

A Guide To Indiana Car Accident Claims

Navigating The Mine Field

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DEDICATION

I dedicate this book to all my past clients who were injured in car accident cases and the lessons that they have taught me.

INTRODUCTION

This book is a consumer guide for people who have been injured because of another person's or corporation's negligence or for people who want information regarding the subject. This book was not written to provide legal advice because each and every case has its own unique set of facts. Knowledge is power. The purpose of this book is to educate the reader about Indiana Car Accident Law.

This book will help you understand insurance in general, how to protect yourself from liability if you hurt another person, or receive compensation if you are injured by another person. You will also learn to be cautious of insurance adjusters and the six ways that you can mess up an Indiana accident case. If you have been injured in a car accident, you will learn how to get your medical bills and lost wages paid, as well as your vehicle repaired. Finally, if you think you would like to hire an attorney help you with your claim, I will give you some helpful tips that will assist you in the selection of the attorney.

The information contained within this book is not to be considered legal advice for your specific injury case. This book is for educational purposes only and does not substitute for the advice of a licensed attorney.

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CHAPTER 1

IMPORTANT CONCEPTS

If you are injured – go to the hospital or doctor immediately.

The insurance adjuster is not your friend. He works for the insurance company and insurance company is in the business of making money for its shareholders.

It is difficult to rely on Yellow Pages, Billboards, or TV advertisements when choosing a lawyer to assist you in a car accident claim.

You need to make sure you have enough insurance to protect you and your family if you're injured in an accident. Always tell the truth to your doctor and attorney. If you hide information or lie; your case is over.

Evidence disappears and witnesses' stories change as time goes on. You must document your claim ASAP.

If you do not have a camera phone, keep a disposable camera in your car in case of an accident. All professional drivers have cameras in their vehicles.

Not all attorneys are created equal; they come in different shapes, sizes and personalities.

If you have been seriously injured, immediately consult a qualified attorney with whom you are comfortable.

In order to prove your claim, your medical records must document injury.

Even if the other driver is at fault for the crash, you may not receive money for your injuries.

CHAPTER 2

GETTING YOUR CAR FIXED

The first question that many people have in a car accident case is; how do I get my car fixed? This is called a property damage or “PD” claim. Generally, personal injury attorneys do not handle property damage claims. However, as a courtesy to our clients we will assist them with their property damage claim.

The first step in deciding how you’re going to get your car fixed is sorting out who is at fault or responsible for the crash. If you caused the crash, you only have one way available to get your car fixed, and that is through your own insurance company, if you have collision insurance. For a complete description of collision insurance please take a look at Chapter 15, which is an in depth discussion of the types of insurance coverage available to Indiana drivers.

If you are not responsible for the accident, you may have two ways to get your car fixed. First, review your insurance policy and see if you have collision coverage. If you have collision, you can get the car fixed through your own insurance company. Most collision policies have a deductible that can range from \$100.00 to \$1,000.00 under the collision benefit. Your insurance company will pay the agreed upon estimate price minus the deductible, which you will have to pay to the body shop.

There are benefits of going through your own collision insurance:

Many times it is quicker because the other driver’s insurance company will have to investigate the claim before it accepts liability and agrees to repair your car.

Your insurance company has a duty to treat you more fairly than the other driver's insurance company.

If you go through your insurance company, your rates will not go up if the accident was not your fault.

If it costs more to get your car repaired than the other driver has in insurance.

The big disadvantage of going through your own collision insurance is:

You have to pay your deductible to the body shop before you will be able to pick up your vehicle. So you may have to reach into your pocket for \$500.00 or \$1,000.00. Your insurance company will seek repayment from the other driver's insurance company, which will include your deductible. When your insurance company receives payment, it will forward you your deductible. However, it may take three to six months to get your money back.

The other option available to you is waiting and going through the other driver's insurance company. In Indiana, all drivers are required to purchase a minimum of \$10,000.00 of property damage insurance. If you choose to go through the other driver's insurance company, you will first have to wait for a claim to be set up and an adjuster to contact you.

Some insurance companies may require you to bring your vehicle to their estimating facility. Other insurance companies have property damage appraisers who will come to your home or storage facility and estimate the vehicle. Still others will ask you to take your vehicle to one of their preferred shops for the estimate.

Below are answers to the most frequently asked questions about getting your vehicle fixed:

How will the insurance company decide whether to repair or total my vehicle?

The insurance company will total your vehicle if your frame or chassis is bent so much that it cannot be easily repaired or if it costs too much to repair.

How does the insurance company determine how much my vehicle is worth?

The standard is the fair market or actual cash value of the vehicle. Most insurance companies use auto evaluation software programs. If you have concerns that the insurance company is not acting fairly regarding your vehicle, you can do your own market research by checking out Kelley Blue Book, NADA (National Automobile Dealers Association), Edmunds or checking out your local newspaper advertisements. Do I have to go the repair shop that the insurance company recommends?

You do not have to go to the repair shop that the insurance company recommends; however, if it is a private preferred shop, you may have an easier time getting additional items fixed that were not in the original estimate because the insurance company has a working relationship with the body shop. If my car is totaled or getting repaired, will the insurance company provide a rental car?

Yes. If the adverse company agrees to repair or total your vehicle, it will approve a rental vehicle for a reasonable period of time. The insurance company will allow a certain amount of money for each day of rental coverage. So, do not plan on a luxury car, SUV or van unless you opt to pay the difference in rental price.

CHAPTER 3

MAKING A PERSONAL INJURY CLAIM

A personal or bodily injury claim addresses physical or emotional injury. A personal injury claim can happen from car, truck or motorcycle crashes. If a person died in the crash, it is called a wrongful death claim.

The first step to receiving any compensation for an injury is proving that the other party was negligent and their carelessness caused your injury. In legal terms this concept is called “proving liability.” As an example, if you are stopped at a traffic light on US 20 and US 421 and you are rear-ended by the car behind you because the driver was on his cell phone, liability is clear. You should have no problem proving that the other person was careless.

Sometimes proving liability can be complex and disputed. For instance, you could be involved in a crash while you’re in the middle of the intersection at US 20 and US 421. You believe that you had the green light and the other driver believes he had the green light. In this type of scenario, it is much more difficult to prove liability even though you were injured.

If an injured person is able to prove liability, they are entitled to receive money for their injuries. This is called damages, and your damages may include: Hospital and medical bills. Lost wages or loss of the ability to earn money in the future. Pain, suffering and the loss of enjoyment of life. Personal injury lawyers help injured people receive fair and just compensation for their injuries. Personal injury lawyers know how to gather evidence to support a claim, talk with the insurance adjusters, and counsel their clients

on how to avoid the common mistakes that people make when pursuing a personal injury claim.

CHAPTER 4

ACTION STEPS THAT SHOULD BE TAKEN AFTER AN ACCIDENT

Below is a list of action steps an injured person should take after an accident:

If you are physically able, call 911 from the scene. The investigating police officer will document the accident, review the scene, and hopefully speak with witnesses.

Get the contact information from any witnesses.

If you are physically able – take photographs of the accident scene, and all cars involved in the accident. Most phones have a camera, if your phone doesn't have a camera, you should keep a disposable camera in the glove box. Professional drivers always keep cameras in their vehicles.

If paramedics arrive on the scene, let them evaluate you.

If you feel that you are injured at the scene, allow the paramedics to transport you to the hospital. If you hate ambulances, go to the hospital or doctor within 24 hours.

Report the accident to your insurance company.

Follow your doctor's advice and treatment schedule. Do not withhold information regarding prior accidents or injuries. Insurance companies have the ability to find out if you have been in another accident.

