

**9** **MISTAKES**  
That Can  
**RUIN** Your  
California Vehicle  
**ACCIDENT CASE**



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California Vehicle  
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*“To my wife Donna and our children Sean and Heather”*



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## Disclaimer

This book is intended as a general educational guide to California accident claims. This book does not provide specific legal advice as each case is unique. The subject matter is for informational purposes only and is based upon California law. For specific legal advice regarding your case, consult with an experienced California personal injury lawyer who will be able to review your situation and the circumstances specific to your accident.

# Introduction

Most of us understand the dangers associated with driving the busy roads and highways of Southern California. We have heard the statistics on car crashes, drunk driving accidents, motorcycle collisions, and truck wrecks. The hazards of distracted driving are not new to us. However, even with all of this knowledge and understanding, the thought that you could be the one hurt in an accident doesn't seem likely. It is all too easy to have the mentality that we are invincible – that accidents happen to “the other guy.”

So, what happens when you are the other guy? When you are seriously injured in a motor vehicle accident, you can quickly become overwhelmed with all your responsibilities. You have injuries to deal with, doctor visits to attend, medical bills that need to be paid, and insurance adjusters who won't stop calling, or who won't return your calls. The insurance company is sending you forms to sign and is requesting that you give a recorded statement of your version of the accident. It is difficult to know what to do. But what is worse, if you act without knowledge of the system you can make mistakes that will hurt your injury claim.

This book was written to educate individuals about the common mistakes that are made following accidents—mistakes that I have witnessed during my 31 years of practicing law. What is unfortunate is that you could be seriously hurt, but you still might not recover the compensation you need. After reading this book, you will be one step ahead of many accident victims and will know how to navigate the process after an accident.

As you read this guide, you will learn about the nine pitfalls that catch people off guard and how to avoid them. You will learn what steps to take after an accident to help you receive the compensation you deserve. I also provide a list of responses to frequently asked questions that address concerns that may be going through your mind.

Each chapter ends with a tip which serves as an action point for

your next step. I also provide worksheets, and real life stories of people who have dealt with situations similar to yours.

Throughout my career as a personal injury attorney, I have represented many significant accident cases. I have developed a deep understanding of the various injuries that result from accidents, which I pass on to you in this book.

# Mistake #1

## *Failing to Obtain a Police Report*

You have just been in an accident in your car, motorcycle, or truck. After you make sure that you, your passengers, and the people in the other vehicles are safe, the first thing you should do is call 911 and request the police to come. In addition to all the common sense things for which you need an officer, you want to have an officer complete a police report, which is also called a Traffic Collision Report.

Sometimes one of the other drivers will say it was his or her fault, offer to pay for your vehicle damage, and ask that you not call the police. Do not give in to that request. That is something that you do not want to do. Many times these drivers change their minds as soon as they leave the collision scene. Then you have to try to chase them down to get the matter resolved.

One of the first challenges you will encounter is the 911 or police operator asking you the same question they always ask: "Is anyone injured?" The problem that it creates for you is that, if you answer "no," many police departments will not send an officer to investigate. The Traffic Collision Report is very valuable to you after a collision, and you want to have an officer complete one, if at all possible. Asking if you are injured is really unfair because you might not know yet if you are injured. You may be injured, but your neck and back may not start to hurt until the next morning. Many injuries suffered in a motor vehicle collision don't show themselves for a day or two.

I suggest answering with the following statement: That you do not need an ambulance, but do need an officer to respond. That way you are not tying up an ambulance that might be needed elsewhere. At the same time, you are making it clear that you want an officer to come to the accident scene.

The next challenge you could face would be that the officer comes to the scene but tells you that he or she does not want to complete a

report. I suggest that you advise the officer that you want a report and would appreciate it if he or she would complete one. You cannot make the officer write a report, but, within reason, you should try to persuade him or her that you would value the help. If you can get an officer to complete a report, you have just overcome the first of the problems you are going to have to deal with after a motor vehicle collision. Having the report offers multiple benefits.

One of the first benefits is that the officer will obtain important information from all the drivers in the collision, which will be very important in the long run. Police Officers are trained to obtain the other drivers' names, addresses and phone numbers, as well as the license plate numbers of the vehicles, the registered owner of each vehicle, and the names of the insurance companies and the policy numbers for each driver. This information is essential information in the event the other driver or drivers fail to report the accident to their insurance companies. It will also enable you, or your attorney, to open a claim with the other insurance company. Once they receive the police report, their adjuster will have the information he or she needs concerning their insured drivers.

