

7 Things You Need to Know: Mistakes Not to Make

Being involved in an automobile collision can be one of the most stressful experiences of your life. In addition to the obvious stress of health and financial fears and worries, dealing with insurance companies and adjusters can often exacerbate the tension and strain.

However, there is good news. As with most things in life, preparation often results in fewer problems and an increased chance of success. Success in the case of automobile collisions and claims means appropriate compensation for pain and injury, lost or damaged property, and lost wages, as well as fewer headaches and problems in handling the arduous process of resolving the claim.

As difficult as it may seem, it is extremely important to stay focused and know what to do should you or a family member ever be involved in an automobile collision. If no one is seriously injured at the site of the collision, there is a great deal you can do immediately to better prepare yourself to make your case and defend your position. If it proves impossible to collect key information at the collision because of serious injury or other factors, a little knowledge and advice will equip you to seek out and find the evidence and details that will be crucial to your case and result in a better chance of success.

Here are seven things you need to know about handling an automobile collision and a resulting claim. Following this advice will help protect you from making critical mistakes.

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Get Names and Contact Information of Eyewitnesses

Eyewitnesses to an automobile collision are one of the most important, though often forgotten, factors in resolving a personal injury claim. They are key to your case because they can verify information, corroborate and confirm your account of the events, and even provide further information of which you are not aware that proves the fault of the other driver(s). Eyewitness statements can even be used to confirm physical pain and discomfort you may be experiencing as a result of the collision.

Eyewitnesses can come in many forms: passengers in your vehicle or other vehicles, pedestrians, onlookers, bystanders, and even other drivers not involved in the collision. In many cases of automobile collisions, there are a number of eyewitnesses unless the scene is isolated or the collision occurs during a time of day when there is little traffic.

If there is a serious injury to anyone resulting from the automobile collision, the first concern of anyone present should be attending to the medical needs of the injured person and calling for medical assistance. However, if no one is seriously injured, one of your first priorities should be identifying and contacting any eyewitnesses.

Contacting eyewitnesses at the scene of the collision has many advantages. An eyewitness account recorded immediately after the collision has the benefit of being the freshest and clearest recollection of the events as they actually occurred. There will be less cause for doubt of the veracity of the eyewitness' statement since the eyewitness will have had little time to forget key details or get confused about what actually happened. Additionally, contacting the eyewitness at the scene of the collision saves you the trouble of sometimes complicated investigative work to seek out the identity and contact information of the eyewitness.

After identifying eyewitnesses, speak to them as soon as possible and ask if they saw the address, and telephone number where they can be contacted in the event that more information is needed at a later date. If an eyewitness leaves the scene before you have a chance to speak with him or her, record the license plate number of the vehicle. This information can be used to obtain contact information from the Department of Motor Vehicles later.

When speaking with an eyewitness, it is important to get a written or tape-recorded statement. It is best if eyewitnesses can write their statements personally. However, if eyewitnesses are unable to write their own statements, you can record the statement for them. (Remember that if you are tape-recording an eyewitness statement, the eyewitness must have knowledge that he or she is being recorded and must give you explicit permission.)

An eyewitness statement should include anything the eyewitness saw, heard, or experienced relating to the collision. Direct observations, in addition to recollections and general impressions, are very useful in determining fault and assisting with your case. Do not paraphrase or reword the eyewitness' statement. It is important to have the account of the collision recorded in the eyewitness' own words, with accurate descriptions and many details.

Once the eyewitness' statement is complete, have the eyewitness sign his or her full name at the bottom of the page, date it and include an address and telephone number where he or she can be reached. For statements that are longer than one page, the eyewitness needs to initial and date the bottom of each page and then date and sign his or her full name on the bottom of the last page.

After collecting all the eyewitness statements, make a copy of each one and mail a copy back to the eyewitness.

If, for whatever reason, you are unable to directly contact or locate a witness, you still

have some options at your disposal. The most traditional option is to send a certified or registered letter to the eyewitness' last known address. Be sure to check "Return Receipt Requested" and "Address Only." When you receive the return receipt signed by the eyewitness, you will then have his or her full address for future contact.