Many patients feel rushed when they go to the doctor. It is best to make a list of your symptoms, complaints and questions

for the doctor before you arrive for your appointment. If your problems are not documented in the doctor's record, it will be difficult to prove that you were injured in the accident. There is nothing worse for a case than a note from a family doctor one week after the accident that does not even mention the accident or injuries.

If you are not able to work because of the injury, be sure to discuss this with your doctor.

If you are not able to work, make sure the doctor supports your decision.

Consult an experienced personal injury attorney even if you don't think you want to make a claim. Most personal injury attorneys offer a free consultation. All conversations with the attorney are protected by the attorney-client privilege even if you don't hire that attorney. Be honest with your lawyer, it is much better to learn of a weakness in a case in the beginning as compared to the middle of trial. Direct all insurance company calls to your attorney. Keep a calendar or diary of the dates of your medical treatment so you can provide this information to your attorney.

CHAPTER 5

THE 7 THINGS YOU SHOULD NEVER DO AFTER AN ACCIDENT

Below is a list of the seven things that you should never do after an accident.

DO NOT give a recorded statement to the adverse driver's insurance company. The insurance adjuster is not your friend and she does not have your best interest at heart. You should only give a statement to an insurance company when told to do so by your lawyer.

DO NOT sign any insurance company papers, medical releases or documents without first speaking to an attorney. If you sign the wrong paper, you may sign away your legal right to make a claim for injuries.

DO NOT exaggerate or minimize your symptoms, complaints or injuries to your doctor.

DO NOT stop your medical treatment too soon.

DO NOT hide information from your attorney. Your attorney needs to know all the skeletons in our closet. Most issues can be dealt with upfront if they are disclosed. All discussions with your attorney and his staff are protected under the attorney-client privilege. The attorney needs to know any problems at the outset of the case so they can be handled.

DO NOT talk to your doctor about what your lawyer said. As an example, if your lawyer recommends that you see a certain doctor or you may have a certain medical condition, do not share

that information with your doctor because it will waive the attorney-client privilege. As an example, the investigator reports something important to the attorney regarding liability in a case. The attorney reports the development to the client and the client mentions it in the doctor's office. The doctor's office puts the information in the client's medical record. Now the attorney-client privilege is broken and the information will be disclosed to the insurance company and the jury.

DO NOT post anything about your accident or injuries on any social media site. Even the most generic post "like that guy who hit me was jerk" can hurt your claim.

CHAPTER 6

THE 8 MISCONCEPTIONS ABOUT CAR ACCIDENT CASES

I hear misconceptions and myths about car accident cases all the time. Most of the time these misconceptions are told in good faith to injured folks by the TV commentator, family or friend. If you hear any of the misconceptions listed, disregard what you heard, it's just not true in the real world.

You will get rich because you were injured in an accident. The court system is like winning the lottery.

NOT TRUE. People who receive a lot of money have the injuries to support the award, and they would give all the money they received to be the person they were the day before the accident.

The formula for settling a car accident case is three times the medical bills.

NOT TRUE. There are so many more factors that go into determining the value of a car accident case. Some cases settle for less than three times the medical bills others settle for more.

Because Uncle Joe, two times removed, or a neighbor, friend or co-worker received X amount of money – you will receive the same settlement.

NOT TRUE. Each and every case, injured person, and insurance company is different.

You must give a recorded statement to the other driver's insurance company or it will deny your claim.

NOT TRUE. You have no duty to give a recorded statement to the insurance company. Occasionally, we will allow our clients to give informal (non-recorded) statements to insurance adjusters, if we believe it is in the client's best interest. However, you do have a duty to give a statement to your insurance company.

If you make a claim for Uninsured or Underinsured Motorist Benefits your insurance company will raise your rates.

NOT TRUE. You were not a fault for the accident and you purchased the insurance just in case the other driver didn't have insurance or have enough insurance.

If you are fair with the insurance company - the insurance company will be fair to you.

NOT TRUE. The insurance company's only goal is to get the claim closed as quickly as possible without having to pay the insurance limits.

If the other person was at fault for the accident, you're entitled to money.

NOT TRUE. You also have to prove that you were injured in the accident, and not some underlying problem caused your condition.

I do not have to tell the insurance company or my lawyer about an accident or injury that happened 10 years ago.

NOT TRUE. You need to tell your lawyer everything and he will decide whether or not to tell the insurance company. Also, insurance companies have many electronic databases that can find this information – no matter how small.

CHAPTER 7

HOW DOES INDIANA LAW IMPACT AN INJURY CLAIM?

People injured in car accidents have questions regarding the law. Here are some of the most common questions:

Who will pay for my medical expenses?

Ultimately, the at-fault driver is responsible for reasonable and necessary medical expenses. However, the injured person is responsible for his/her medical treatment during the case. This is why we strongly recommend that you purchase Medical Payments Coverage. (See Chapter 15 on insurance) If you do not have medical payment coverage through your auto policy, you can utilize your health insurance or a government health benefit to receive medical care. If you do not have any medical insurance, we may be able to assist you in finding a physician that will wait for the case to resolve before requiring payment.

The doctor wants me to take some time off of work, how will I get paid?

Lost income is an element of compensation that an injured party is entitled to receive from an at-fault driver at the time of settlement or jury verdict. If you have sick days at work, short term disability or long term disability; you may need to apply for these benefits. How do I get compensated for my personal injuries?

Your attorney will seek compensation for your injuries from the other driver's insurance company. If the other driver is uninsured or underinsured, your attorney will be able to seek

compensation from your insurance company if you purchased uninsured or underinsured motorist coverage. See Chapter 15 for a more complete description of uninsured and underinsured motorist coverage. The compensation you receive will depend on the facts of the accident, the nature and extent of your injuries and whether your injuries are permanent.

For what sort of losses can I receive money?

Legally speaking, you can receive money for your damages. You will have the burden of proving your damages by a preponderance of the evidence (more likely than not). The following will be considered by an insurance adjuster or jury when considering the value of the case or a damage award:

1. Past Healthcare Expenses
2. Future Healthcare Expenses
3. Past Lost Wages
4. Future Loss of Earning Capacity
5. Pain & Suffering Damages which are intangible and consist of physical and mental pain and suffering, humiliation, disfigurement, and loss of enjoyment of life What are the damages if somebody died in the accident?

In a non-medical malpractice case (i.e. automobile or premises liability) the estate's damages are governed by the Indiana Wrongful Death Act. The Act is governed by Indiana Code 34-23. The damages available are slightly different depending on whether the decedent is married or unmarried and has children. Generally, damages include reasonable medical, hospital, funeral, burial expenses and lost wages necessitated by the wrongful act or omission that caused the adult person's death. A surviving spouse may receive damages for loss of love, care and affection, and a surviving child may recover for loss of guidance and parental

care. The damages that may be awarded to the parents of a child or single adult who has passed away are different. There are damage caps for wrongful death in Indiana.

Will I be able to recover money for my injuries if I was partially at fault for the accident?

Maybe! Indiana is a modified comparative fault jurisdiction. Discussion of the Comparative Fault Act is beyond the scope of this book. The brief answer is that any monetary damage award will be reduced by the percentage of the injured person's fault up to 50%. If a jury determines the injured party is more than 50% at fault, he/she is entitled to NOTHING, ZIP, ZERO. This is why it is important to seek the advice and/or hire a lawyer early in your case so facts can be developed to support your claim.

