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Your INFORMATIVE SOURCE FOR TOPICS OF INTEREST AND INSIGHT

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— A CIVIL LITIGATION LAW FIRM —



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Is Your Insurance Company **FAIR?**

Two class action lawsuits were recently filed against State Farm in Florida and Georgia over the insurance company's alleged policy of uniformly rejecting automotive claim repairs more than \$4,700 per claim, even when the legitimate repair costs are well-above that.

In February 2024, the Montana Commissioner of Securities and Insurance fined State Farm \$2 million for underpaying automobile claims. Among the errors noted were State Farm not attempting in good faith to come to equitable settlements and over-applying comparative negligence percentages to reduce claim payouts.

While State Farm is mentioned here twice, it is hardly alone. Publicly available information shows that many major insurance companies are fined for failing to properly investigate and process claims and for underpaying claims.

Each state has some form of an insurance regulation division, charged with overseeing insurance products and processes. Those agencies have a big job to do, often with little staff. When they do take action, consumers should take notice. Fining a company for its operations is a big deal. And with major national insurers being involved, can anyone really think the wrongful actions were taking place in only one state?

Remember, insurance policies are contract—an exchange of promises. You promise to timely pay your premiums and in exchange, the insurance company promises to fairly evaluate and pay your claim. In fact, the law in many states requires even more. For example, among other things, South Dakota requires insurance companies to:

- Acknowledge and act within 30 days on communications;
- Explain coverages available for claims;
- Promptly provide a reasonable explanation for its payment or denial of a claim that is based on the facts of the claim and language in the insurance policy;
- Promptly settle claims where liability has become reasonably clear; and
- Make a good faith assignment of contributory negligence, if applicable.

When you've done your part, often paying premiums diligently for years on end, it is never too much to ask for your insurance company to hold up their end of the bargain if a claim arises. We've been hearing a lot lately that companies are not doing that. If you suspect your insurance company is not acting fairly with your claim, you may be right. We've fought these practices many times and would be happy to evaluate your situation to see how we can help.



Parking Lots and Distracted Driving

By Dan Amert

The National Safety Council observes April as "Distracted Driving Awareness Month." A common place where driving can be very distracting is parking lots. In a National Safety Council public opinion poll, US drivers said they would do the following while driving through a parking lot:

- 66% would make a phone call.
- 63% would program their GPS system.
- 56% would send text messages.
- 52% would use social media.
- 50% would send or receive email messages.
- 49% would take photos or watch videos.



Other areas in the survey found that 59% of teens were likely to engage in personal grooming vs. 53% of adults, while teens were less likely to be using their phones than adults (60% v. 66%).

Drivers may be distracted by attempting to check off their to-do lists or attempting to get from one store to another. Drivers may possess a false sense of security while driving in parking lots at

slower speeds that they have more control over their vehicle. The combination of distractions, inattention to the environment, and driving mistakes lead to numerous crashes. CBS News reported in 2016 that 20% of yearly car crashes occur in parking areas and parking ramps. Those 50,000 car crashes cause approximately 60,000 injuries and more than 500 deaths per year.

One problem I've been experiencing lately is fast driving through parking lots. Drivers are attempting to get in or get out of parking lots as quickly as possible. We are all in a hurry, but driving fast in a parking lot is unnecessary.

The National Safety Council asked drivers to take the "safe-driving pledge," where the motto is: "When you're behind the wheel, your only job is to drive." Northern Plains Justice supports organizations such as Safety Village of South Dakota, which promotes numerous safety issues, including distracted driving awareness.

We at Northern Plains Justice suggest putting the phones down, observing where we are going, and arriving safely. *Wishing you a wonderful Spring 2024!*

“ AI ALLOWS INSURERS TO ANALYZE RISK AT A MUCH DEEPER LEVEL ”



CRASH COURSE

Big Data at Work

I've written a lot about so-called artificial intelligence and some of the issues that can arise with it. This quarter, I'd like to turn your attention to just a few ways in which the massive rise of data collection and AI is being used to affect your everyday lives, sometimes in surprising ways. This is not a "sky is falling" piece, rather it is intended to provoke some thought and communication with those you know about whether data collection and usage is beneficial and how it should be regulated. If you've been assuming someone is looking out for you in all this, you're probably wrong. If you're wondering who is "watching the watchers" on these issues, well, it's you!