Officers are also trained in taking witness statements, and people are a little more hesitant to be untruthful to a police officer after an accident than they might be to you. Furthermore, statements taken immediately after the accident are likely to be more accurate. After taking statements from the drivers involved in the accident, the officer will re-state their statements in a general way in the report. These statements will be very valuable at a later time, especially if the other driver decides to change his or her story. It will be very hard for drivers who change their stories to convince others, such as insurance adjusters or a jury, that they didn't say what the police officer wrote down, right after the accident. If there were passengers in the vehicles, the officer will record their names, addresses, and phone numbers, and perhaps take their statements as well.

The officer is also trained to observe and record any physical evidence available. If pieces of chrome or other metal are lying on the

roadway, the officer will indicate on a diagram where those pieces of metal were found at the collision scene. If there are skid marks, the officer will measure their length, the direction of the skid, and which vehicle they came from. With that information, the officer will plot the point of impact (POI) of the vehicle, or multiple vehicles if necessary. These POIs are some of the first things that insurance adjusters look at in determining who was at fault in an accident. Furthermore, if a lawsuit occurs, trained accident investigators can use the length of these skid marks, and the make, model, and weight of the vehicle, to accurately calculate the speed of that vehicle prior to impact.

Using all of the physical evidence and statements, the officer will come up with a cause for the accident. The officer will indicate which driver was at fault, and will frequently include the state vehicle code section that the at-fault driver violated in causing the collision. It is left up to the officer's discretion whether to issue a citation to the at-fault driver. After the officer has gathered all the information, he or she should provide you with a card indicating his or her name and badge number, the report number, a phone number to call to see if the report is ready, and an address where you can, for a small fee, pick up a copy of the report. You should make sure not to lose or misplace that card. It will make obtaining the report easy and convenient.

If the officer finds one of the other drivers at fault, you have resolved one of the main issues in your case. What the officer writes in the report is viewed as the most accurate and unbiased statement of who caused the accident. The officer's opinion as to the cause of the accident is thus almost always accepted as the truth.

Once the insurance company of the at-fault driver accepts liability for their insured's accident, that insurance company will authorize payment for the repair of your vehicle. If you have a deductible on your own policy the at-fault driver's insurance company will cover your deductible.

If the at-fault driver and his or her insurance company dispute liability, in spite of the Traffic Collision Report, the report will still be important to you. If you retain an attorney and a lawsuit is filed, your attorney will take the deposition of the at-fault driver under oath. A deposition is a proceeding held in an attorney's office in the presence of a court reporter to obtain a sworn oral statement before a trial. The court reporter, a notary public authorized by California law to administer the same oath as the one given in a courtroom, takes down everything that is said on record.

During the deposition, your attorney will read each sentence of the other party's statements to the officer as recorded in the report. Then your attorney will ask the other driver "Is that what you told the officer at the accident scene?" The at-fault driver will usually agree that what the officer wrote down as a statement is what he or she told the officer. By the end of the deposition, your attorney has locked the at-fault driver's statements to the officer into evidence, so that he or she can't change the story at trial. The police report has thus become a valuable part of your case.

Should the at-fault driver change his or her story at trial, your attorney will simply ask this person if he or she said one thing under oath at the deposition and is now saying something different under oath at trial. When the driver answers yes, your attorney will then ask, "So when were you being untruthful, in your deposition or now at trial?" Juries are not usually kind to people who lie under oath.

As you can see from the above discussion, it is critical that you obtain a police Traffic Collision Report, if at all possible. If you cannot, you are going to have to do the investigation yourself. If the police won't come, then you are going to have to shake off the effects of the accident long enough to do the following:

Write down the license plate numbers of all vehicles in the collision. In cases where the other drivers are unwilling or unable to talk to you, this may be all the information that you can obtain. Even if that is

all you can obtain, it will later be possible to find the registered owners of the vehicles and thus acquire the information needed for your claim.

Try to get the name, address, and phone number of every other driver in the collision. Do the same for all their passengers or witnesses not in one of the vehicles. Also, ask the other drivers to exchange driver's licenses so that you and they can each write down the driver's licenses of all the drivers in the collision.

Obtain the name and policy number of the insurance company for each of the drivers. Ask to see a copy of the proof of insurance of each driver to make sure he or she actually has automobile insurance. Check the dates of coverage to make sure that the insurance is still in effect on the date of the accident. Be sure to write down the other person's insurance policy number. Be attentive while writing down the policy numbers. If you misreport even one digit of the policy number, it may become very difficult to track the insurance information down.

If you can, take photos of the license plate numbers and visible damage to all the vehicles. Some people carry inexpensive digital cameras in their car just in case of an accident. If you have a camera in your vehicle, or a cell phone with a camera in it, the photos may prove very valuable to you later.