Additionally, Indiana is a contributory negligence jurisdiction in two scenarios. Under contributory negligence - the injured person has to be faultless to receive compensation for their injuries. That is right, if the injured party is determined to be 1% at fault, he/she is entitled to NOTHING, ZIP, ZERO. Contributory negligence comes into play in cases where the state, municipality, governmental agency is being sued and in medical malpractice cases.

Finally, an injured person has to know of a doctrine called Mitigation of Damages. Under this doctrine, if an injured person fails to follow their doctor's advice the jury can reduce the verdict. The argument from the defendant will be that the client would have recovered or improved if he/she would have followed their doctor's advice. A client who fails to follow their doctor's advice severely jeopardizes their chance of recovery – even if they were not at fault for the accident.

CHAPTER 8

THE INSURANCE INDUSTRY

When you or a family member is injured in an accident it is personal. You may worry about your injuries, ability to work, ability to take care of your family, and what will happen in the future. Insurance companies, on the other hand, are in the business of insuring risk of loss. An injury claim is just part of the ordinary course of business to the insurance company. The harsh reality is the insurance company doesn't care about you.

Most insurance companies are for-profit corporations so they are in business for the sole purpose of maximizing profits. Generally, premiums are dependent on a number of factors including the type of insurance that is purchased, the geographic location, and personal information regarding the applicant such as employment, income range, and prior accident history.

An insurance company's goal is to collect more money in premiums and investment income than it has to pay out in claims. The duty that an insurance company has to an injured person depends on the relationship. Your insurance company has a duty to act in good faith and deal fairly with you, the policy holder (insured). On the other hand, the adverse driver's insurance company does not owe you a duty to act in good faith or to be fair because you are not the policy holder (insured).

When an insurance company is put on notice of an injury claim, the company's goal is to protect the policy holder and settle the claim as cheaply as possible. For instance, if the policy holder has \$100,000 in coverage and the injured party has a claim that is close to \$100,000 in value, the insurance company will do

everything in its power to settle the claim for less than the \$100,000.

Insurance companies take this claim business seriously. Think about it, if the company can save a little bit of money on every claim it handles, in the long run, the company makes a lot of money. Since the late 70s early 80s, the insurance industry and corporations have spent millions of dollars on a marketing campaign to convince the public that lawsuits are out of control and people who file these lawsuits are receiving millions of dollars for minor injuries. This is just not true.

Insurance companies have created and marketed the story called "Tort Reform" to the American Public. This story is based on the premise that runaway verdicts (McDonald's hot coffee case) have created the need to:

- Limit the maximum amount of recovery an injured party can receive no matter how serious the injuries; and
- Reduce the average payout or verdict across the board.

The insurance industry's methods are effective because Tort Reform fits right into the insurance model of doing business. If insurance companies are able to get a state legislature to put a cap on the amount of damages an injured person can receive, the companies know their maximum pay out so they can eliminate all risk. Also, if the insurance industry is able to reduce the average payout to injured parties across the nation by a few hundred dollars, it saves these companies millions of dollars per year.

The Insurance Industry's Strategy Has Worked

In 2009, the US Department of Justice published an article reviewing all types of accident cases for the years 1996-2005. The article reported that the median jury verdict award for an injured person in an automobile accident case nationwide was \$16,000 in

2005. This was a \$6,000 decrease from 1996 when the median award was \$22,000.

In this 10 year span, insurance companies have spent millions of dollars lobbying and advertising about greedy people injured in automobile accidents and juries have bought the lie hook, line and sinker. In percentage terms, the median award for an automobile accident in 2005 was 27.3 times less than the award in 1996. Has medical charges gone down since 1996? Has the price of food gone down since 1996? Has the price of gas gone down since 1996?

The insurance industry sells this Tort Reform story to the legislature and the public stating insurance rates will go lower. Go into downtown Indianapolis or Chicago and you will notice that the biggest buildings are owned by insurance companies. These companies just keep getting fatter and fatter, insurance rates continue to rise, and the average person who buys into the "Tort Reform" story does not realize that they have been taken for a ride until they, or someone close to them, are seriously injured and want to be treated fairly.

Why do I tell you this? Because if you're injured in a car accident, you have to separate the emotion and treat your claim like a business. Remember, insurance companies are in business, and you are only a number. Most insurance companies follow a plan when adjusting car accident claims.

If you think you want to handle your own car accident claim, read the following chapters because it will provide some insight into your dealings with the insurance company.

CHAPTER 9

HANDLING THE INSURANCE ADJUSTER

Once a car accident claim is open, most insurance adjusters will follow the same steps. Below is information about the steps the adjuster will follow and how to deal with her.

The adjuster will call you about the claim.

The adjuster will call you and get some basic information about the claim. You have to provide them with the basic information like your age, date of birth, social, date and time of the accident and so forth. Once the insurance adjuster has this information, he/she will be able to run you in a number of databases and learn a bunch of information about you.

The adjuster may then ask you to take a recorded statement regarding the facts of the accident and your injuries.

Your response to this request depends upon whether the adjuster is from your insurance company or the other driver's insurance company. Do not get confused if both you and the other driver are insured by the same company. The way that I tell clients to think about this situation is to assign another name to other driver's insurance company, let's say "Insurance company X".

If the adjuster is from your company and handling your first party claim (collision, medical payments, uninsured motorist), you probably have to give her a recorded statement. You will need to look at your policy, under the "duties" section. The policy will usually say that you have to provide the insurance company with a sworn statement.

If the adjuster is from the other driver's company, you are not required to speak with the other driver's insurance company. The objective of this phone call is to get you to concede certain points that may come back to haunt you later. For instance, you may have broken your wrist and injured your back in the accident. The adjuster calls you and asks you about your injuries and the broken wrist is your major concern. So, when you're asked if you are hurt, you tell her that you broke your wrist; however, you forget to tell the adjuster about your back injury because it was not bothering you as much as your wrist.

Later, the insurance company will use the statement to argue that you only injured your wrist in the accident and not your back. The adjuster will insinuate that you are trying to take advantage of the system. There is no benefit in giving the other insurance company a recorded statement.

How do you handle the phone call without being rude?

Thank the adjuster for the call and tell him/her that you are not comfortable speaking with them right now. REPEAT AFTER ME! "Thanks for calling – I'm not ready to talk about the" claim or accident or injuries. Ask for his/her contact information and you will call them back when you are ready.

Don't be rude but be firm. If you have hired an attorney, give the adjuster the name, address and phone number of your attorney. If you have not yet hired an attorney but are planning on doing so, bring the adjuster's contact information with you when you have your consultation.

The insurance adjuster may tell you that you do not need an attorney.

This statement may be true, but how would anybody know if you need a lawyer one or two days after an accident? Remember, the insurance adjuster does not owe you a duty to act in good faith.

In fact, the adjuster may offer you a settlement in exchange for releasing your claim forever. They often suggest that, if you hire an attorney, any money you receive will just go to the lawyer. This was a plan that Allstate followed for many years. This plan was exposed in the 1999 publication Trial.

Clients have told me that adjusters have threatened to deny their claim if the client hires a lawyer. Other adjusters have said to clients, "you can go ahead and hire an attorney but the offer is not getting any bigger."

What do you do? In a minor case, you may decide to handle your case without hiring an attorney. However, read this book before settling your case because it may help you get the money you deserve. Before you settle the case, you may want to ask yourself why the adjuster is telling you that you do not need an attorney. Remember, the insurance adjuster is not on your side.

The insurance adjuster may call you and ask that you sign a medical authorization so they can obtain all your medical records. She will say something like this, "we really want to settle this case but we cannot until we get documentation showing all your medical treatment."