A second option is to employ the search capabilities of the internet. There is a wealth of information to be found on individuals on various websites, and this information could provide you with crucial clues to locate the eyewitness. If you are inexperienced with internet searching, seek assistance from someone more familiar with the internet's capabilities and functions.

Ultimately, it is important to remember that the burden of proving your account of the collision and the fault of the other driver lies on you. Eyewitnesses can be one of the most important resources to help alleviate this burden.

Document Everything

As stated above, the burden of proving your case and justifying your claim rests on you. Insurance adjusters aim to reduce or minimize your claim in order to lessen the amount of money the insurance company pays, so the more reliable documentation and evidence you have to support your claim, the better chance you have of success and appropriate compensation.

Documentation can be done in many ways, and you should not rely on only one form of documentation. In the case of automobile collisions and personal injury claims, you cannot have too much information, so document as much as possible. Documentation can take the form of written records, receipts, bills, payment records (cancelled checks), photographs, etc.

Because photographing is probably the quickest and easiest form of documenting the results of an automobile collision, it makes sense to start with this method. (Again,

remember that attending to any medical injuries or emergencies supersedes the collection of eyewitness accounts or photographing the scene.) For this reason, it is a good idea to always carry a disposable camera in your automobile's glove compartment should you ever find yourself involved in an automobile collision. If using a camera that has a timestamp, be sure the date is correct and printed on each picture. If using a disposable camera or a camera without a timestamp function, develop the photographs as soon as possible and write the date they were taken on each one.

Once the collision has occurred, photograph the scene of the collision and all vehicles involved as soon as possible. Although you may personally acquire little information from a visual assessment of the scene, key indicators such as the position of involved vehicles, skid marks, road conditions and/or obstructions, etc. can help trained personnel (such as police officers) determine fault. Attempt to take enough photographs so that a full 360° view of the scene can be represented as accurately as possible.

In addition to photographing the scene itself, take more focused close-up photographs of each vehicle involved in the collision and the damage sustained. Concentrate especially on your vehicle, photographing the damage from various angles.

Many physical injuries can also be photographed. Take pictures of cuts, bruises, swelling, broken bones, etc. Anything that can prove medical injury was sustained during the accident lends to the credibility and strength of your case. It could also be helpful to take pictures of the progression of the injury—either as it heals or worsens. Again, remember to develop the pictures as soon as possible and write the date they were taken on each one because this timeline of your injury and condition can support your claims for “pain and suffering,” lost wages, etc.

Photographs, though they provide powerful visual evidence, are not the only forms of documentation that can be helpful, however. Detailed written records help to verify the

accuracy of what you claim and enable you to provide specific, unchanging, and certain answers when responding to questions about your medical condition, lost wages, others expenses incurred. When keeping written documentation of facts related to your case, the date of the record is extremely important, so be sure each record or entry is dated.

It can sometimes be difficult to document everything that could be helpful to your case if you are unsure what will be relevant or used. Knowing some common questions that adjusters or lawyers may ask you can help you keep better records and be prepared with critical supporting evidence. Below are some, though by no means all, of the questions you could be asked relating to your medical condition and injuries:

- What injuries did you sustain as a result of the automobile collision?
- Did you leave the scene of the collision in an ambulance?
- What medical treatment have you received for your injuries (and when was this treatment received)?
- What medical providers have treated you?
- What was the doctor's diagnosis?
- Are you still being treated for these injuries/conditions?
- Do you have a history of injury to these same body parts?
- When was the last time prior to the accident you were treated for pain to these body parts?
- Do you have any residual pain or injuries?
- How much were your medical bills?

Keep in mind that not all of these questions are relevant to the settlement of your case or claim and not all of them should be answered. However, knowing potential questions that could be asked (and that adjusters would like you to answer) can help you be prepared and know what to expect.

Other forms of helpful documentation can include records or receipts relating to travel

expenses for medical appointments, payment records (checks) for services you were unable to perform yourself as a result of the collision (housekeeping, yard work, etc.), records of lost wages or lost opportunities to make money (which could include tax records if you are self-employed), etc. Essentially, the important thing to remember is that if you think it could be useful or important to your case, it probably is and you should document it in some way.

