

Information Jurors Aren't Allowed to Hear at Trial

In Oregon, case law and statutory law prevent juries from hearing about certain facts and issues in personal injury cases. Additionally, the judge, at the request of an attorney, may prohibit the jury from hearing specific facts about the case. This can sometimes cause jurors to speculate and then make bad decisions based on those speculations. It is important to know and understand the facts and topics that cannot be discussed at trial so you can better evaluate how a jury will perceive your claim.

1) JURIES CANNOT BE TOLD ABOUT INSURANCE COVERAGE

Almost every personal injury case that goes to trial has insurance coverage. All of us buy insurance in case we make mistakes and cause someone harm. At trial, however, the Court will go to extreme lengths to prevent anyone from discussing the existence of insurance. In fact, if the plaintiff mentions the word "insurance," the defense counsel will often be granted a mistrial.

The jury's job in a personal injury case is to determine the liability (if it is not admitted), how much harm the defendant has caused, and how much compensation it will take to balance that harm. Whether or not someone has insurance does not help the jury do its job. The courts prevent juries from hearing this information because they feel it could lead to higher verdicts if a jury felt someone else was paying for the harm.

In reality and in practice, we find that juries speculate on this issue. Juries that speculate that insurance does not exist often consider whether or not the defendant can pay for the amount they want to compensate the plaintiff. This often leads to verdicts that undercompensate the plaintiff and let the insurance company off the hook.

While debatably unethical, defense attorneys are using this lack of information to their advantage. Defense attorneys will subtly discuss the defendant's occupation, family, and life style to suggest or implicitly state "any amount of compensation to the plaintiff for the harm I caused will financially hurt me and my family."

2) THE TRUE DYNAMIC OF THE HIRED-GUN INSURANCE DOCTOR

Plaintiff attorneys usually use their client's treating doctors from the community to testify about the client's injuries and how they were caused. These doctors are not professional witnesses and in most cases hate going to court. They went to medical school to help people, not to testify in court.

To combat these local professionals and their opinions, defense attorneys turn to booking agencies for doctors that are willing to testify at trial. These doctors-for-hire will briefly examine the plaintiff, write a report, and then testify at trial. Most of the doctors perform the exams and testify at trial to supplement their income and create more financial stability for themselves and their families. While there are some good doctors out there that perform these exams and testify at trial, a majority of them know whom they work for and know what needs to be said so they will continue to get hired.

At trial, plaintiffs are often prevented from exposing the full extent of this institutional bias. These hired-gun doctors will repeat the same generic conclusions over and over again in their reports and at trial. The doctor's bias can often be revealed through exposing these generic conclusions and sloppy cut-and-paste reports.

Attorneys will gather and collect as many of the doctor's prior reports as possible to know what the doctor is going to say at trial. These reports, however, cannot be admitted into evidence for a jury to review. Making matters worse, many doctors base their opinions on minority views and not peer-reviewed literature. Attorneys are not allowed to prevent doctors from citing these minority and obscure opinions. The advantages of a hired-gun doctor can have a significant impact on the case. It is up to the personal injury attorney to skillfully expose these issues as best they can.

In the end, insurance companies and their doctors do their best to discredit reputable doctors in the community. Why do they do this? They do it because they know they can hire a doctor to say what they want. In doing so, they can keep more of their money in the bank.

3) JURIES AREN'T ALLOWED HEAR ALL THE FACTS

In many trials jurors, aren't allowed to hear all the facts about what happened in a given case. This can happen for many reasons. In each circumstance, this will affect how a jury views and decides your case.

In auto accident cases, jurors may not hear about why a collision occurred if the defendant admitted liability. For instance, a jury will often not hear that the driver was texting or received a traffic citation for causing the collision. Jurors will also not hear about similar incidents where the defendant harmed someone or committed the same dangerous act. The judge usually prevents this information from being discussed because the only issues in an admitted liability case are the amount of harms caused by the defendant and how much compensation it takes to balance the harm.

Defense counsel will often use this to their advantage and wait until the last minute to admit liability. This strategic maneuver, while disingenuous, prevents the harmful information from getting to a jury. At trial, defense counsel acts like they are taking responsibility for what happened by admitting liability. In reality, they are refusing to pay for the full amount of harm and are merely playing games with the jury and the legal system to gain favor.

In medical malpractice cases, similar medical errors and prior bad acts of the doctor will be excluded at trial. Judges exclude this information because it doesn't have anything to do with the specific case at hand.

In premises liability cases, juries aren't allowed to hear about modifications to the premises after the incident occurred. For example, if someone fell off a dangerous stairway that didn't have a railing, a jury would not be allowed to hear about how the defendant put a railing up the next day to fix the problem. While these actions can sometimes be an acknowledgment of a dangerous condition, judges and the law do not allow safety modifications to be discussed at trial for public policy reasons – we want to encourage people to make their properties safer and not to worry about what might be presented at trial as an admission of fault.

Whether or not a jury hears this information can have a significant impact on your case. It is important to know what a jury will hear to properly evaluate your case.

4) JURIES AREN'T ALLOWED TO HEAR THE SETTLEMENT HISTORY

Settlement conversations and offers to settle are often exchanged between the parties months prior to trial. These settlement numbers cannot be discussed at trial. This can frustrate clients as the settlement offers seem like an admission of what the defense believes the case is worth.

Sometimes the insurance company will even deny liability in front of the jury for strategic reasons after making significant offers to settle a case. Denying liability can increase the costs to take the case to trial and create more opportunities to poke holes in the plaintiff's case.

Judges and the law don't allow this information be heard by a jury as it could influence the jury's opinion of how much harm has been caused by the defendant and of how much it will take to compensate the plaintiff for the harm caused.

In summary, there are many facts and issues that are important to clients that affect their view of the case. Unfortunately, the law doesn't always allow us to tell the jury about them. As a result, we have to ground our judgment of what a case is worth based on what information will actually be heard by the jury. At the end of the day, it isn't what our clients know happened, it's what can we prove in court.

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