These forms are usually drafted to allow the insurance company to obtain all of your medical information and will not be limited to your medical records regarding this accident. It allows the insurance company to go on a fishing expedition for any other past medical problems that might be completely irrelevant to the pain you are experiencing. In fact, this medical authorization form will allow them to go back and obtain private medical information even if it is 20 years old. Additionally, these releases are so broad that they allow the company to obtain psychiatry or psychology records, HIV or other communicable disease records, and personnel records.

A client recently received an authorization from a large insurance company not only asking him to sign an authorization allowing them to receive his medical records but also talk to his doctors. Can you imagine an insurance adjuster being allowed to talk to your doctor without you or your attorney being present?

I'm not your attorney. In my clients' cases I do not provide blank authorizations to the insurance company. Do not sign any medical authorization forms until you have consulted with an attorney. Do not become a victim again by having your privacy invaded. While some of your past medical records may be relevant to your personal injury case, many are not and the insurance company may not be entitled to them under the law. An experienced personal injury attorney knows what medical records are relevant to the case, and will provide this information to the insurance company at the proper time.

If you're handling your claim by yourself, make blank copies of the authorization. Limit the request to five years of past records, excluding psychological and communicable disease issues. Fill out an individual authorization for each doctor. Make a copy of each authorization for your records and send them back to the adjuster with a letter telling her to provide you with a copy of each and every document she receives with your release. The insurance adjuster may use delay tactics to wear you down.

The insurance company has the potential settlement money set aside in a loss reserve. The insurance adjuster has learned that people who have been seriously injured have additional expenses. They know that you may be feeling pressure because their doctor took them out of work and they are not receiving a salary. Insurance companies know that that most health insurance or medical payment policies do not cover the entire medical bill. Knowing that these psychosocial stressors push an injured person into a premature settlement, the adjuster will just wait until you give up and say, "enough!" and accept the unfair offer.

An experienced personal injury attorney can advise you how to handle some of these issues. It may be as simple as calling your doctor's office, explaining the issue, and asking them to wait until the case is resolved for payment.

The insurance adjuster may hire an investigator and put you under surveillance.

Credibility is a common theme throughout this book. Insurance companies know that an injured person's credibility is what a jury will determine. Even when there is a question of the other person's fault in a case, a jury will usually bend over backwards to find for an injured person who is credible. This is why the injured person should never exaggerate injuries or hide facts.

Insurance companies are notorious for trying to dig up facts that can negatively impact an injured party's credibility. For instance, the insurance company may have learned that you have severe low back pain and the doctor put you on a lifting restriction of 15 pounds. In an effort to achieve this result, the insurance company may hire an investigator to follow you around and videotape you for days on end. The investigator will take hours of tape and cut it down to a few minutes allegedly showing that you were doing some type of lifting over 15 pounds. The other thing that really hurts on video surveillance is when clients are walking around doing destructive behavior like drinking or smoking.

If you have been injured, do not be paranoid but be aware of your surroundings. Look for suspicious people who may be around your house. If you see a suspicious person around your house or following you, call the police. Investigators who are performing surveillance are supposed to notify the local law enforcement agency of their presence.

Also, follow your doctor's advice. If your doctor tells you not to mow the lawn, ask a family member or friend. There is nothing that can ruin your case more than not following your doctor's

advice regarding restrictions. If for some reason you are not able to follow your doctor's advice regarding restrictions, discuss the issue with your doctor so it is documented in your medical chart. Finally, never exaggerate your symptoms or injuries.

The insurance adjuster will look at your social media.

It is likely that the insurance adjuster will troll Facebook, Twitter, LinkedIn, Google+ and any other social media sites to see if they can find you and see what you are posting. Before you post anything on social media, ask yourself if you would be comfortable with your post being blown-up on a movie screen with your parents, employer, teacher or jury in the audience. If you say you hurt your neck in the accident and you are tagged in a picture doing an upside down margarita – there is a problem.

CHAPTER 10

DO YOU EVEN NEED TO HIRE A LAWYER FOR YOUR CAR ACCIDENT CLAIM?

You do not need an attorney for every small injury case. In fact, some people are better off not hiring a lawyer and may even have trouble finding a reputable lawyer to take a small injury claim. This is because in cases where there is little or no property damage, the injuries are minor, and/or medical bills are less than a few thousand dollars, the attorney fees and costs might leave little or nothing after paying medical bills. In my experience, the injured person may receive just as good a settlement by herself in this type of case.

It is important to be aware that many people do not fully realize the extent of their injuries until it is too late. The people think the pain in their neck or back will go away in a couple of weeks and they do not immediately seek medical care or legal advice. Sometimes, a seemingly minor injury may be much more severe than initially thought. This fact scenario is much more common with a back or neck injury because of the anatomy. If a person breaks an arm or leg in an accident, it is readily apparent and they are taken to an emergency room.

On the other hand, if a person injures a disc in their neck, it usually starts as mild to moderate neck pain and gets progressively worse over a period of time. It's always better to be safe than sorry. When you are injured in an accident, seek medical advice and a legal consultation. You do not have to hire the lawyer but you will learn your rights and equip yourself with valuable information.

A 1999 study performed by the Insurance Research Council (IRC), a not for profit research organization funded by the insurance industry, determined injured people who retained an attorney on average received 2½ to 3½ times more compensation than those people who settled their cases on their own. This is not true; however, if you were involved in a fender bender with a whiplash injury that responded to care after a few months.

You may start out thinking that you want to handle your own claim and after a few weeks or months decide it is better to hire a lawyer, which is why you need to read this entire book so you don't make mistakes that can cost you a lot of money or your entire claim. My best advice to a person injured in an automobile accident is to at least talk to an attorney. Most personal injury attorneys do not charge for an initial consultation. If you want to go it alone that is fine, you should at least follow some of the recommendations in this book, that way, if you are not able to resolve your claim and you need to hire a lawyer, your case will still be viable.

CHAPTER 11

HOW DO YOU GO ABOUT HIRING A CAR ACCIDENT LAWYER?

You've made the decision that you want to hire a lawyer – how do you go about choosing a lawyer? If you open up your local phone book – you are going to see ad after ad offering you the same thing. At this moment, I have the Portage/Valparaiso phone book open but I'm sure that you will find the same ads in your local phone book.

What you will notice is a lawyer ad on the back of the phone book and then page after page of ads offering: "Free Consultation", "No Recovery, No Fee", "Aggressive and Honest", "__ Years Experience". Also, if you turn on your local TV station, you will hear lawyer after lawyer spouting the same information. So how do you go about determining which lawyer in your local community is the best for your case?

Below are some issues that I would consider when hiring an attorney. You should hire an attorney who focuses on injury cases because:

Personal injury law in Indiana is complex. The attorney not only needs to know the law – the attorney has to know the medicine. In medicine, it wouldn't be prudent to go to your family practice doctor for heart surgery. Likewise, it wouldn't be prudent for you to retain an attorney that handles divorce, trusts, estates and an occasional personal injury case. Insurance companies know the reputation of attorneys who handle personal injury cases. The companies share information between each other and they know if an attorney takes cases to trial. You may think that all attorneys

take these cases to trial but that is not true. Only a small percentage of cases go to trial and only a small percentage of attorneys actually handle the trials. When I was doing defense work, there were times when insurance companies settled cases for a higher amount than the insured's policy limits because they knew the injured person's attorney's reputation, and they were concerned of the risk of an excessive verdict at trial.