Avoid Making Statements to Insurance Companies, Attorneys, Investigators or Strangers

As alluded to earlier, your insurance company and the insurance adjuster—despite being *your* insurance company—are not necessarily on your side. Their aim is to minimize your claim to ensure that they pay out as little as possible. This fact is also true of the other driver's insurance company, although their motives are slightly different. The other driver's insurance company may attempt to get a statement from you in order to use that in proving your fault in the accident.

Remember that you are advised to collect information and statements from any witnesses or other parties involved in the collision to support your case, so anyone attempting to collect a statement from you also has the potential to use that statement against you for the benefit of his or her case or claim.

Making statements to anyone about the collision can be damaging to your case in a number of ways. First, it can provide evidence to support someone else's claim that you are at fault in the accident, lessening your chance of success and compensation. Second, if you make a statement that later proves to be incorrect (even if deception or inaccuracy was not your intention), the error can cast doubt on the veracity and credibility of your claim and anything else you assert.

For your protection and the ultimate success of your case, it is best to reveal as little information as possible. Because personal injury cases and receiving appropriate

compensation from your insurance company can be a complex and difficult, it is often a good idea to seek professional advice from an experienced personal injury lawyer.

At the scene of the collision, assess the condition of all parties involved in the collision. Cooperate with police and other officials in providing basic facts, but remember that you are not required to make speculations about circumstances of which you are unsure or give your opinions. You always have the right to consult an attorney before making any statements.

The bottom line is protect yourself by protecting your information and opinions. The less you disclose, the less you do to hurt your own claim and the less you give someone else to use against you.

Avoid a Delay in Treatment for Injuries

When you are injured as a result of an automobile collision, recovering the costs of medical treatment can be a large part of your personal injury claim. Although it may be confusing deciding when to get treatment, what treatment to get, and what information to disclose to medical providers, it is crucial that you handle the process of obtaining medical treatment correctly or you could strongly damage your case.

An important fact to remember is that it is your obligation to take whatever action is possible to prevent further injury and damage to yourself as a result of the collision. This first means obtaining medical treatment as soon as possible after the collision occurs and/or accepting medical treatment at the scene of the collision.

If part of your claim involves recovery of damages associated with your medical injury and it is found that the damage could have been prevented by early treatment of the problem, you most likely will be unable to recover that part of the damages. Although the court may rule that delay in seeking treatment was reasonable if you did not realize the seriousness of the injury initially, it is a

needless risk to take because the outcome could turn against you.

When seriously injured after an automobile collision, seek medical treatment at the scene of the collision or as soon as possible. The fact that you were injured and refused treatment at the scene can be used against you by the insurance company and can be very damaging to your case.

If you do not believe you are injured, have a slight injury that you believe to be inconsequential, or are unsure if you are injured, it is probably in your best interest to be checked out by your general practitioner at the very least to ensure that you do not have a serious problem that will arise later. This minor initial expense can prevent greater expense, pain, and trouble in the future. Do not assume that your minor injury will get better. It is far better to confirm this (or realize that your initial diagnosis was incorrect) early on than wait until there is a real problem after having already reduced the chance that you will recover those expenses.

Another problem with delaying medical treatment is that insurance companies often refuse to pay claims when the injured person does not seek treatment immediately. For some people, the lack of medical insurance may prevent or deter them from seeking this early treatment. However, it will only hurt them in the long run. If lack of medical insurance is a deterring factor, ask the medical provider to bill you. Lawyers can help with this situation, as well, because they often can negotiate with medical providers to have them bill you and set payment after the case is resolved.

Once it has been determined that you will seek medical treatment for your injuries, it is again very important to be conscious of the information you disclose and provide to your medical practitioners. Clearly, it is crucial that you provide accurate information about your medical history and previous injuries in order to ensure that the medical practitioners can treat you appropriately and safely. This means that you should avoid both exaggerating the facts relating to the collision

and your injury and denying any previous injuries in statements you provide to medical providers.

However, providing exaggerated information or denying previous injuries can affect more than just your health and the outcome of your treatment. If insurance companies or other parties involved in the resolution of your claim find out that you provided false or misleading information about your condition and the collision, it again casts doubt on your credibility, makes them question your account of the collision, and dramatically weakens your case and chance for success.

