the statute of limitations

Oregon's statutes of limitations are mostly contained in ORS chapter 12, which is available at <http://www.leg.state.or.us/ors/012.html>. Claims for injuries or property damage due to someone else's carelessness are usually covered at ORS 12.110. Generally speaking, **the case must be filed within 2 years of the injury** or property damage.

But this is general advice only. We have in our office a 247-page book called "Oregon Statutory Time Limitations." It's far more complicated than you think, and we cannot guarantee that you have 2 years from the date of your injury. That's generally what happens, but not always.

If you were hurt by any public body, or any employee of a public body, you will have to file a "tort claim notice" *within 180 days* of your injury. You can read about this at <http://www.leg.state.or.us/ors/030.html>. Examples include: City of Portland driver, a State employee who was on the job, a Tri-Met bus, a public school teacher on the job, a police officer, a library, or any other state, county, or city entity or worker. If you don't file the appropriate notice within 180 days, you will lose all rights you have to ever make any claim. Call us if you have any questions.

If you are close to the expiration of the statute of limitations, which usually (but not always!) means it's been close to 2 years from the date you were hurt, then you shouldn't mess around with this any longer; you should call a lawyer right away. "Close to 2 years" generally means anything longer than about 18 months. Once you're within about 6 months from the final moment in which you can file your case, it's time to panic.

Your best bet? **Don't even wait a month after your accident** to start thinking about what to do next and what your options are.

2. Make sure your case is really a "smaller case" before using 20.080.

How do you know if your case is worth less than \$10,000? First and most important: **Don't settle your case until you're done with your medical treatment.** If you settle your case for \$10,000, and then later find out you need surgery for your injury, the insurance company will not pay any more money!

If you've decided you're willing to settle for \$10,000 or less, this letter will give you guidelines for how to send a good **20.080 demand letter.** (For more on this, go to **page 9.**)

If you were in a car that was hit by another car, and neither car was damaged that badly, and your injuries are whiplash-type injuries that last a few months, your case is probably worth \$10,000 or less and you are probably a good candidate for 20.080.

If your case is primarily about property damage, then you should have a good idea of how much it's worth simply by looking at the repair estimate.

If you send a demand letter asking for \$10,000, and the other side agrees to pay it, then you have made a deal and you cannot back out of it. Ultimately, it is always up to you how much you are willing to settle your case for. So before you send a letter asking for \$10,000, you have to make sure you are willing to settle your case for \$10,000, in case they agree to pay it.

3. Decide what to do about PIP.

If you have been hurt in a car crash, your medical bills have probably been paid by your own auto insurance's Personal Injury Protection or "PIP." If PIP paid your medical bills, and your injuries were someone else's fault, then PIP has a right to get paid back for the money they have paid on your behalf.

There are basically two ways PIP can get their money back. **They can collect it from the insurance company of the person who hit you, or they can collect it from you.** They can only collect it from you out of money that you get from the insurance company of the person who hit you, but they do have a right to that money.

Usually, PIP will choose to collect their money from the insurance company of the person who hit you. In this case, you have nothing to worry about, and you can skip the rest of this section.

But if PIP chooses to collect its money back from you, out of whatever money you are able to get from the insurance company of the person who hit you, then you will have to pay them.

Let's look at an example: Imagine that your PIP paid \$1,500 in medical bills because of a car crash that was the other driver's fault. And imagine that PIP decides to collect that money back from you. Then, if you settle your case with the insurance company of the person who hit you for \$1,700, you would have to pay PIP its \$1,500, and you would only get to keep \$200.

It is obviously better for you if PIP decides to collect its money directly from the insurance company of the driver who hit you. In that case, you would get to keep the entire \$1,700.

How can you figure out if PIP is going to collect its money from you, or from the other insurance company? Easy. Call them and ask. Whatever they say, get it in writing. Once you have it in writing, you can move forward, secure in the knowledge that at least you know what will happen with PIP.