Does the attorney have any inside knowledge of the insurance claims handling process or did they actually defend cases for insurance companies in the past? Attorneys who were claims adjusters or defended cases for insurance carriers know how insurance companies evaluate cases. It sort of like living with another person, you learn what buttons to push and what things to let go.

Choose an attorney who knows the medical issues involved in your case.

For example, if you have a neck injury that causes neurological problems in your hands ask the lawyer about his knowledge of the condition. At least 50% of a personal injury case focuses on the client's injuries. An attorney can know all the law in the world, if he cannot truly understand the injury, he cannot be an effective advocate for the client.

Get a referral from another lawyer or professional who deals with attorneys on a regular basis.

It is difficult getting a referral from a family member or friend because they may know an attorney but there are so many specialties, the attorney they know, may not be a car accident lawyer.

Learn about lawyer advertising.

When I first started practice, I litigated and tried a lot of cases for a lawyer in the area that did a whole bunch of advertising. The lawyer did not try most of his own cases so he had to bring other lawyers in to try his cases. The fact that that lawyer didn't try cases was known throughout the insurance industry, which I believe impacted the chance of resolving his cases before litigation.

Do not hire a lawyer who actively solicits business shortly after an accident.

This is my opinion; but I wouldn't hire an ambulance chaser. Solicitation is against the Rules of Professional Responsibility in the practice of law. Another thing, I would stay away from folks who offer you money or a kickback to go to a certain lawyer, doctor or body shop after a car accident.

Choose an attorney that maintains an active trial practice and has actually tried personal injury cases.

To put this in context, over 90% of civil cases settle before trial for a number of reasons. First, the courts are under-staffed and it is difficult to get a trial date. Second, when cases get close to trial the parties are able to negotiate a compromise. Does the attorney have an active trial practice? Some states and national organizations actually certify trial lawyers. At the time of this writing Indiana does not certify civil trial lawyers. Other states, like Florida do have certification processes for lawyers in a number of specialties. When I did insurance defense work, there were occasions when the insurance company settled a case the week before trial because of the injured party's attorney's reputation or recent trial verdict.

When interviewing the attorney find out how his/her office works.

There are many law offices that are similar to big box stores with multiple layers of staff. In a number of these offices, the attorney doesn't even know the case exists until it settles. In these offices, the cases are handled by case managers. Ask the attorney if he or she will actually be handling the case. It makes a difference, the only way for the attorney to actually understand the issues and medicine in the case is by reviewing the client's medical records and bills. If the attorney understands the facts of the case and injuries, he or she will be a more effective advocate.

Ask the attorney if he or she is licensed in the state where your case will be filed.

Insurance companies know who is not licensed and therefore cannot actually try the case, so you will be at a disadvantage when it comes to negotiations. Also, laws vary from state to state.

Ask the attorney how he/she will communicate with you.

It is my preference to communicate by email. If a client has any questions, she can send me an email and I can respond to the question or set up an appointment to discuss the matter. I do not have an open door policy because it is not effective to the representation of my clients but I will always respond to an email or return a call within 24 hours.

There are many excellent and competent lawyers in Northwest Indiana.

If you were to ask me, I could probably rattle off 25 names of lawyers who would do a great job handling a local car accident case. You need to choose a competent lawyer who you like. You will be dealing with the attorney for one to five years depending on facts of your case. You wouldn't want to have to spend time with somebody that you do not like for years just because he or she is competent or has a good reputation. I'm sure you can find an attorney that you like.

CHAPTER 12

HOW DOES THE LAWYER GET PAID

Lawyers are typically paid in one of three ways. First, there are flat fee agreements. For instance, you go to lawyer and ask for a will, and the lawyer charges you \$500.00 for the will. Second, there are hourly fee agreements. In these agreements, the lawyer and client agree to an hourly amount and the scope of representation and the client is billed for the services. The client may be required to give the lawyer a retainer before the lawyer starts working on the matter.

The third type of fee agreement is the contingency fee agreement. In this fee agreement the lawyer does not get paid until the contingency is met. Contingency fee agreements are common in personal injury matters because many clients are not able to pay the lawyer an hourly fee and advance expenses as the case moves forward. Contingency fee agreements are not allowed in divorce and criminal matters.

I like to look at a contingency fee agreement as a partnership. The client hires me and I agree to put my time, energy and money to help the client receive justice. In this type of case, I assume the risk in the partnership. I can spend hundreds of hours and thousands of dollars in a case and the jury can award nothing. This is why it is so important for the client to tell the truth about everything so there are no surprises later on.

The typical contingency fee agreement is 33% of the recovery plus expenses if a case settles before a lawsuit and 40% after a lawsuit has been filed. The typical fee agreement may have to be adjusted if attorney's fees are capped or limited by other laws, like the medical malpractice law. The parties are always free to

negotiate a contingency fee contract with the understanding that lawyers cannot charge an unreasonable fee under the rules of professional responsibility.

CHAPTER 13

THE STEPS IN A CAR ACCIDENT CLAIM

In this chapter, I will summarize the basic steps for most personal injury cases, especially those involving serious injury. The process of a personal injury case can be lengthy with many important decisions along the way.

Determining Liability: The first question that has to be answered is who is responsible for the accident? Stated another way, are we able to prove liability against the other party? The liability investigation starts immediately after the lawyer is retained because as time goes on evidence is destroyed, altered or disappears.

A common statement that I hear from clients when they come into the office is this: “We don’t have to worry about liability because the other driver admitted he was at fault and was sorry.” I have to explain that if I had a nickel for every time I heard this, I would be a rich man. The truth is that many times the at-fault driver’s story will change between the time of the accident and the time they discuss the matter with their insurance company. It doesn’t mean that the other driver is lying, most of the time people just rationalize events.

They client will then say that the other driver received a ticket so that establishes liability. I have to explain to them that under the law a jury will not learn that the driver was ticketed for the accident. Because of these issues, it is important that the accident is investigated ASAP.

The Four Areas of Liability Investigation

1. Vehicles: The cars will have to be inspected. The attorney or investigator will take photos of the inside and outside. Additionally, certain measurements may have to be taken, such as the amount of crush the vehicle received during the impact. In some cases we will need to obtain the EDR or “black box”. If we believe that liability is going to be an issue or if the damages are severe, we may also hire an accident reconstructionist or engineer to review the vehicles, scene and reconstruct the event.
2. Accident Scene: We gather the crash report, and visit the scene in person in order to photograph, inspect, measure skid marks, and look for other factors such as bushes or trees or anything else that could have contributed to the accident. It is important to do this ASAP because the height of corn, trees and shrubs change or skid marks could wash way.
3. Witnesses: If there are witnesses to the accident, we will need to interview them so we can document what they observed at the time of the crash. As time goes on memories fade and people move. It is much easier to show a witness their prior statement to refresh their memory than have them try to recall the facts of the accident years later.
4. Insurance: We need to determine if there are any insurance policies available to compensate the client for their injuries. This could be difficult because the insurance company doesn't have to provide us with the coverage limits before a lawsuit. However, many adjusters will give us information about available insurance coverage.

The most important first step in dealing with an Indiana accident case is determining liability because a client's recovery is dependent on liability. If an insurance adjuster or jury determines that the injured party is more than 50% at fault for the accident, he/she is not entitled to any recovery.

Damages (injuries): The next area of investigation is the nature and extent of the client's injuries (harms & losses).