A motor vehicle accident can be a terrifying experience and the aftermath is often just as difficult. I hope that you are never in such an accident and that you are never injured. However, if it does happen to you, you should try to obtain a police Traffic Collision Report. It is always a good idea to request that the police come to the accident scene and provide you with the report that will become so important for you and your case afterward.

## CHAPTER TIP

Obtaining a police report is crucial to an injury claim. Make sure you get one after an accident.



## Motor Vehicle Accident Checklist

*(Feel free to make a copy of this list and put it in your glove compartment for reference in the unlucky event that you need it.)*

**If you have been in a collision, the following will act as a checklist of what you need to do:**

- Obtain a police report
- Only discuss the accident with the police
- Don't admit fault or blame others
- Take pictures of the accident scene, if possible
- Get the names of the other drivers, passengers and witnesses
- See a doctor immediately
- Tell your doctor about each and every one of your symptoms
- Follow through with the recommended medical treatment
- Talk with a lawyer

## Mistake #2

### *Not Going To a Medical Doctor, Emergency Room, or Chiropractor As Soon As Possible After the Accident*

Another big mistake people make after a vehicle accident is delaying treatment, which is to say, failing to see a physician as soon as possible. There are two reasons why this is a big mistake.

The first reason is because you are putting your health at risk. If you have been in a vehicle accident, you really need to be checked out by a physician. We have clients who we refer to as having the “John Wayne” syndrome—they think that they are too tough to be hurt in a vehicle accident and that they don’t need to see a physician. A medical doctor, doctor of chiropractic, or other health care provider is trained to take a history, examine you, and treat you, if necessary. You are far better off seeing a health care provider and letting that provider tell you if you are injured or not.

The second reason is that you are reducing the amount of money that the insurance company of the at-fault driver is going to owe you as compensation for the harm caused to you. In order to understand this part of your case, you need to know a little bit about the claims evaluation software programs being used by insurance companies to settle claims.

Insurance companies now have software programs to assist the insurance adjusters in evaluating claims. One of the principal duties of the insurance adjuster is to feed data from the records into the program. The program does the calculating and generates a final settlement dollar amount. It is very difficult to get the adjuster to significantly increase the amount of that computer-generated offer. As such, it very important that the initial data the insurance company feeds into the software is correct and complete.

One of the first pieces of data that the insurance company will enter will be whether or not you saw a physician within 72 hours of the

accident. If you have seen a physician within that timeframe, then you have added a “value driver” to your computer calculated score. There are other more significant value drivers used in the software, but in terms of time, this is the first important one that you want to have in your case profile.

So, how do you get to a physician within 72 hours of the accident? There are a few simple ways to do so.

If you have a family M.D. you can call that doctor’s office and advise his staff that you have been in a motor vehicle accident and need to be seen right away. If you have a good relationship with that doctor’s office, you may be able to get a quick appointment. If you cannot get in to see your usual M.D. right away, then you should go to an urgent care facility, or see a doctor of chiropractic. The software programs recognize a chiropractor as a physician, so if you can be seen within 72 hours of the accident by a chiropractor you will have satisfied this rule. It is also critical that the M.D., chiropractor, or other physician, take a history, perform an examination, and record the findings. As long as a written record of that exists, you have satisfied this first rule. Some people might be reluctant to see a chiropractor, because they think the chiropractor will “crack their spine” or perform adjustments on their spine. In fact, many chiropractors will not do spinal adjustments on a patient’s first visit. What they will do is take a history, execute a physical exam, and possibly take x-rays, which is all that you need at this point. Chiropractors are trained to perform the same physical examination as medical doctors, although a chiropractor cannot prescribe medications. You can also go to a local hospital emergency room. In most areas, there are hospitals that are designated as trauma centers. They have to see you as a patient, even if you do not have health insurance or money to pay for treatment.

Remember, you are entitled to be examined, even if you are not initially feeling pain or discomfort. Furthermore, physicians are trained to spot motor vehicle accident problems that you or I might not recognize.

Let health care professionals check you out, preferably within 72 hours of the collision, to make sure you receive care if you need it. This will also make sure that any eventual claim you may make against the at-fault driver's insurance company, has overcome the first hurdle of needing an examination by a physician within 72 hours.

### CHAPTER TIP

Failing to see a doctor after a motor vehicle accident is a bad idea. Make sure that you seek medical care immediately following a collision, even if you think your injuries are not severe.

## Mistake # 3

### *Failing To Tell Your Doctor About Each and Every Symptom*

#### *You Have Experienced From the Accident*

Whether you see the physician within the first 72 hours or not, the symptoms and complaints you tell the physician about will be critical for assessing the maximum value for your claim. Before we proceed, please understand that I am not suggesting that you report symptoms or complaints that do not stem from the collision. That may constitute fraud for which there may be substantial economic or criminal consequences.

