

EXPECTING THE UNEXPECTED

Safety Supplies for Your Car

Equipping your vehicle for driving emergencies not only makes sense, it could save your life and the lives of those travelling with you. Putting together supplies for roadside emergencies or bad driving conditions isn't expensive. In fact, most of the items are probably in your home already.

DIY EMERGENCY KIT

The following items will serve you well for most roadside emergencies:

Glove Box

- name, address and phone number of someone to call in an emergency
- cell phone, preferably with text-messaging capability
- spare fuses for your electrical system
- plastic flashlight with an extra set of batteries in a sealed plastic bag
- pocketknife

Trunk

- spare tire, jack and lug wrench for changing tires
- first-aid kit including pain relief medication and a small supply of necessary medications for the usual occupants of the vehicle
- tire blocks to prevent the car from

rolling downhill or moving when you're changing a tire

- flares for emergency warning to other drivers
- empty gas can—never carry extra gasoline in your vehicle
- duct tape
- spare container of motor oil
- two screwdrivers: one standard and one Phillips
- battery booster cables
- extra washer fluid with anti-freeze
- fresh water

For Winter Emergencies

- ice scraper and snow brush
- tire chains for deep snow or ice
- traction mats, sand or kitty litter for slippery conditions
- metal shovel for digging out of deep snow
- hand warmers
- candles and matches stored in a sealed container
- two empty coffee cans with lids, one for melting snow for drinking water and the other for burning candles
- blanket

FULL DISCLOSURE



MORE TIPS FOR EMERGENCIES

When your car breaks down in an urban area, there is usually a phone nearby. Outside of urban areas, a cell phone becomes a much more important survival tool. Even if you can't get a signal where you are, write a text message and choose the option that allows the phone to send the message once it picks up a signal. Make sure your cell phone's battery has completely run down before recharging it from your car's battery. When it's fully recharged, be sure to unplug the adapter so that no charge from the car battery or the phone is wasted.

You never know how long you'll need to wait for help when your vehicle breaks down, so always carry some snacks. Dried food containing protein, potassium and sugar, with a little salt, will keep you nourished. It's tough to make good decisions when you're hungry.



Your Source for Legal News

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JURY REMOVED

\$130,000 Win After Mistrial Granted

In March of 2009, Michelle Ma of Klein Lyons achieved two successes in the same case. One, she had the jury removed, something that rarely happens in a civil case. And two, she managed to obtain a judgment that was three times the amount that ICBC originally offered.

The trial took place in the BC Supreme Court in New Westminster between the plaintiff, Deanna Jopling, represented by Ma, and a defendant represented by Kieron Grady for ICBC. Jopling was driving westward on Delta's River Road, preparing to make a left-hand turn into the driveway where her business was located. She stopped her vehicle and waited while numerous cars passed her on the right. Jopling was suddenly rear-ended by the defendant's vehicle. It was a text-book rear-end collision, with the defendant acknowledging that she had been following the plaintiff too closely.

In cases that do go to court, ICBC often wants to have a jury trial. "With a jury," says Ma, "it's like throwing the dice. It's the luck of the draw, whether you get a good jury or a bad jury." Often, jurors bring their own past experiences and biases into the courtroom. In addition, Canadian lawyers cannot advise the jury of the amount of money that should be awarded for various injuries

and they cannot refer to past judgments. The amount of compensation a plaintiff receives in a jury trial is solely at the discretion of the jury, without reference to what plaintiffs with similar injuries were awarded in similar cases.

During the trial, a medical doctor who had treated Jopling disclosed a

"... it's like throwing the dice. It's the luck of the draw, whether you get a good jury or you get a bad jury."

situation regarding a former patient in which after the patient received her ICBC settlement of \$70,000, she stopped seeing the doctor for treatment of her injuries. This comment, although not the least bit relevant to Jopling's legitimate claim, was seriously prejudicial to Jopling and could have negatively affected the outcome of the case. Based on this, Ma applied for a mistrial, asking that the jury be dismissed because they were no longer able to render a fair judgment. Mr. Justice Eric Rice considered her request, and the following day declared a mistrial, a rare occurrence in



Victory at the New Westminster Courthouse
From left: Michelle Ma & Deanna Jopling

civil motor vehicle accident cases.

For Ma, taking the issue to court had to do with fairness. Many factors may have led to ICBC's initial low offer. Jopling had a pre-existing medical condition and suffered soft tissue injuries, which generally do not result in high awards. At 63 years of age at the time of the accident, she was close to retirement age, which affects future earning potential in the eyes of the court. Another factor was gender. Historically, awards for female plaintiffs are lower than they are for male plaintiffs.

Ma, who was retained in April 2005, felt that Jopling deserved more. "From the beginning, ICBC took a really hard line on this case. They dug in their heels," she said. "They offered \$42,500 before the trial, and our judgment was for about \$130,000 plus costs." A big win for both Jopling and Ma.



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CLASS ACTION

Defective Hip Implants

Klein Lyons is pursuing a class action on behalf of Canadians who have been injured after their Zimmer Durom Cup hip implants failed. The Durom Cup is an artificial joint socket. Following implantation, the cup is intended to bond to the patient's hip bone and stay in place. The allegation is that the cup fails to adhere to the surrounding bone and instead remains loose or separate from the bone, causing the patient excruciating pain. It then becomes necessary for the patient to undergo further surgery to remove the implant and install a new one. Given the wait times in this country for surgery, Canadians may endure many months of pain and disability waiting for a new implant.