Five Areas of Damages Investigation

1. Past Medical History/Prior Claim Search: We will order an ISO claim search, which is one of the claims searches performed by insurance companies. This will give us an idea if the injured person had any past auto or worker's compensation claims that have been reported by insurance carriers.
2. Medical Documentation: We will obtain all medical documentation related to the accident including EMS reports, hospital records and medical records. We also need to obtain past medical records if there have been prior accidents, injuries or illness to the areas of the body injured in the accident.
3. Medical Bills: We will gather all medical bills related to the injury.
4. Employment Records/School: If the client lost time from work or school, we will obtain these records.
5. Lay Damage Witnesses: Lay damage witnesses are a very important part of proving a client's damages. If there are friends or acquaintances with whom the client has contact, and these people are able to describe the changes in the client after the accident, this testimony tends to help juror's determine proper damage awards.

The Demand Package

Once we have completed our liability and damage investigation and the client has reached a point of maximum medical improvement, we will submit a demand package to the insurance company if we believe it will be fruitful. The demand package is a compilation of our liability and damage determination. It consists

of a letter from the attorney setting out the client's position regarding liability and damages.

A number of insurance companies use claims management software to arrive at a value for the claim. Your attorney must know the insurance companies that use this software and the specific data points to send the company so the injured person gets a fair shake.

Negotiation

The insurance company is usually given 30 days to review the information in the demand package. Once the demand package is reviewed, the insurance adjuster will make an offer in response to the demand. Sometimes the offer will be the entire policy limits of the at-fault driver's insurance policy. The amount of the offer depends on the facts of the accident and the nature and extent of the client's injuries. Once an offer is received by the insurance company the negotiation process begins. The attorney will consult with the client to discuss the strengths and weaknesses of the case and the best way to proceed. The final decision of whether to settle the case is ALWAYS the client's decision. The attorney will make recommendations based on his/her experience but the decision is the client's.

If an offer is fair, there are numerous advantages to settling a case without going to trial. Below is a list of settlement advantages.

Advantages of Settlement Before Filing a Lawsuit

Attorneys fees and costs are lower

Money is obtained immediately

The client can avoid the stress of a prolonged lawsuit

The client is in charge of the settlement not six strangers in a jury box

Life goes on as planned

The outcome is guaranteed

The Lawsuit

If the parties are unable to negotiate an agreement and the insurance company's highest offer is rejected by the client, the next step is to file a lawsuit. A lawsuit begins by the filing of a complaint. Most of the time, the complaint is filed in the county of the accident. For instance, if the accident occurred in Merrillville, which is in Lake County we will file the complaint in Lake County. Once the complaint is filed, the clerk's office will assign the case to a judge. So the case may be tried in Hammond, East Chicago, Gary or Crown Point depending on the judge assigned.

The Clerk of the Court will then serve the complaint on the defendant(s) (the people legally at fault for the accident and injuries). In Indiana, more than one person can be held legally responsible, such as the driver of the vehicle or employer if the driver was on the job.

Indiana is a modified "comparative negligence" jurisdiction which means that a jury can apportion fault among all parties and non-parties that it determines are at fault for the accident. However, an injured person is barred from recovery if the jury finds that he/she was greater than 50% at fault.

Once the lawsuit is filed and the defendant(s) are served with the summons and complaint. The insurance company will hire an attorney to represent the defendant(s). The defendant(s) will answer the complaint and the litigation process begins. Once a lawsuit is filed, much more is expected out of the client. In order

to for the case to be successful, the client must be willing and able to actively participate in the litigation process.

The following steps occur in a lawsuit between the answer and jury trial:

Case Management Conference: Following a case management conference, the court will set deadlines for discovery, mediation and motions. Additionally, the court may set the case for trial.

Discovery: This is period of time where the parties exchange information. Written discovery includes interrogatories, request for admissions and request for production of documents. Additionally, the parties will subpoena records from healthcare providers or any other persons who have information relevant to the proceedings.

Oral discovery consists primarily of depositions. Depositions are statements under oath that are taken under oath before a court reporter. The parties can take the deposition of all persons who have knowledge regarding liability and damages.

Mediation: This is a confidential settlement conference between the parties and a non-interested third party who tries to help negotiate a resolution to the case. All trial judges will refer the case to mediation. This is usually the last chance to settle a case before trial. Things that are discussed during mediation are confidential and cannot be used at trial. If a settlement is reached at mediation, the insurance company will issue a check within 20 to 30 days.

Trial: There are two types of trials. (1) A bench trial, in which the judge hears the entire case and rules on the law and the facts. (2) A jury trial in which six members of the community will decide the case. Depending on the complexity of the case, the trial can last from a few days to weeks. A trial can cost between

\$25,000 and \$100,000 to present. There is no way to predict what a jury will decide. Attorneys and insurance companies use their past experience and information gleaned from other juries who decided similar issues to make an educated guess regarding the outcome of the case. This is another reason you need to retain an experienced trial attorney.

Post Trial: A verdict following a trial is not necessarily the end of the line. For many cases, it is the beginning of a whole new round of litigation. If a party believes the court committed error during the trial, they can file a motion for a new trial or an appeal. Appeals can take years to resolve. If the Appellate Court decides there was reversible error committed during trial, it can remand the case back to the trial court for a new trial.

The length and expense associated with the litigation process, the fact that nobody can foretell what a jury will do with a case, and the fact that jury verdicts can be overturned on appeal are some of the reasons that parties will attempt to compromise and settle a case short of trial.

CHAPTER 14

WHAT DOES THE CAR ACCIDENT LAWYER DO IN A CASE?

Below is a complete list of tasks that may be performed in order to work-up and successfully resolve an Indiana car accident case. Every case is unique and has its own set of challenges so each case may not require every action. These actions include the following:

Interview the client

Explain the claims process to the client

Gather liability and damage evidence to support the client's claim

Review the client's automobile insurance policy to see what coverage is available to pay for the client's medical bills, lost wages, and other losses

Put client's health insurance, Medicare and/or Medicaid on notice of the claim

Start the initial investigation of the client's claim, which may include: gathering physical evidence, speaking with witnesses, photographing the vehicles, and photographing the accident scene

Analyze the legal issues involved in the case to determine if there are other parties that may be responsible for the claim or if there are facts that might diminish the client's recovery

Obtain and review the client's medical records (past and present)

File any necessary claim forms with insurance companies

Work with the client's health insurance or governmental benefit plan to make sure they pay for the treatment

Contact the adverse party's insurance company to put them on notice of the claim so they can set appropriate loss reserves

Negotiate with the insurance adjuster in an effort to settle the claim. Discuss negotiations with the client to determine if a lawsuit will be filed

If a lawsuit has to be filed, prepare and draft the summons and complaint

Locate the defendant(s) so they can be served with the summons and complaint

Draft written discovery to the defendant(s) and respond to written discovery from the defendant(s) (Interrogatories, requests for production and requests for admissions)

Attend depositions of parties and witnesses

Hire the necessary experts to prove client's claim. This may include an accident reconstructionist and/or medical experts

Attend case management/status conferences

File all necessary documents with the court identifying witnesses and exhibits

Prepare for an attend mediation

For larger exposure cases – hire and present case to focus group(s)

Take the case to trial

Draft or respond to any post-trial motions if necessary

Negotiate any outstanding medical bills with client's doctors and negotiate with client's insurance company

CHAPTER 15

OVERVIEW OF CAR INSURANCE

This is the most important chapter in this book because people do not think about their insurance needs until it is too late. Almost exclusively, when a client comes into the office and I ask him about insurance coverage, the answer is “I have full coverage.” When I ask him what that means? The typical answer is “I don’t know.”

Insurance has two main purposes. First, to protect your assets if you injure another party. Second, to provide coverage to make you whole if you are injured by another party. Insurance must be purchased before an accident. Frequently, I have to explain to clients that they have to pay money when they have been injured by another party because they did not purchase enough insurance. Understandably, these clients become upset when they learn that they have to pay for the other person’s mistake.