As mentioned earlier, the insurance company software programs calculate awards using “value drivers.” Value drivers are medical injuries, symptoms, and other matters that the insurance company recognizes as having more value than other injuries, symptoms, or matters. Insurance adjusters will be looking in your medical records for these value drivers. The number one value driver is the number and type of injuries and complaints your doctor has recorded in your medical records.

The International Coding of Disease (ICD) system has created a process where each injury, disease, symptom, and complaint has its own ICD-9 code. When you describe your injury, symptoms, and complaints to a physician, you do it by using words, such as “sore neck” or “back pain”. The physician records your complaints as you recite them. Afterwards, either the physician or a physician’s assistant adds the medical injury ICD-9 codes. It is these ICD-9 codes that the insurance adjuster feeds into the software programs. The greater the number of ICD-9 codes recorded in your accident medical record, the higher the value of your claim. This actually makes sense if you think about it. If one person receives three separate injuries and another person receives twenty injuries, then the value of the collision claim with more injuries should be greater.

*Please note: I am not implying or suggesting that you ever make up and report an injury, symptom, or complaint that you are not experiencing. To do so would be fraudulent, unethical, and wrong. Doing so will destroy your relationship with your health care provider, jeopardize your treatment, and could result in you going to jail for insurance fraud*

If, however, you truly have any of the symptoms and complaints that I am going describe, make sure to tell your doctor about them so he can record them in your medical chart. These are ones that the insurance company considers value drivers and the value of your claim will increase dramatically—and justifiably so.

Your first opportunity to get all of your value drivers into your medical chart may be in the doctor's waiting room when you are filling out your patient forms. The forms, will ask you to identify your symptoms and/or complaints from the accident. If you have any of the following symptoms or complaints, you want to be sure to write them in the doctor's patient intake forms. Then you want to repeat them to the doctor when he or she asks you about your symptoms and complaints. Here is a little tip, when your physician asks about your symptoms or complaints start at the top of your head and go down body-part-by-body-part to your feet, to make sure you don't miss anything. Again, it is important to remember that these symptoms or complaints must be in the medical records for the insurance company software to give you dollar credits.

I have organized these complaints in such a way that it will be easy for you to remember which ones to list on your intake forms as you sit in the waiting room. They start with your head and work down through your body.

**Headaches:** Almost everyone who has ever been in a motor vehicle collision, even low impact ones, has a headache. Since the majority of headaches go away within a day or two, most people forget that they had one. The insurance company software programs give a lot of financial credit for headaches (even if it was just a minor headache that went away quickly)

**Dizziness:** Although people tend to forget about this symptom, it often happens in a motor vehicle collision. After a collision, drivers are often temporarily disoriented. It usually goes away quickly, but if you had any dizziness at all write it down.

**Visual Disturbance:** This is similar to, but different than dizziness. The visual disturbance can come in the form of flashing lights or “seeing stars.” Report any type of visual disturbance that you experience. These are value drivers and when a person truly has had them, they increase the value of the claim.

**Sleep Disturbance:** An insurance company will pay extra money for reports of sleep disturbance after an accident. If the injured person does not record it in the patient intake forms and fails to report it to the doctor, however, the insurance company will not pay for it. It has to be in the medical records to earn financial credit. If the injured person reports sleep deprivation and the medical doctor prescribes medication to help with sleep the value of the sleep deprivation goes even higher. This is because, to the insurance company computers, the sleep disturbance requiring medication becomes a combination accident symptom and accident injury. It is the fact that the doctor felt it was serious enough to treat the sleep deprivation with medication that makes it an injury, as well as a symptom. Having the physician prescribe sleep aid medication usually means that the injured person gets increased credit for the accident caused sleep deprivation. None of this value can be realized, however, unless the patient puts it in writing in the patient intake forms and/or the doctor writes in the injured person’s medical records.

**Anxiety or Depression:** People who have been in a vehicle collision don’t often like to let others know about feeling anxious or depressed from the accident. Anxiety and/or depression are, however, big value drivers and you should disclose them to your doctor if you are experiencing those feelings. Almost every client I have interviewed just after a motor vehicle accident appears to be anxious and some are clearly depressed. The physician does not need to be a psychologist or

psychiatrist for you to report anxiety and depression in the intake papers or in the examination. Just tell the physician so that it is recorded in the documents. An M.D. is usually licensed to prescribe medications for anxiety or depression. If you need such medications ask for them, fill the prescriptions, and take them so that you feel better. The combination of anxiety or depression with prescribed medications is a significant value driver, adding more money to the value of your claim. If a chiropractor records a diagnosis of anxiety or depression and orders non-medication treatment, such as exercise or bed rest, the value of the anxiety/depression claim can also go up.