In a collection of cases across states from 2021-2024, plaintiffs have alleged that major insurance companies are using databases created by entities outside the automotive industry to assign values to vehicles that are a total loss. The problem, the plaintiffs claim, is that the databases are skewed in favor of the insurance companies. Searches return lower values for vehicles than what they are actually worth, which leads to claims payouts that are below fair value.

In two lawsuits filed in 2023, plaintiffs claimed major national insurers unfairly reduced medical bills when calculating claim values. In the first instance, the plaintiff claimed the insurer used a third party to review medical bills and make unfair downward adjustments to bills. The insurer claimed it used an independent third party to review the bills. The plaintiff claimed the insurer instructed the third party on how to program its AI system to review those bills—including by ignoring treatments after a certain specified number of visits. In the second case, the plaintiff claimed the insurance company applied deductions for medical care as if it was a health insurance claim. Of course, health insurers have agreed upon lower rates for reimbursement with medical providers, while auto insurers do not. The result was

that the plaintiff received less than they actually paid for their medical care in an auto claim—having to pay the difference out of their own pocket.

In a 2024 case filed in Florida, the plaintiff claimed a major auto manufacturer was selling driving data to a third party, who sold it to his insurance company. That company used the data to double his insurance premiums. The plaintiff didn't even know his vehicle was collecting data on him—everywhere he drove, how long, how fast, how hard he accelerated and braked, and even how many quick stops he made. Of course, that data was missing context of the driving situation, but that didn't stop the insurer from classifying the man as a high-risk driver and raising his rates.

Data collection combined with AI allows insurers to analyze risk at a much deeper level. But it also allows them to "fine tune" algorithms to obtain results. The industry realizes as much. In a 2024 insurance industry journal, it was made plain that AI presents a problem for consumers. "When you go to train one of these [AI] models, if it has bias in it, an insurer can run into redlining problems because there was unconscious bias in the training data, which then leads to bad results and potentially illegal things coming out of that..." Left unsaid was the potential for conscious bias—exactly what is alleged by the plaintiffs above—when insurers purposely create a database trained to deliver lower claim value.

AI is all the rage. Too many are excitedly asking the question, "What can it do?" without bothering to ask the questions, "What should it do?" and "How do we know that is what it is actually doing?" If you are involved in a claim, ask questions. How did your insurer calculate its value? What did it choose not to consider? What facts and policy provisions allowed it to act the way it did? Keep asking until you get answers.

MINDSET AND SMALL WINS

By Dan Amert

The 2024 expectations we set for ourselves earlier this year may be taking a backseat. You may have planned to start a new exercise program, or begin new hobbies such as journaling, meditating, or other activities. We buy the materials for the new hobby or activity with excitement. You tell yourself, "I will start the new year fresh."

Once the year starts, many factors may be getting in the way, such as work commitments and family issues. Other times, we let our old habits creep back in again. We see the new hobby materials gathering dust, we aren't getting ourselves to the gym to exercise, and life remains unchanged.

I have wanted to pursue a variety of hobbies, such as journaling or writing. I went to the store, purchased the materials, and brought them home. I didn't do anything with them, or I did it once or a couple of times and gave up in frustration.

Some people fear failure. Some people fear success. I have feared both at the same time. Fear of failure teaches me, "If I don't start the new program, or activity or hobby, I won't fail." No choice is still making a choice, a decision to fail. I am deciding to remain the same and not wanting to give myself the opportunity to become better tomorrow than I am today.

Fear of success for me can be more terrifying. "If I start the new activity, will it change me beyond how I see myself?" "Will I be able to cope with these changes?" I have experienced times when I have changed my habits for the better, then I fall back into the same bad habits holding me back.

Your beliefs and concepts of yourself and the world around you can be extremely difficult to change. In her book "Mindset," Dr. Carol Dweck points out people have two mindsets. The first is referred to as a "fixed mindset," often associated with fear of failure and fear of success, where if I can't do something right from the start or perfectly, I don't need to do it. The second mindset is a "growth mindset" where we provide ourselves with the opportunity to fail and to improve. We are not worried about the fear of success because we choose to work on improving ourselves.

Charles Duhigg's "The Power of Habit" is another book I recommend. Mr. Duhigg's talks about "Small Wins" because a Small Win is a way to encourage us to keep moving forward, make the time available to do what you want to do now. Many times, we will have days where we are discouraged and do not want to be held accountable. This is when we need to maintain accountability and make tomorrow a better day and ourselves a better individual than yesterday.

As we move through 2024, keep encouraging yourself to improve every day. Keep working on better habits, keep an open mindset, and give yourself a shout out when a Small Win happens. We wish you continued success in 2024!