***Note:** You should know that when we take a case, we deal with PIP very differently. Because we know the laws surrounding PIP's rights, we are often able to force them into collecting from the other insurance company. But without some legal training, you are probably better off just calling them and asking.*

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4. Decide what to do about Medical Insurance.

Every single thing we just wrote about PIP applies to medical insurance too. If Medical insurance paid your medical bills instead of PIP, they have a right to be reimbursed as well.

The difference is that medical insurance is far less likely to choose to get reimbursed from the insurance of the person who hurt you. They are far more likely to force you to pay them back.

Make sure you take this into account in determining if you really have a 20.080 case. If you have to pay your health insurance back \$6,000, then \$10,000 may not be enough money to compensate you.

5. Make sure your case is still really a "smaller case."

If PIP (or health insurance) is going to force you to pay them back \$10,800, then making a claim for \$10,000 obviously doesn't make any sense. If PIP is going to force you to pay them back \$6,800, making a claim for \$10,000 may or may not make sense. That's a decision you have to make for yourself.

But now that you know what PIP (or health insurance) is going to do (You have it in writing, remember?), go back and make sure that ORS 20.080 still makes sense for you.

6. Get organized.

This is actually an ongoing step and should, if space and time allowed, be included before, after, during, and in between every other step we've listed. But, right now it makes perfect sense to organize the information you have so far.

Make the following lists:

1. List every medical provider (doctor, chiropractor, naturopath, massage therapist, acupuncturist, surgeon, nurse practitioner, etc.) you have seen for this injury, along with the provider's name, clinic name, address, phone number, fax number, date(s) of your visits.
2. List every expense you have paid out of your own pocket because of this incident.
3. Record the name, address, phone number, and claim number for your own insurance (PIP coverage).
4. Record the name, address, phone number, and claim number for the insurance company of the person who injured you.
5. Record the names, addresses, and phone numbers of any witnesses.
6. Record the name, address, phone number, license number, and any other information you have for the person who caused your injury.

7. Gather your medical records and bills.

ORS 20.080 requires you to get a copy of all "medical records and bills for medical treatment adequate to reasonably inform the person receiving the written demand of the nature and scope of the injury claimed."

It's not entirely clear what this means, and because this part of the law is brand new, it has not been tested yet.

Here's what we think it means: Get all the medical records and bills related to the injury for which you are seeking compensation.

We recommend that you get a big, thick, black magic marker and black out all of your sensitive personal information, such as social security number, date of birth, etc. You're going to have to send all this to the person who ran into you.

There are three ways to get your medical records and bills:

1. **Ask your doctor's office for them.** This is easy, and will probably work. But if you get an incomplete set of records, you won't know, and ultimately you may be blamed for it being incomplete.
2. **Request the records in writing.** This takes more time, may cost a little more, and is more formal. In this case, you can include a copy of your request along with the records, and if the doctor provides incomplete records, it's less likely to be blamed on you.

If you want to file a written request, the best way is to ask your doctor's office for a form. They ought to have one. If your doctor does not have forms, you are also welcome to use the form that is included in these materials.

3. **Have us get your records for you.** We do it all the time; we're streamlined and efficient; and if we don't get all the records, we will take responsibility for that. The only problem with the third method, though, is you have to hire an attorney to do it. If you want to do it yourself, you're stuck with the first two methods.

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8. Gather property damage records.

If you are making a claim for property damage, you need to supply those records as well. ORS 20.080 says you must supply "documentation of the repair of the property, a written estimate for the repair of the property or a written estimate of the difference in the value of the property before the damage and the value of the property after the damage."

There are no set forms for this. You'll just need to gather the information however you can.

If your car has been repaired, but is now worth less than it was before the damage, you can sometimes make a claim for the "diminished value" of the vehicle. This usually requires paying a vehicle appraiser to determine how much value the vehicle lost as a result of the damage. The sooner after the crash this is done, the better.

9. Write the "20.080 demand letter."

This is the easy part. (Really.) Just follow the example below. You do not need to type it; handwritten is just fine. Everything in needs to be replaced with your information. Everything in is just a note to you.

