BALINT'S BULLETIN
CLIENT LAW UPDATE

Issue 68 October 2012

Important Changes to Our Firm!

There are important changes to our firm, please note them! The first is a change in name to Balint and Associates, PLLC. Over the past several months we have been working hard to revamp and update our website. Check it out at balintlaw.com and let us know your reaction (and suggestions). The website has important information for you, including advice on automobile insurance and what to do in the case of an accident. The new website also has past editions of Balint's Bulletin. Our email addresses have also been changed. David Balint's is now dbalint@balintlaw.com. Donald Horowitz's is now dhorowitz@balintlaw.com. Brenna Holscher's is now bholscher@balintlaw.com. Our paralegal, Kish Underwood, can be emailed at kunderwood@balintlaw.com

Automobile Accident Facts

The National Highway Traffic Safety Administration keeps detailed data on highway safety. They have fairly complete information for 2010. In that year there were nearly 10 million licensed drivers in the United States. Police don't always take accident reports especially for minor finder benders. But there were almost 5.5 million crashes reported by police departments around the country. There were well over 2 million people injured on our roads that year. They reported a major problem with insurance. Almost 15% of drivers have no insurance whatsoever, even though this is illegal in most states, including Washington. If you hurt someone in one of those 5.5 million crashes and have no insurance, you are exposing your assets to judgment collections. This includes your home, your wages, everything. Bankruptcy is an unpalatable option. In my experience, I think that Washington drivers are even more underinsured than these national statistics. Call us if you have any questions about whether you have adequate insurance.

Helmet Law Statistics

During my 38 years of personal injury practice I have represented lots of injured motorcyclists around the State of Washington (and one in Yellowstone Park). Occasionally Congress has made its grant of highway funds to various states contingent on having universal helmet laws. These are laws that require all riders on motorcycles to wear helmets at all times. The first time the Highway Administration did this was in 1967 and soon 47 states had passed universal helmet laws. However, under pressures from lobbies spouting "freedom" these laws have been rescinded. As soon as Congress has repealed these laws the states have reverted to either no helmet laws or limited helmet laws requiring only minors or passengers to wear helmets. Today only 19 states have universal helmet laws (including Washington), 28 states have partial helmet laws, and the remaining 3 have no laws whatsoever. Shift to another statistic. In 2010 there were 4,502 motorcyclists killed in the United States making up 14% of all road deaths for that year. Motorcyclists represented 1% of all vehicle miles driven in 2010. I want to repeat that: less than 1% of the miles driven in this country are on motorcycles, yet they make up 14% of all highway deaths. Since many states have imposed, then removed and then re-imposed helmet laws, the United States Center for Disease Control and Prevention have pretty good estimates of how use of helmets affects fatalities. They estimate that helmet use prevents 37% of fatalities among motorcycle drivers and 41% of their passengers. The statistic, however, tells only a small sliver of the overall economic impact because most motorcycle accidents do not result in fatalities. The real statistic is the number of brain damage injuries that affect a person injured, their families and the economy as a whole. For example, when Florida repealed its helmet law the number of hospital admissions for brain damaged motorcyclists increased by 82%. Who pays for the "freedom" to ride without helmets? We all do because the cost of this medical care is

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This newsletter reports on news and developments in the law. It is offered as a service to our clients and readers and is not a substitute for legal advice.

born by taxpayers and public hospitals or by insurance companies. Why am I writing this article now? Because of a combination of gas prices, heavy advertising and other factors, motorcycle ownership in 2010 was 8.2 million compared with half that in 2000. Motorcycle (and bicycle) ridership is increasing by leaps and bounds. Be careful so that you won't need lawyers!

Hospital Infections

According to a recent article in the New York Times, hospitals have a new tool that they can utilize to track hospital infections. Analyzing the genetic structure of the bacteria has become quick and efficient and relatively cheap. Hospitals now have the potential for tracking an outbreak of infections such as MRSA (Methicillin-Resistant Staphylococcus Aureus). This is becoming increasingly important because more and more of our bacteria are adapting to our antibiotics. Once the hospitals can identify a particular bug that infected other patients, they can track the method of transmission arising from some hospital piece of equipment or procedure. Medical care in this county is supposedly the best in the world. This may be true, but according to the article there are more than 99,000 deaths a year attributable, at least in part, to hospital acquired infections. This is in addition to the 98,000 deaths per year attributable to medical mistakes. Hopefully with new tools and more attention paid to the problems deaths attributable to medical care can be (and should be) substantially reduced.