**Temporomandibular Joint Disorder (TMJ):** This is an injury to the jaw that sometimes occurs in a motor vehicle collision. At the sides of your head, where the jaw meets the skull, there are small joints called temporomandibular joints. Those joints are called TMJs for short and an injury to a TMJ is usually quite painful. The injuries are treated by a dentist with special training in such injuries. This disorder can also arise following an accident when a person clenches or grinds their teeth due to the pain and discomfort of the injuries. Again, this is a value driver and you should make sure it goes into the records.

**Muscle Spasms:** In a motor vehicle collision, the impact can stretch a muscle to its extreme length and as a result, the muscle and tendon fibers are damaged. The muscle, in an attempt to protect itself, goes into a spasm and becomes hard and stiff. The spasms usually occur to the muscles in the neck or the back. They can, however, occur in the arms, legs and any other part of the body. They are big value drivers as they are very uncomfortable.

**Muscle Stiffness:** Muscle stiffness is similar to muscle spasm but somewhat different. When a person has muscle stiffness the muscles may or not feel hard, as they do when a muscle is in spasm. In stiffness, the muscles may just feel just hard to move. The best way to describe muscle stiffness is simply by telling the doctor where the muscles seem stiff and difficult to move. The doctor is trained to be able to tell the difference



between muscle stiffness and muscle spasm. Injured people often have both stiffness and spasm so, if both are present, both should be reported to the doctor. If complaints of muscle stiffness as well as muscle spasm show up in the medical records, the insurance company computers are supposed to give extra financial credit for both.

**Restricted Range of Motion:** When a muscle is in spasm, it usually restricts a person's normal range of motion. For example, if you can normally rotate your head all the way to the left and right, but after a collision you can't, then your range of motion has become restricted by the collision. The same applies to your back when you can't bend over or rotate your body right or left the way you did before the accident. Again, it's a big value driver. Most physicians will be performing range of motion testing as part of the physical exam, so the number of degrees of restricted range of motion, compared to normal, will usually be recorded by the physician as part of the examination findings.

**Radiating Symptoms:** The nerves that run from our necks to our fingers, and from our low back to our toes all come out of our spine. The cause of radiating pain is usually some type of injury to the spinal vertebrae, discs, or nerves. This is pain, a tingling or a nerve sensation, that starts in one part of your body and radiates, or travels, towards another part of your body. For example, if you have neck pain that travels down to your shoulder and arm to your, elbow, wrist or fingers, you have radiating pain. If you have back pain that shoots down to your hips, knees, ankles, feet, or toes you have radiating pain.

The insurance company is playing by a set of rules that they have not told you about. Under California law, you are entitled to compensation for the injuries caused you by the negligence of the at-fault driver. You need to tell your physician every symptom or complaint that you have suffered from the collision, both for your health and to obtain the compensation to which you are entitled under California law.

## CHAPTER TIP

It is imperative that you tell your doctor about every symptom you have experienced since the accident. This information is not only important to your medical treatment and recovery, it is also crucial for your injury claim.

## Symptoms Worksheet

It is important that you tell your doctor about every symptom you have been experiencing since the accident. The following are warning signs of injuries or medical conditions that could have been caused by the collision. Report any of these symptoms to your doctor immediately.

- Headache
- Dizziness
- Visual Disturbance
- Sleep Disturbance
- Anxiety
- Depression
- Teeth grinding
- Jaw pain
- Clenching of the jaw
- Muscle spasms
- Muscle Stiffness
- Restricted range of motion
- Radiating pain

## Mistake #4

### *Not Making a Phone Call to an Accident Attorney for a Free Consultation*

It is a big mistake to not call a personal injury attorney before you start talking to the insurance company of the at-fault driver. People call me all the time for advice, and I give it to them freely—most personal injury attorneys will do the same. When an accident victim calls me for a free consultation, here are the questions I go through with them:

#### **Who was at fault in the accident?**

First, I need to know about who was at fault in the accident. The insurance company involved is going to do a liability investigation before they do anything else. If the other driver calls his or her insurance company and accepts fault, the insurance adjusters will generally go ahead and accept liability quickly. Typically the insurance company will not deny liability when their own insured admits that he or she caused the accident. If the other driver does not admit fault to his or her insurance company, the insurance company will usually want to wait to see the Traffic Collision Report. This can sometimes be a problem, as it can take days or weeks before the report is completed.

Once the insurance company for the at-fault driver accepts liability, it will begin to resolve what is called the property damage portion of your claim—the damage to your car.