Remember, when you’re involved in an accident it is too late to purchase insurance to cover the claim. There are thousands of accidents on Indiana roads every year. A high percentage of people that caused these accidents had little or no insurance to compensate the people that they hurt or killed. This means that if you drive in Indiana you have to protect yourself.

Indiana’s Minimum Insurance Requirements

In Indiana, the state minimum insurance requirements are at least \$25,000 for injuries to one person, at least \$50,000 for injuries to all persons, and at least \$10,000 in property damage. Additionally, the Indiana Department of Insurance requires all newly written insurance policies to include a minimum of

\$25,000/\$50,000 of uninsured motorist coverage, and \$50,000 in underinsured motorist coverage. You are able to waive this coverage.

Below is a description of the different benefits that you can purchase to protect yourself on Indiana's dangerous roads.

Collision: This benefit provides coverage to repair your vehicle if it is damaged in an accident. You can purchase this insurance with a deductible that ranges from \$100.00 to \$1,000.00. If you do not have collision insurance, you will have to pay for your car to be fixed in the following scenarios:

The damage to your car is more than \$ 10,000 and the other driver only has \$ 10,000 in coverage

The other driver is uninsured

The other driver's insurance company denied liability and will not fix your car

You caused the accident

GAP: This benefit provides coverage if your car is worth less than the amount you owe the bank or credit union. If you do not have GAP coverage, you will have to pay the difference between the fair market value of your car and the amount you owe the bank.

Medical Payments Coverage: This benefit pays medical expenses for the insured and usually passengers, if injured while riding in, getting in or getting out of the car. With the current cost of medical care, you should consider purchasing the highest amount available.

Bodily Injury Liability: (Minimum \$100,000/\$300,000 or more if you have substantial assets that can be attached if you

were to injure another person.) You are required to purchase a \$25,000/\$50,000 policy, you will need this coverage if:

You were at fault in the accident and caused serious injury to another person.

Uninsured Motorist Coverage: (Minimum \$100,000/\$300,000) If you are driving in Indiana, you need uninsured motorist coverage to protect yourself if the at-fault driver has no liability insurance, which is likely. You are required to purchase \$ 25,000/\$50,000. You can waive the requirement.

You will need uninsured motorist coverage if the driver that injured you was uninsured or their insurance lapsed

Underinsured Motorist Coverage: (Minimum \$100,000/\$300,000).

If you are driving in Indiana, you need underinsured motorist coverage to protect yourself if the at fault driver has the state minimum (\$25,000), and your injuries are greater than \$25,000. For example, if the at-fault driver has \$25,000 in coverage and you have \$100,000 in UIM coverage, you have \$75,000 in excess benefits.

There is something else you must know regarding Uninsured Motorist Coverage and Underinsured Motorist Coverage. Just because you planned ahead and purchased adequate amounts of insurance coverage from your insurance company, and you've been faithfully paying premiums for a number of years, doesn't necessarily mean that the insurance company is just going to compensate you what you think you deserve. You will most likely need an experienced personal injury attorney to get a fair deal with under your uninsured motorist coverage.

Group Health Insurance: Some clients have group health insurance through their employer. These insurance carriers will

pay for medical treatment if you do not have Medical Payments Coverage. However, you will be responsible for the co-insurance payments. Additionally, most health insurance carriers will be waiting for reimbursement at the time of settlement. This is another area where you need an experienced personal injury attorney. The insurance carrier's right of subrogation or recovery could be based on contract, ERISA (a federal law) or equity.

Medicare/Medicaid: Some clients are covered under Medicare or Medicaid. These healthcare programs will pay the client's medical bills but they will require repayment at the time of settlement.

Personal Umbrella Policy: Generally, the most inexpensive way to adequately protect you from liability or if you are injured by an underinsured/uninsured motorist is through an umbrella policy (PLUP). A PLUP is a single limit excess policy, which is usually available to clients who own multiple assets, like a car and a home. PLUPs are usually available in \$1-5 million limits. The insurance carrier will usually require the insured to purchase a certain level of underlying automobile coverage (BI/UM/UIM) if the insured wants the maximum uninsured or underinsured limits.

Conclusion

These insurance recommendations may sound expensive, however, you may be surprised to find out that they cost much less than you think. This is especially true if you have a good driving record and are insured by a standard insurance company. Uninsured Motorist Coverage and Underinsured Motorist Coverage are absolutely necessary because the mandatory minimum insurance coverage is not adequate to protect and compensate you if there is a serious injury.

Don't forget, you have to look at your insurance needs and up your limits before an accident occurs.

CHAPTER 16

THE 6 WAYS TO MESS UP YOUR CAR ACCIDENT CLAIM?

I have been assisting people injured in automobile accidents, first as a doctor then as a lawyer, since 1986. In this chapter, I will list the biggest mistakes that have destroyed any chance of a meaningful recovery for a number of patients and clients over the years. .

1. Failing to call the police or obtain proper information at the accident scene.

Problem: If you fail to call the police to the scene of the accident, it can be very difficult to prove the case. Without verifiable documentation from the police, the insurance company may dispute that the accident even happened.

Recommendations: Call the police because it is important to document the accident and determine fault. At the accident scene, you should also get the contact information from any witnesses. Sometimes witnesses will stop at the scene to make sure no one is severely injured and they will leave before the police arrive, so make sure you have paper and a writing instrument in your glove box. I can't tell you how important it can be in the future to have an independent witness to corroborate your recollection of the events that caused the accident.

If you are physically able, you should also take photographs of the scene and vehicles. Once the roadway is

cleaned up, the accident scene cannot be duplicated. If you do not have a camera on your cell phone put a disposable camera in your vehicle.

2. Failing to seek immediate medical attention

Problem: Many people do not seek medical attention at the accident scene or go to the ER because it is too big of a hassle or they think the injury will go away. Delaying medical care can destroy an injured person's accident case for two reasons. First, the person may have a medical condition that progresses because he did not timely treat the condition. Second, the insurance company and a jury will question the person's credibility because "everyone knows that a seriously injured person doesn't wait to go to the doctor."

Recommendation: If an accident victim feels pain at the scene, he should be evaluated by EMS and follow the paramedic's recommendations. If the person does not want to be transported to the hospital by EMS, he should go to the hospital or urgent care center later that day. An injured person should not try to tough out an injury; it will MESS UP your case.

3. Providing too much information to the other driver's insurance company

Problem: The adjuster from the other driver's insurance company calls the injured person right after the accident and asks for a recorded statement. Within a week of the accident that person may be taking pain medication or have not yet started to feel the full effects of the entire injury. The adjuster is calling to lock in the victim's version of the facts regarding the accident (liability), and to discover the extent of his injuries (damages). This recorded statement will be used against the injured person at a later date.

Recommendation: The injured person should not talk to the other insurance company right after the accident. Instead, when they call, get their name, number and claim number. This information should be given to your lawyer, if you hire a lawyer.

4. Waiting Too Long Before Hiring an Attorney

Problem: Some people initially try to handle their injury case on their own and then attempt to hire a lawyer after they receive a low-ball offer from the insurance company. The problem is that evidence related to the accident needs to be preserved. Once evidence gets cold, vehicles destroyed, or witnesses disappear, an injured person's case can be destroyed. Many people do not get the money they deserve because they did not hire an attorney before evidence was destroyed and witnesses lost.