Incarceration Rates

Recently a New York Times article discussed the incarceration rates around the country and in the world. The article mentioned that there were 62 prisoners for every 100,000 in Afghanistan; 122 per 100,000 in China. In Iran the rate was 333. In Russia the rate was 525. The United States tops the list at 730 prisoners per 100,000 people in the population. That rate was nothing compared to the individual states in our country. In Louisiana there were 1,619 prisoners per 100,000 in the population. None of these statistics include people who are on probation and parole. To a certain extent these incarceration rates guarantee higher crime rates. How? Because once a person is convicted of a felony, whether violent or nonviolent, that information is public record almost guaranteeing permanent unemployment. I'm surprised that no politicians have suggested some way to change the record keeping such that persons who have paid their debt to society and are not in a dangerous class of criminals, such as violent criminals or sexual predators, be shielded from a lifetime of unemployment or near unemployment. I have always believed we should be tough on crime but the way we do it in this country, we're really just being tough on ourselves.

Income Loss Cases

When a client gets injured they often cannot go to work for days, months, or even permanently. I am often called upon to measure and present to a jury an injured person's income loss. Although there are exceptions, the income loss over a lifetime is highly dependant on attained educational level. In these days, where the job market is getting more competitive, what do you think is going to happen to those people who did not even complete high school? Is it a serious problem? Here are some of the statistics. A few months ago a national college neatly assembled 157 school desks in front of the Washington Monument in our nation's capital. They represented graphically the number of students who drop out of high school in this country every single hour of a standard school year. According to the national statistics, about 1.2 million students drop out each year. The numbers translate into 7,000 students a school day. 42% of high school students in some of our nation's cities do not complete high school. Hispanic students are twice as likely as Caucasian students to drop out and their rates are shockingly high. Many leave before the 8th grade is finished. What happens to these people? Well. 75% of violent crimes are committed by high school dropouts. And these dropouts constitute more than half of the households on welfare so, who pays the price for these awful statistics? We do. We pay for it in different ways such as crime and taxes to support people who are on welfare, children who need medical care or food stamps and all sorts of other benefits. More importantly, we pay indirectly by having so many people spend their lives doing small jobs when they could have contributed so much more to our economy. Could America become a third world county? Unless we devote more resources to education infrastructure and pay our teachers more, require longer school years and provide support for families of students, we are heading in exactly that direction.

Jury Duty

For 45 years I have been on the voter registration lists for King County, and have had a driver's license for even longer. Almost everyone I know has had several summonses for jury duty. In most of my jury trials nearly every one of the jurors has served more than one time previously. I finally got my summons to King County Superior Court. The current rule is that you serve 2 days or one trial whichever is longer. I was initially selected as juror number 5 for a medical malpractice trial. When I got to the courtroom I recognized the judge as one of my law school classmates. I knew of both attorneys and I knew a couple of the

expert witnesses. Despite the fact that my practice is almost exclusively plaintiffs personal injury, including medical malpractice, the insurance defense lawyer for the doctor could not get me disqualified for cause. I told him, as I truly believe, that I would have been a fair and objective juror. Despite that, he utilized one of his peremptory challenges and I was dismissed. Nevertheless, it was an interesting learning experience for me. Although I know what goes on behind the scenes after 38 years of practice, to actually experience it gave me a deeper appreciation. Unfortunately, many people do not respond to the jury summons because they are generally aware that there is nothing the county can do about it if a person refuses to appear. What this does is leave the jury pool without representation from poor people who cannot afford the time to sit on a jury without compensation, without significant representation from minorities, and a concentration of people from big corporations who pay their employees their regular pay while they are on jury duty. Therefore, it often does not become a jury of one's peers. In a recent trial my client was African-American but out of the 50 jurors in the pool only one person was African-American and he got sick and did not participate in the trial. There was some evidence that at least one, and maybe three, of the jurors were expressly racist and the results were not good. The right to a jury trial in criminal cases and most civil cases is guaranteed by both the U.S. and the Washington State constitutions. If you receive a jury summons I urge you to do all in your power to make it work. Everyone suffers a hardship, but without more people responding we get skewed juries.

Medical Costs – Our Responsibility

One of the principle reasons for rising medical costs is the inattention/lazy factor. I recently had an ear infection and went to a doctor. He prescribed some ear drops. I went to the pharmacy to fill it and I was shocked to see that this tiny little bottle would cost $120. I asked the pharmacist if there was any generic equivalent. When he confirmed that there was, I bought an identically sized bottle for $10. Yes, the more expensive medication was slightly more effective. It would have required only 4 drops per ear rather than the 5 for the generic brand. All you have to do is ask. If you don't ask for cheaper alternatives then you are part of the problem especially when your attitude might be that Medicare (meaning the rest of us) or an insurance company (meaning higher premiums) will pay for it.