#### **Can I get a copy of the repair estimate?**

What I need next is a copy of the repair estimate on your vehicle. Unfortunately, insurance companies have taken the position that, if there is not much visible damage to your vehicle, there cannot have been much damage to your body. If their insured was at fault, the insurance company will pay for the damage to your car. They will not, however, pay you any money for your physical injuries if the damage to your vehicle is below a certain amount, usually around \$2,000 or so.

Cases with low repair costs are generally referred to as Minor Impact Soft Tissue (MIST) cases. Once your case is labeled as a MIST case, it becomes very difficult to receive compensation for your personal injuries. For this reason, it is important to know what facts can take your case out of the MIST classification by the at-fault driver's insurance company.

One option you might want to consider is getting a different estimate. The insurance adjuster, who initially evaluates the damage to your car, is not capable of assessing under carriage damage. The insurance claims offices do not have hoists to raise your vehicle up, tools to measure frame damage, or tools to take exterior parts off to identify secondary damage. Sometimes, a body shop will write a "lowball" estimate to impress the insurance company and get the repair job. You don't want any part of that. You want to get your vehicle repaired correctly. I suggest that you take the vehicle to the manufacturer's shop or to some other high-end shop. After all, you didn't cause the accident and are entitled to have your vehicle repaired to its pre-accident condition. If you get a higher estimate, that may take care of the whole problem. You want a very thorough repair estimate, not just a "walk around". Ask the repair shop to put the vehicle up on the lift to look for damage underneath the vehicle. If they have to remove a few access panels to look for damage, have them do so.

Below are instances in which the original repair estimate on a vehicle came in under approximately \$2,000. If on further examination, one of the factors listed below is identified, your case should be taken out of the MIST classification and will then be handled just like a case where the property damage repair estimate was for more than \$2,000.

**Trucks:** Most trucks ride on what is called a "ladder frame". If you were driving a truck and had frame damage needing at least two hours work to pull and straighten the frame, you will not be classified as a MIST case, even if the repair estimate is low.

**Tow hitch:** If your car had a tow hitch and you were rear-ended, you will not be in MIST. The reason is that the tow hitch is attached to

solid areas under the vehicle and the force of the impact is transmitted directly to the occupants of your vehicle and not absorbed by the rear bumper system.

**Your vehicle was “submarined”:** Sometimes when a car is rear-ended, the striking vehicle slides under the rear bumper of the car being hit. Often, the only visible damage on the rear bumper of the struck vehicle is a small dimple on the rear bumper cover. When the car is put up on a lift, however, there is extensive damage to the underside of the struck vehicle. A tip off to this condition is that usually the front end of the vehicle that went under the back of the other vehicle has a lot of visible damage on it. The damage underneath the rear of the struck vehicle will often raise the repair estimate high enough to be taken out of the MIST classification. You should take a digital photo of the underside of the rear of your car in the event this happens.

**Rear bumper absorbers moved more than one inch:** Some cars have shock absorbers attached to the rear bumper under the back of the car. They consist of a cylinder with a piston coming out, which attaches to the underside of the rear bumper. The cylinder and piston are normally all covered with road dirt and grease. If, in a rear-end impact, the piston is depressed such that more than one inch of shiny piston can now be seen, that means that the vehicle sustained an impact of over 4.5 G's, which makes it a non-MIST case.

**Damage extends beyond the rear wheel well:** Damage of this nature means that the vehicle experienced an impact speed of more than 2.5 G's. Even if the repair estimate is low, this will take the case out of the MIST program.

**Multiple Vehicles or Multiple Impacts:** Since this makes the whole case more complicated for the insurance company, it will usually not classify a case with these characteristics as a MIST case.

### **Were you injured?**

The first thing you need to know about the personal injury portion of your case is that the insurance company of the at-fault driver is not

going to pay your medical bills as you go. Many adjusters tell injured people that they will pay their medical bills. What they don't say is that they are not going to pay the bills until the injured person signs a release agreeing to not submit any more medical bills or bills of any type. Why would you sign a release before you are finished treatment?

In order to evaluate the personal injury portion of your claim, I need to know certain things. They are as follows:

- What kind of injuries did you receive? Did you suffer a whiplash injury? Did a portion of your body strike any part of the interior of your vehicle? Were you taken by ambulance to a hospital? If so, what did they do for you there?
- How soon after the collision did you first see a doctor? If you were not immediately taken to the hospital, I need to know that we don't have a problem with an unreasonable delay in treatment. If you did delay treatment, I need to know if you self-treated with over-the-counter ibuprofen, bed rest, or exercise. If you did, you can tell that to the physician when you see him or her. That may resolve the delay in treatment problem with the claims evaluation software of the at-fault driver's insurance company.
- What did the doctor tell you about your injuries? I need to know if the doctor is recording all of the complaints and symptoms you are having and telling the doctor about. If the doctor is not recording them, you need to find a doctor who will, so that your personal injury claim is not harmed.
- Do you need help getting a doctor see you on a lien basis, because you don't have health insurance? Many physicians will treat patients in personal injury cases on a lien basis. That means that the doctor will wait until the end of the case to be paid. It is a great help to people injured in motor vehicle accidents who don't have the funds or insurance to pay for medical or

chiropractic care.