EXAMPLE

	<u>YourFirstName LastName</u> <u>Your address</u> <u>Your city, state, ZIP</u>
<u>FirstNameOfBadDriver LastName</u> <u>Address</u> <u>City, state, zip</u>	
Sent by certified mail, return receipt requested	
Re: Accident of <u>[date of accident goes here]</u>	
Dear <u>Mr./Ms. BadDriverLastName</u>	
This letter is a demand for \$10,000.00 for injuries or wrongs to my person or property. If I prevail in this action, you will be required to pay my attorney fees and costs, unless you tender payment within 30 days from the date you receive this letter. This demand is made under ORS 20.080. Please give a copy of this letter to your insurance company immediately.	
Please be aware that I am not collecting money to reimburse PIP, since they have informed me in writing that they will collect their money directly from your insurer. Any money that we discuss will be exclusive of PIP. <i>[Note: this paragraph only stays in if PIP did tell you in writing that they will collect their reimbursement directly from the insurer and will not try to collect from you]</i>	
Sincerely,	
<i>(Sign the letter here)</i>	
<u>TypeYourNameHere</u>	
cc: <u>[Allstate, State Farm, or whoever the insurance company is for the person who injured you]</u> , with medical records, medical bills, and property damage documents enclosed <u>[insurance company's address goes here]</u>	

END OF EXAMPLE

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10. Mail the letter and supporting documents to the appropriate people.

You've written, dated, and signed the 20.080 demand letter. Now **make 2 copies of it**. You should have 3 total: the original and 2 copies.

Gather all of your medical records, medical bills, and property damage records. Make two copies. You should now have three total.

Put the original, signed 20.080 demand letter in an envelope, along with all the medical records & bills and any property damage records, and address the envelope to the person who hurt you. This is the **original**.

Put a copy of the letter, along with a copy of the medical records & bills and any property damage records into another envelope, and address it to the insurance company of the person who hit you. This is the **insurance company copy**. It should be exactly the same as the original.

Keep one copy for yourself. This is your copy for your records. It should be exactly the same as what you sent to the insurance company and to the person who hit you. The original and the two copies should all be identical.

Walk to the post office (the exercise and fresh air will be good for you). Tell the clerk you want to **mail the original and the insurance company copy by certified mail with return receipt requested**. The clerk will help you fill out the forms.

When you get the green postcard back, check the date it was delivered. Count 33 days later. **Mark the date on your calendar**. That's the 30-day mark.

(You may be wondering why the "30-day mark" is 33 days later, and not 30 days later. It's because the Oregon Rules of Civil Procedure require adding 3 days to take into account mailing time. It's not entirely clear whether you have to add the 3 days in this particular case, but we figure better safe than sorry.)

11. Wait.

Wait until the 30-day mark that you've marked on your calendar, or until they send you an offer – whichever comes first.

12. Collect your money or contact an experienced attorney.

If you receive an offer before the 30 day mark (which you'll recall is actually a 33-day mark), you can either (a) take the money, and you're done, or (b) decide it's not enough and call an attorney. If you decide their offer is not enough and call an attorney, and if you later turn out to be correct, and **if your injury is indeed worth more than they offered, then the insurance company has to pay all your legal bills.**

If the 30-day mark comes and goes without getting an offer, don't worry. This is probably the best result you could hope for. Because this is where the magic of 20.080 comes into play.

If they have made no offer by the 30-day mark, the law considers this an offer of zero (\$0.00). If a lawyer can beat that offer, then the insurance company has to pay all your legal fees. And they know this can be thousands and even tens of thousands of dollars, which is why they should have made you a reasonable offer in the first place. Now, because they did not make you a reasonable offer, the law punishes them. To avoid having to pay all those legal fees, there's a very good chance that they will pay you the full \$10,000.

If you don't have an offer by the 30-day mark, call a lawyer immediately, because there is a pretty good chance you will be able to get the entire \$10,000 if the lawyer knows what they are doing and acts quickly.