It is important to make the distinction, however, between providing adequate and accurate information to medical providers and over-disclosing. Your medical providers need to know anything relevant to your actual bodily and physical health and history. In addition, some medical providers, such as chiropractors, may need to know information relating to the actual impact of the collision and what resulted in your injury. This information is pertinent to their decision-making regarding best course of treatment for your injuries.

However, your medical providers do not need to know your speculations or opinions about the accident. Provide them with just the facts necessary to your medical treatment. If you question their need of the medical providers to know something they ask you, probe them about their reasons for asking. Protect your information and you will protect yourself and your case.

Avoid Insurance Company Propaganda

Despite their necessity and their claims to be on your side in your time of need, insurance companies most often work against your best interests as they attempt to limit the amount they pay out to you in a claim settlement. This result is because limiting what they pay is in *their* best interests. Because of this conflict of interest, insurance companies often directly or indirectly circulate various myths and propaganda about claims and recovery of costs so that the uninformed claimant may

make critical mistakes that work in favor of the insurance company.

When you know the truth about common insurance company myths, you can protect yourself and be a strong, informed advocate for your case.

One common myth is that an emergency room visit and ambulance ride from the scene is required to recover medical costs and associated damages. Although this myth is linked to the truth, it is not completely accurate. The important thing to remember is that you are responsible for your injuries and will not be able to recover damages if you did not act in a reasonable way to prevent them or their worsening. This means that delaying treatment—if doing so can reasonably be found to be the cause of pain, suffering and further injury—can eliminate the possibility of recovering damages and result in an unfavorable settlement of your claim.

However, failing to visit the emergency and not leaving the scene in an ambulance will only be a factor in recovering damages if your injury is severe enough to warrant immediate attention. If you have only a slight injury or are not even sure if you *are* injured, it is perfectly acceptable to seek treatment from a medical provider later that day or even the next day after the collision. Preventing further injury and damage by seeking appropriate medical attention within a reasonable amount of time is your only obligation.

A second myth is that uninsured drivers cannot recover damages, even if they are not at fault for the collision. Again, there is some truth in this statement, though it not entirely accurate. First off, the laws and limits for recovery applying to uninsured drivers vary state by state. Some states have a cap on the amount of damages an uninsured driver can recover since the uninsured driver failed to follow the law by carrying adequate insurance coverage. However, the blanket statement that uninsured drivers cannot recover damages is untrue and inaccurate. Insurance companies may encourage this propaganda in an effort to dissuade uninsured motorists from filing a

claim and convince them that their chance for success is slim.

A third myth is that unlicensed drivers cannot recover. This situation is related to the one concerning uninsured drivers because operating a car while unlicensed is a criminal offense just like operating a car without sufficient automobile insurance. However, in most cases the breaking of this law does not automatically result in civil liability. The exact circumstances of the collision will dictate the recovery possibility for unlicensed drivers. A great deal depends on who was at fault for the accident, whether any driving infraction on the part of the unlicensed driver contributed to the accident, etc.

The effort to convince unlicensed drivers that they are unable to recover damages is again an attempt on the part of the insurance companies and others to persuade the unlicensed driver that pursuing a personal injury claim would be futile. If it is the case that you are an unlicensed driver who is involved in an automobile collision, your best recourse is to seek the guidance and experience of an attorney familiar with personal injury cases.

A fourth myth is that the passenger of an at-fault driver cannot recover damages. This myth is most likely based on the idea that once you entered the car with a specific driver, you trusted their driving skills and competency and therefore have no legal grounds to file a personal injury claim against them. However, this common belief is also untrue. The fact is that any person involved in a motor vehicle collision has the freedom to file a lawsuit against any other driver involved in the collision who may be at fault.

The law states that anyone who operates an automobile must exercise “reasonable care under the circumstances.” If a driver fails to exercise this care and a collision and resulting injuries and damages occur, the driver is guilty of negligence and may be responsible for paying costs and damages to any other party involved in the collision. A passenger in an automobile, even the passenger of the at-fault driver, has the same rights just the same

as any other person involved in the automobile collision as long as he or she can prove that the driver of the car is responsible for the accident and the injuries or damages the passenger suffered as a result.