The above are some of the things that you need to discuss with a personal injury attorney after a car, motorcycle or truck accident. Most personal injury attorneys will discuss your case at no cost to you. By calling and speaking with them you can learn a lot about how your case will be handled, and what steps you need take to ensure that you receive all of the financial compensation you are entitled to under the laws of the State of California.

### CHAPTER TIP

You have nothing to lose by calling an accident attorney. Most personal injury lawyers offer free consultations, meaning you can get advice regarding your case at no charge.



## Mistake #5

### *Allowing the Other Driver's Insurance Company Adjuster to Record Your Statement*

Allowing the at-fault driver's insurance company to take a recorded statement from you is a big mistake. Sometimes the only goal of such an insurance adjuster is to get you to say on tape that you were not injured in the collision.

The problem is that the word, "injured," may mean different things to different people. You may think the word, "injured," refers to fractures and hospitalization—not the headaches and sore muscles you are experiencing. You may inadvertently say you not injured, when in fact you are.

If you make that type of statement on tape, you will badly damage your chances of getting payment for your medical bills or pain and suffering from the collision. The adjuster has recorded you saying that you were not injured. You have just ruined your personal injury case.

#### **Case Study**

#### *"Were You Injured?" It Seemed Like Such a Simple Question*

Alfred was referred to me after he was rear-ended in a motor vehicle accident. By the time he contacted my office, though, he had already provided a recorded statement to the insurance company for the at-fault driver. I knew we could be facing some challenges.

When I called the insurance adjuster, she told me that Alfred stated, on record, that he was not hurt in the accident. Of course, I called Alfred to ask him what exactly was going on. He told me that the insurance adjuster called him the day after the collision. At that point, his neck and back weren't hurting that bad. It wasn't until the second night that he started to feel worse.

Alfred had gone to see his physician later and discovered that he had suffered neck and back sprain/strain. His doctor had prescribed a

muscle relaxant and anti-inflammatory prescription medication.

I called the insurance adjuster back to let her know what had happened. You know what she said? She told me that she didn't care and that if we sued, the recording would be played at trial. She said that the recording would show that "Alfred is a liar, cheat, and fraud." I asked that she send me a copy of the tape recording.

It turned out that something had been wrong with the insurance adjuster's tape recorder and the tape was blank. That was a huge relief. Although Alfred had a reasonable explanation for his statement, the recording could have affected the amount the jury awarded him. I was able to settle the case for a reasonable amount for Alfred.

There is no question that Alfred would have been much better off if he had refused to give a recorded statement (or any statement for that matter). It was just too early to know the full extent of his injuries.

**Moral of the Story:** You won't be able to say with confidence that you are not injured without a medical evaluation, so don't say you are "fine," until you know you are.

The insurance adjuster will not confine the recording to a statement about your injuries. You can expect to be questioned about the facts of the collision in an attempt by the adjuster to place all or part of the fault of the accident on you. When the adjuster calls, he or she will probably have a copy of the Traffic Collision Report and will grill you about the facts of the accident. You may say something by mistake, which will really hurt your case.

There is absolutely no requirement for you to give a recorded statement to the insurance company of the at-fault driver. Some insurance company adjusters are experts at trying to make you fearful that should you decline to give them a recorded statement, they will not pay your claim. That is simply not the case.

In California, the adjuster may not record your conversation without your consent. In California, it is illegal to record a telephone conversation without the permission of the other person. If you have

spoken by phone with the adjuster, you will not have been recorded unless you have given them permission to do so.

If you are asked by your own insurance company to give a recorded statement, however, you can go ahead. Your own insurance company has an obligation to not turn over your recorded statement to the adverse insurance company. If they do so, they would be exposing themselves to an insurance bad faith lawsuit.

Based on the above, my recommendation is simple. When asked for a recorded statement, just say “no”. When the adverse adjuster tells you that he or she can’t settle your claim without such a statement just say “no” again. Tell the adjuster to talk to your attorney about it. If you don’t have a case big enough for an attorney and wish to work with the adjuster yourself, go ahead and do so. Just don’t agree to the recorded statement as part of it.

## CHAPTER TIP

Giving a recorded statement could be detrimental to your case. So, don’t do it.