Recommendation: Consult with a lawyer immediately following an accident to protect your rights. If you do not feel that you are ready to retain an attorney, follow the recommendations in this book. If you decide to retain an attorney, he can begin investigating the accident to preserve evidence and interview witnesses. An experienced personal injury attorney can identify potential weaknesses and issues early on and attempt to sure up the facts supporting the injured person's claim.

5. Hiding or Failing to Disclose Prior Accidents and Injuries

Problem: This is the problem that will destroy a client's case faster than any other problem. Pursuing a personal injury claim depends solely on the client's credibility. The insurance industry has an extensive database that maintains a history of a client's prior accidents and claims. An insurance carrier only has to put the client's name and social security number into the ISO Claim Search and all insurance claims will come up. Hiding information from your doctor or lawyer will destroy your case. Failing to give completely accurate information to your doctor can

hurt a client's case as well. The fact that a client may have been in a prior accident or injured the same part of the body can be dealt with if it is reported.

Recommendation: It is important for a client to be completely honest and provide an accurate history. I can't tell you how many times, a client failed to give complete information, and after the fact, their response was the other accident or injury was "different" or the "pain was different." It is so much better to just disclose the issue and explain the difference.

6. Social Media

Problem: Social media has become a big problem and has had a big impact on personal injury claims. Insurance companies and lawyers are constantly attempting to get this information because many times it's a treasure trove of information. Some people just don't think before they upload photos or posts to social media.

One of the biggest problems that I have been confronted are with clients who say they can't do some activity or are having some problem and a social media post or photo contradicts the client's testimony.

Recommendation: Think about what you are posting and uploading to social media. Understand that if you're making a car accident claim or any other personal injury claim you're living in a fish bowl until the claim is over. If you can't show restraint, don't file a personal injury claim.

CHAPTER 17

HOW MUCH IS YOUR CAR ACCIDENT CLAIM WORTH?

This is one of the most frequently asked questions in the initial interview process. Many times clients have an idea based on conversations with family or friends, and the 8 misconceptions discussed in Chapter 6. The value of a case is dependent upon a number of factors and the lawyer will not have all the facts at their disposal during the initial conference. One of the overriding factors in determining the value of a case is the available insurance, especially in this day and age when many people do not have disposable income.

As an example, if a client's injuries have a value of \$100,000 and they lawyer discovers that there is only \$25,000 available in coverage; the case is only worth \$25,000 because the likelihood of recovering more than the insurance proceeds is slim to none. A car accident lawyer has the knowledge and experience to evaluate the factors that go into determining case worth.

If you have an initial interview with an attorney and they are able to tell you how much your case is worth, I recommend that you ask the attorney to put that in writing and hire him.

The following factors are utilized by insurance adjusters and/or jurors in determining the value of your car accident claim:

Your credibility

The credibility of the other party

Who was at fault for the accident

How bad was the at-fault party's behavior?

The damage to the vehicles involved in the crash

The nature and extent of your injuries

Were you wearing your seatbelt?

What was the cost of medical care and how much of the care was paid by insurance

Are you required to pay back the money that your insurance company paid for her medical care?

The amount of your out of pocket expenses

The amount of future medical expenses if future medical care is required

Did you lose income, and are you expected to lose income in the future

Did you have any prior injuries or pre-existing medical conditions that were not caused or aggravated by the accident

If you are married or have children, how did the injuries impact your relationship with your family

How did and how does your injuries impact your ability to enjoy life

These are some of the factors that go into determining the value of your car accident claim. In addition to the factors noted above, the insurance company may employ other strategies (i.e. surveillance) in an attempt to settle cases for less than full value. If you have a serious injury claim, it is in your best interest to speak with an attorney initially so you do not make mistakes that can destroy your claim.

CHAPTER 18

CONCLUSION

Car accident cases have a lot of moving parts and because all the parts have to be integrated there are many areas where an unsuspecting injury victim can be tripped up. I can't tell you how many times, I became involved in a case after an injured person tried to do it on their own and learned that they made concessions to the insurance company that undercut their claim. Insurance companies and lawyers do not always speak the same language as the average person.

For instance, an insurance adjuster may ask you, how much time elapsed between the first time you saw the other car and the crash? And without thinking (you may be horrible at judging time and distance) you say 10 seconds. However, if you actually look at that answer scientifically, you could have avoided the crash two times over if 10 seconds really elapsed. Based on this statement, the insurance companies for the other driver denies liability and a lawsuit has to be filed. In the lawsuit, you have to contradict that prior statement because it really didn't take 10 seconds but the statement will certainly impact your credibility with the jury.

Hopefully, by reading this book you have gained an understanding of the existing landscape involved in car accident claims. My hope is that you receive fair and just compensation if you've been injured in a crash. If you have any questions, you can always send me an email to guy@dpjustice.com.

GLOSSARY

Causation: Is a legal concept that requires the negligent act (the car accident) to be the proximate cause of the injured person's injuries. Many times this legal concept is a point of contention between the injured person and the insurance company.

Comparative Fault: The facts of the case suggest that the injured person's action(s) or inaction caused or contributed to the accident. Any recovery is reduced by the injured person's percentage of fault.

Economic Damages: Compensation that may be available to an injured person, which include healthcare expenses, lost wages, and any other monies that are tangible and paid or owed.

First Party Coverage or Claim: An insurance claim made against your insurance company. Includes collision, rental, medical payments, uninsured and underinsured motorist claims.

Liability: The determination of fault. The facts of incident are very important in determining liability or fault.

Medical Payments Coverage: A benefit in an automobile insurance policy that pays for medical and/or funeral expenses up to a contracted amount.

Negligence: Is the legal term for fault or liability. The law requires a person to follow a standard of care that it defines as a "reasonable prudent person" under the same or similar circumstances.

Non-Economic Damages: Compensation for the injured person's human losses including physical and mental pain and suffering, and the loss of the quality of enjoyment of one's life.

Subrogation: Is a term that is used when a third party has a interest in a case. For instance, when medical payments are made under a client's medical payments coverage, his/her insurance carrier has a right of repayment, if the client gets money from the negligent driver.

Third Party Coverage or Claim: A claim made against an insurance company for the negligent or at fault party.

Underinsured Motorist Coverage: Provides insurance coverage for the injured person if the negligent driver does not have enough insurance available to pay all the damages.

Uninsured Motorist Coverage: Provides insurance coverage for the injured person if the at fault driver is uninsured.

Underinsured Property Damage Coverage: Provides coverage to pay for your vehicle if it is damaged by an uninsured motorist.

ABOUT THE AUTHOR



As an attorney, I have worked on both sides of the table. My trial experience has allowed me insight into how insurance companies and corporations value injury cases.

The fact is that insurance companies look at a specific number of factors in determining the amount of money to place on a case. Real money value is placed upon the reputation of the attorney representing the client and whether that attorney actually takes these types of cases to trial.

Education:

National University of Health Sciences - BS (1984), DC (1986)

Valparaiso University School of Law - JD, summa cum laude (1999)

Bar Admissions: Florida (2000), Indiana (1999), Illinois (2000, inactive); US District Courts of Appeals (11th Circuit, 7th Circuit); United States District Courts: Southern and Middle Districts of Florida; Northern and Southern Districts of Indiana; Northern and Central Districts of Illinois; and District of Colorado.

My two backgrounds, one in health care and the other in law are to your advantage. I know the anatomy and physiology of the human body and have a "hands on" understanding of your injury.

I have successfully litigated injury cases from Indiana, to the Courtrooms of Florida and Illinois. I know that people who are injured have many worries and concerns. I am available by phone to allay your fears and answer your questions.