A fifth myth is that seat belts are required to be worn in order to recover damages in a personal injury claim. The reality is that seatbelts are *recommended* to be worn because it aids in increasing the ease of the case and eliminating possible complications in resolving the claim.

As mentioned earlier, after the automobile collision has occurred, it is the responsibility and obligation of the injured party to ensure that no further injury or damages result as a consequence of delay or personal negligence in treatment. Wearing seatbelts during the time when the collision occurred follows a similar vein of logic. Wearing seatbelts may have prevented or lessened the severity of an injury sustained in an automobile collision, and for this reason insurance companies and the other party's legal counsel may fight payment of damages to an injured person who was not wearing a seatbelt at the time of the crash. However, wearing a seatbelt will only strengthen your case and improve your chances not only of saving your life but also of a successful resolution to your claim. If you do find yourself involved in an automobile collision, probably your best course of action is to seek the guidance of an experienced personal injury attorney who can better fight for your rights and appropriate compensation despite your not wearing a seatbelt.

A sixth myth is that "full coverage" automobile insurance equals "adequate coverage." The reason for the widespread belief of this statement is that the term "full coverage" itself is so ambiguous. In actuality, there is no such thing as "full coverage." In most cases, this term is used to refer to the combination of collision and comprehensive coverage—both of which refer to physical damage coverage.

There are numerous reasons why "full coverage" does not equal "adequate coverage." In some cases, the monetary

amount of insurance coverage someone carries is not sufficient. This situation would involve someone with a low coverage insurance policy with low coverage limits and is then consequently involved in a serious accident with damages exceeding the coverage provided by the insurance company. In this case, despite having "full coverage," the insured individual does not have enough insurance coverage to cover the costs of vehicle damage or personal injury.

If you are someone involved in the collision who is not at fault, not having adequate insurance coverage personally could result in the need to file a personal injury claim with an experienced attorney in order to recover costs and damages associated with the collision.

Another way that full coverage does not equal adequate insurance coverage is that there are many other insurance coverage options that "full coverage" might not cover or supply. These other insurance coverages could be medical payment coverage, rental car reimbursement, uninsured motorist coverage and underinsured motorist coverage. Because of the common understanding of the word "full" to mean "complete" or "entire," many people erroneously believe that they are insured and protected adequately with "full coverage." However, this is many times not the case and if you find yourself without adequate insurance coverage and involved in an automobile collision, you may want to enlist the services of an experienced attorney to protect yourself, your health and your property.

A seventh myth is that you cannot use your personal health insurance policy to pay your medical bills. This statement is most certainly untrue and having and using personal health insurance after an automobile collision can reduce your stress and financial worries as you initially deal with medical treatment post-collision before your claim is resolved. After a collision when you first seek treatment for medical injuries or pain, if you have personal health insurance you will be able to use it to pay the costs of diagnostic tests, office visits, hospital stays and anything else the health insurance normally covers. Using this health insurance will also not affect the resolution or

settlement of a personal injury claim and you may still be able to collect a significant sum for out-of-pocket medical treatment costs, pain and suffering and other damages. As in general, personal health insurance is always a good idea for your personal protection should a medical emergency or injury occur.

In conclusion, though insurance companies do provide some level of assistance and protection, their primary goal in many cases is minimizing the amount they ultimately have to pay out for an insurance claim. As a result, there is a large body of misinformation circulating about the policies of insurance companies relating to claims and many people make harmful decisions as a result of incorrect information. Knowing the truth and what to expect can minimize the problems you will experience and the stress involved in a collision and personal injury claim.

Do Not Sign Anything

A signature is a very powerful thing, and especially after an automobile collision, it should be used with caution. In many legal situations and conflicts, experience counsel often urges involved parties to exercise extreme caution in signing any documents. This same advice holds true for parties involved in automobile accidents and who might file personal injury claims.