A new trend is emerging across the country. The drug companies are urging doctors to establish their own "pharmacies" within their clinics. Any prescription they make is, therefore, filled before you go out the door. These pharmacies stock only medications pushed by the drug companies which are always the most expensive and are frequently not needed. A survey recently done for the New York Times states that the price of the drug in the doctors office often were 9 times more than the ones at the pharmacy. The doctors get additional kickbacks for pushing these drugs. It is the same kind of markup street drug pushers make. Some states are banning this practice as a clear conflict of interest. Yes, it is inconvenient to stop by an independent pharmacy—but don't be lazy. Never buy drugs directly from the doctor and always ask if there are more reasonably priced alternatives.

Support Run Scared

My daughter, Ilana, organizes events for charities. Please join me and hopefully a thousand others for the 4th annual 'Run Scared' 5k (3+miles) around Seward Park on Sunday, October 28, 2012. It starts at 9 a.m. and lasts until the party is over. The proceeds benefit the Leukemia and Lymphoma Society. Ilana began this quest in response to my own leukemia battle 10 years ago. Costumes encouraged. Prizes, refreshments, and lots of smiles. Register at runscared5k.com. See you there.

Protecting Your Virtual Estate

Several years ago my mother died of cancer. She left no list of bank accounts, mortgages payments, lines of credit, utility bills, insurance policies—nothing. Fast forward to the computer age and this problem is magnified. If that happened now, we would have been scrambling to try to figure out all the passwords for things like online banking accounts, phone bills (you can't cancel if you can't access), automatic monthly charitable donations, and any other automatic payments. According to an article in the Wall Street Journal on 8/12/12 entitled Protecting Your Virtual Estate, "Estate Planners say few, if any, of their clients consider digital assets in their wills—an oversight that can result in real-world losses to beneficiaries." Remember, this can include not only financial transactions but also Facebook accounts, domain names, blog accounts and e-filing of tax returns. But without log-in information, access to those Web accounts and services may require hiring a computer forensics expert or obtaining a court order. Read the entire article but think about protecting yourself and your heirs by doing some simple things. Make a list of all your accounts and passwords and store everything on a flash drive or paper list, then lock it in a safe or safe deposit box that someone you trust can access. Keep the list current! There are also websites that will enable users to release account information to designated beneficiaries after their death. I can't stress enough how important this

is—you don't need these hassles. I can barely remember my own passwords—how could my heirs possibly figure them out?

Super PACs and Judicial Races

One of the few protections we have had as citizens of the United States is that most judicial elections have been nonpartisan. For the most part we have historically cared more about the qualifications of a person running for judge then we have had about their political views and ideology. This is not true anymore. The super PACs, freed by our Supreme Court in the Citizens United case, figured out they can get ideologues to run for judicial and elect judges who will support their interests rather than serve the interests of justice for all. In essence these PACs can "buy" elections for persons who will not strive to be fair but rather will strive to support their various interests which almost never include the rights of injured persons or even the right to have access to the justice system. It used to be that judicial elections in Washington were relatively modest, dignified affairs characterized by positive messages about the qualifications of each candidate. Now you see very expensive campaigns including professionally produced attack ads. Large sums of money, often from out of state, have distorted judicial elections throughout the country including Washington. Beware of well financed judicial attack campaigns. There are only a very few contested judicial races on the November ballot. Call if you would like voting advise.

Bankruptcy and Personal Injuries

What happens if someone is injured, has a right to sue the person who caused the injury, but files bankruptcy? As a general rule, when someone files for bankruptcy, all of their assets, not otherwise exempt, are instantly owned by the Trustee not by the bankrupt person. This includes all existing lawsuits, claims and potential claims for personal injuries. Failure to list such a claim in the bankruptcy filing may eliminate any such claim forever. The Trustee may hire a personal injury lawyer to pursue the claim or may even abandon it back to the individual. I have handled several such lawsuits. In any event, the 1st $20,000 of any net recovery is exempt and goes to the victim but the rest is owned by the Trustee for the benefit of the creditors.

November Gubernatorial Recommendation

If you ever were, or will be, injured in the State of Washington you do not want Rob McKenna as governor. He has spent his entire career working tirelessly against rights of injured persons. He has used his position as the current state Attorney General to stand behind big business and government and in every possible way to narrow the ability of injured persons to recover from the wrongdoers who injured them. Please vote for Jay Inslee.

Quote of the Month

I am old enough to remember the Burma Shave signs. A bunch of them were sent to me by my friend Maureen O'Hara, Here is a piece of good driving advice:

"Don't lose your head
To gain a minute
You need your head
Your brains are in it."

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