The manufacturer of the device, Zimmer, Inc., and its related companies recalled the product in the United

States on July 22, 2008. Alarming, the manufacturer has not yet recalled the device in Canada, despite the fact that Canadians have come forward to report that their Zimmer implants have failed, including Dennis Jones and Susan Wilkinson, who are the lead plaintiffs in the class action against Zimmer. Mr. Jones received his Zimmer implant in January of 2008 and Ms. Wilkinson received hers in April of that year. Their implants failed, and they both required revision surgery.

Their injuries might have been avoided if Zimmer had listened to the doctors who were reporting concerns about the implants. Dr. Lawrence Dorr, a world-renowned orthopedic surgeon and director of the Dorr Institute for Arthritis Research and Education Foundation in Los Angeles, alerted Zimmer to problems

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with their device in early 2008. Rather than promptly investigate, however, Zimmer blamed such problems on surgical error, even though the concerns about their device were coming from a highly experienced and respected surgeon.

FOR MORE INFORMATION, PLEASE CONTACT
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ARRIVE ALIVE

Impaired Driving—Not Just for Drinkers

The term "impaired driving" doesn't necessarily mean operating a vehicle after consuming alcohol. While alcohol consumption continues to be the major cause of impairment, it isn't the only one. Impairment is caused by anything that reduces a person's ability to drive a vehicle responsibly or react appropriately to dangerous conditions.

If you have ever driven while tired, after taking over-the-counter medication that makes you drowsy (such as cold remedies or sleep aids) or after taking illegal drugs, you have probably been impaired.

DRUGS AND DRIVING

A 2007 roadside survey conducted by the U.S.-based National Highway Traffic Safety Administration found that alcohol-impaired driving had decreased by about two percent since 1973, when a similar study was conducted.

The earlier study only looked at the

effects of alcohol, while the recent study looked at additional substances as factors for impaired driving. It found that 16.3 percent of nighttime, weekend drivers tested positive for drugs, most commonly marijuana (8.6 percent), cocaine (3.9 percent) and over-the-counter and prescription drugs (3.9 percent).

Any drug that changes your mood or the way you see and feel, will affect the way you drive, whether the drugs are illegal or not. Check the labels on your medications to ensure that they will not affect your ability to drive safely. If your driving ability is at risk, plan alternative ways to get around while you are taking the medication.

FATIGUE

Another form of impairment that can lead to disastrous consequences is driver fatigue. Tired drivers are responsible for one in five traffic-related fatalities in BC. When taking long trips, it's espe-



cially important to plan ahead and start out after a good night's sleep. Here are some other things you can do to make sure you don't become a statistic:

- Allow enough time to get to your destination.
- Take plenty of rest breaks.
- When you stop for a rest, go for a walk, change drivers or take a nap.
- Avoid overnight driving and break up your trip into shorter driving days.
- Keep a window open for fresh air and don't set the temperature in the car too high.
- Turn on the radio or talk to a passenger.

AT THE SCENE

Keeping an Eye out for Witnesses

Car accidents usually leave drivers and passengers confused and fearful. That's why it's important to remember to stay calm and focused so that you can concentrate on recording the facts of the accident and securing witnesses who will support your claim.

By law, drivers involved in accidents are required to remain at the scene, but witnesses have no such obligation. When it comes to protecting yourself from an unfair assessment against you, Tom Doyle, client services manager for Klein Lyons, has some good advice on obtaining witnesses if you have been involved in an accident.

"Before you pursue information from other drivers of vehicles involved," says Doyle, "secure your eyewitnesses, including other motorists, cyclists or pedestrians." If the offending driver leaves the scene of the accident, you will have the necessary witness information to present a hit-and-run claim.

"Very often, drivers immediately make contact with the opposing driver, who isn't going anywhere. In the meantime, witnesses can disappear leaving you with no one to validate your innocence in the collision," he says.

EYEWITNESSES CAN MAKE OR BREAK YOUR CLAIM

Doyle emphasizes that your first course of action should be to secure details from any witnesses, such as names, addresses, cell and residence phone numbers or business cards. He also notes that it's wise to jot down the licence plate numbers of vehicles leaving the crash site in case investigating police officers need additional details about the circumstances of the crash.

Eyewitness validation is especially important in accidents at an intersection controlled by a traffic light. Doyle cautions that lights can change in the blink of an eye, and that the witnesses will be providing information that will be the deciding factor in a liability decision. He also advises obtaining

unbiased witnesses: "It's best to pursue witnesses from outside of your vehicle, as passenger statements don't carry the same weight as statements from someone who doesn't know any of the parties involved in the collision."

TAKE PHOTOGRAPHS

A picture is indeed worth a thousand words, so use your mobile-phone camera to record facts of the accident. Photograph the vehicles before they're moved to show their positions on the roadway. You should also capture images of the damage done to the vehicles involved, any injuries such as cuts and bruises, or anything else you can think of, like skid marks, vehicle debris on the road or conditions that could have contributed to accident.

If you don't have a cell phone or one that takes pictures, Doyle suggests that you purchase an inexpensive disposable camera and keep it in your glove compartment.

Eyewitnesses can make or break your claim, so be sure to keep an eye out for them.