Immediately after an automobile collision, involved parties, insurance adjusters, lawyers, police and other law officials and others will be seeking as much information relating to this collision as possible in order to determine exactly what happened, collect information for a case or claim, and determine fault. Although an uninvolved eyewitness faces little risk in writing and signing an statement relating to the collision, anyone directly involved in the collision stands to lose a great deal more by signing something that may potentially be adverse to his or her own interests.

One document that you might be encouraged to sign is a Release of All Claims. This generally releases the other party for any liability relating to the collision and any

resulting damages or injuries. Although on first inspection you may initially feel that there is little damage or injury, if anything should arise at a later time and you had already signed a release of claims, you will have no legal recourse to collect on any damages or recover any expenses.

Another document you may be asked to sign is a Medical Records Release. Generally, insurance companies will ask you to sign this document so that they can obtain your medical information and records to evaluate your injuries resulting from the collision. The problem with signing this release form is that the insurance companies may use information contained in your records against you and your case. For example, they may try to invalidate a current injury or condition resulting from the collision by showing that you have a history of problems or treatment to that particular area of the body. It is worth considering to note that few people are aware of the exact information contained in medical records and what this information may look like when compiled and analyzed by a possibly adverse party. At the very least, you should obtain a copy of all your medical records and know what is contained therein before beginning the process of negotiating a personal injury claim.

Although it may ultimately be impossible to avoid signing some release forms, you want to be as prepared as possible to deal with whatever may happens as a result of investigation into your personal information and release of your privacy. Because of the complexities and nuances of some personal injury cases, if you do decide to file a personal injury claim and have any doubts as to the ease of the process, you should probably consult an attorney to advise you before signing any forms.

Once your signature is on a document, that document is legally binding and there is little you can do to revoke your signature or "permission." It is therefore in your best interest to guard it well.

Consult a Good Lawyer

As you can see from reading the above information, the time following an automobile collision can be confusing, stressful and overwhelming. With so many parties involved—drivers, passengers, witnesses, insurance companies, opposing legal counsel, insurance adjusters, police and law officials, etc.—it is easy to become confused about who is on your side and who is slowly building a case in opposition to your position and benefit.

The important thing to remember about filing a personal injury claim after an automobile collision is that it is not about becoming rich or making the other person pay. In many cases of personal injury claims, an injured or damaged party endures significant hardship and pain and stands to lose a great deal, not only in terms of financial stability but also of mental health, quality of life, etc. It is important to recover medical costs, the cost of damaged physical property and appropriate compensation for physical and mental pain and suffering to move on and live as fully as possible after the collision.

The importance of consulting a good lawyer with experience in injury cases cannot be overstated. The time immediately after an automobile collision can be especially confusing. You may be unsure whether or not your particular situation warrants filing a personal injury claim. However, the good news is that consulting with a lawyer about your specific situation is always a good first step. Consultations are generally free, so there is no obligation beyond discussing the merits or disadvantages of filing a claim. If you consult with an ethical injury lawyer with a proven reputation, he or she can confidently advise you on the next steps you should take and important decisions.

When choosing a lawyer to consult about your case or represent you in a personal injury claim, flipping through the yellow pages is not a good idea. Talk with the lawyer and take note of your general impressions. See how

well he or she listens to you and evaluates your situation. Gauge whether the lawyer's concern is for you and your life or monetary gain.

Experience is also a key component in choosing a lawyer. Because injury cases are often difficult and complex, choose a lawyer who has proven experience handling these types of cases with certainty and success. Although some personal injury cases can be handled through mediation, many others are settled in court, so be sure that your lawyer has experience advocating for and protecting the interests of the client in court.

Ask questions of your prospective lawyer and carefully consider the answers. Assess how busy the lawyer seems to be with other cases to determine if he or she can give you adequate time, care, and consideration. The last thing you want to do is hire a lawyer who is juggling so many cases at once that he or she can hardly distinguish between them and devotes little individual time and attention to each one.

A good personal injury can be your strongest asset and best ally in a personal injury claim. Be objective and critical in evaluating potential lawyers and ultimately decide on one who you are sure is on your side. It could be the best decision you make and have an immeasurable impact on your future.

For questions or to request addition information, please contact John L. Lowery and Associates at 1-800-819-1604 or by email at john@jllowery.com.