We love to take 20.080 cases with no offer. If this is your situation, please call us right away at (503) 222-4411 and tell us you have a **"zero-offer 20.080 case."** We'll make you a priority and do everything we can to get you the full \$10,000 **at no cost to yourself.**

We hope this helped.

We very much hope that the information in this paper has been useful to you. We understand that it is quite complicated, and we stand ready to offer you free advice on any aspect of this you don't understand or just need a little help with. **Please don't hesitate to call us at (503) 222-4411.**

The rest of this paper contains the actual language of the law, as of January 13, 2012, along with a sample medical request that should help you to get your medical records and bills.

TEXT OF ORS 20.080

20.080. (1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is \$10,000 or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant, and on the defendant's insurer, if known to the plaintiff, not less than 30 days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 30 days after the transfer of the action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed \$10,000, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

(3) A written demand for the payment of damages under this section must include the following information, if the information is in the plaintiff's possession or reasonably available to the plaintiff at the time the demand is made:

(a) In an action for an injury or wrong to a person, a copy of medical records and bills for medical treatment adequate to reasonably inform the person receiving the written demand of the nature and scope of the injury claimed; or

(b) In an action for damage to property, documentation of the repair of the property, a written estimate for the repair of the property or a written estimate of the difference in the value of the property before the damage and the value of the property after the damage.

(4) If after making a demand under this section, and before commencing an action, a plaintiff acquires any additional information described in subsection (3) of this section that was not provided with the demand, the plaintiff must provide that information to the defendant, and to the defendant's insurer, if known to the plaintiff, as soon as possible after the information becomes available to the plaintiff.

(5) A plaintiff may not recover attorney fees under this section if the plaintiff does not comply with the requirements of subsections (3) and (4) of this section.

(6) The provisions of this section do not apply to any action based on contract.

Note: Sections 2 and 4, chapter 487, Oregon Laws 2009, provide:

Sec. 2. (1) Except as provided in subsection (2) of this section, the amendments to ORS 20.080 by section 1 of this 2009 Act apply to all causes of action, whether arising before, on or after the effective date of this 2009 Act [January 1, 2010].

(2) The amendments to ORS 20.080 by section 1 of this 2009 Act do not apply to an action that was filed before the effective date of this 2009 Act. [2009 c.487 §2]

Sec. 4. (1) The amendments to ORS 20.080 by section 3 of this 2009 Act become operative on January 1, 2012.

(2) Except as provided in subsection (3) of this section, the amendments to ORS 20.080 by section 3 of this 2009 Act apply to all causes of action, whether arising before, on or after January 1, 2012.

(3) The amendments to ORS 20.080 by section 3 of this 2009 Act do not apply to an action that was filed before January 1, 2012. [2009 c.487 §4]

AUTHORIZATION TO USE/DISCLOSE PROTECTED HEALTH INFORMATION

I _____ authorize _____ to use and/or disclose a copy of my own specific health and medical information identified below for _____, DOB _____, SSN _____. Please release this information directly to me, the patient.

The information will be used on my behalf for the purpose of: legal proceeding.

By initialing the spaces below, I specifically authorize the disclosure of the following health information and records:

- _____ Entire medical record (all information)
- _____ X-ray films
- _____ Billing records

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the disclosure of this information may apply. I understand and agree the following categories must be initialed to be included in this authorization.

- _____ HIV/AIDS information
- _____ Mental health information
- _____ Genetic testing information
- _____ Drug/alcohol diagnosis, treatment or referral information

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

I understand that I may refuse to sign this authorization and that my refusal to sign will not affect my ability to receive treatment, payment, enrollment or eligibility for benefits. The only circumstance when refusal to sign means I will not receive health care service is if the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure.

Except to the extent that action has been taken in reliance of this authorization, I understand that I may revoke this authorization in writing at any time.

I have read this authorization and understand it. Unless revoked earlier, this authorization expires one year from the date on this authorization.

Signature

Date