## Mistake #6

### *Taking Your Vehicle to a Repair Facility Recommended by the At-Fault Driver's Insurance Adjuster*

This is another mistake you don't want to make. Some companies have repair centers where you can drive in and get a quick estimate. Others have what they call preferred shops that they try to refer claimants to for the repair estimate and work.

Think about what might make these shops preferred by that insurance company. Is it because they do a really deep and detailed evaluation of the damage to your vehicle? Is it because they want to make sure that every single item on your vehicle is returned to pre-accident condition? Or is it because the insurance company can save money by cutting sweetheart deals with these shops, so that they can reduce the amount the insurance company pays out in parts and labor on the repairs?

You need to take your vehicle to a quality repair shop that will do a complete evaluation, estimate, and repair. If your vehicle needs to be opened up and the interior inspected during the repair for hidden damage, you need to have that done as well. Going to an insurance company owned or sponsored body shop or repair facility is just not a good idea. You are far better off going to a dealership or truly independent shop that will do the repair correctly for you.

### CHAPTER TIP

Don't let the insurance company pressure you to go to a particular body shop for an estimate.

## Mistake # 7

### *Hiding Previous Vehicle Accidents or Other Personal Injury Claims from Your Doctor or Attorney*

All insurance companies maintain a combined index where they list the names of all persons making injury claims. The index consists of people's names, dates of birth, and social security numbers. Whenever a claim is opened, the insurance companies run the index on the name, date of birth, and social security number of the person making the claim.

There is nothing wrong with having been injured in a previous motor vehicle accident. The issue is whether or not the same part of the body injured in a previous motor vehicle accident was hurt again in this accident. For example, if a person injured his or her neck in a previous accident, but hurt the low back in this accident, then the injured person is entitled to compensation for the new injury to the back. Even if the same part of the body is injured in a subsequent accident, the injured person is still entitled to compensation if certain facts can be established by his or her medical records. If the injured person's medical records show that a significant period of time elapsed without complaints or treatment between the prior injury to the same body part and the later injury, the person is still entitled to compensation.

The length of time that is considered sufficient is determined by the specific facts of the case. If a person had prior low back problems for several years, but was then symptom free, and doctor-visit free for six months before the second accident, it should be sufficient to show that the re-injury is a new injury.

Even doctors hired by the insurance companies will usually admit that a person who had a previous injury to a certain body part may suffer a worse injury than a person without such a pre-existing injury. You should not be penalized simply because you had a previous injury to that particular body part.

## Case Study

### *The Eggshell Plaintiff*

In California, the law is even more favorable to a previously injured claimant. Our state has a jury instruction called the “Eggshell Plaintiff” instruction. The name comes from a case years ago when a person who was born with a skull that was as thin as an eggshell lived and functioned for many years, in spite of his eggshell skull.

Then someone was negligent, striking the man in the skull with a heavy board. Due to the eggshell skull, the injured person’s skull collapsed, causing horrible injuries and damages.

The defense attorneys argued on the theory that the defendant was not responsible for all of the injuries because a person with a so-called normal skull would not have been injured so badly.

The court decision found that the eggshell skull person had been living a full and normal life before the defendant caused the damages. The court found that the defendant is responsible for all harm caused to the injured person, in spite of the injured person’s pre-existing condition. This is where the name “eggshell plaintiff” came from.

In addition to the eggshell plaintiff example, the new claims evaluation software used by insurance companies actually gives additional credit for what is called pre-existing degenerative disc disease. Degenerative disc disease occurs in the spine and generally involves the spinal vertebrae, spinal discs, and spinal nerves.

As we age, the vertebrae develop arthritis-related spurs of bone, the discs lose water and shrink, and the spinal nerves become compressed by the degenerating vertebrae and discs. If the condition becomes advanced enough, the person starts experiencing painful symptoms, such as pain radiating out to the arms or legs.

When a person with degenerative spinal disease is injured in an accident, it stands to reason that his or her injuries are going to be much more severe than a person without that disease. Like the eggshell skull person, someone with spinal degenerative disease becomes an eggshell

spine claimant. For this reason, the insurance company knows that, if they go to trial, the jury instructions may help such a claimant obtain a good jury award, in spite of the pre-existing spinal degenerative condition.

As you can see, there is no need to hide previous accidents and injuries from the doctor or your attorney. When people do, they are setting the stage for a defense attorney's dream case. One in which the defense attorney can catch the claimant in a lie in front of the jury at trial.

When a person hides previous claim information from a doctor or attorney, the insurance company does not let on that they know about the previous claims. But, they might ask the claimant during a deposition whether he or she has ever had any previous injuries. If the claimant denies that he or she ever had any previous injuries, the defense attorney may not say anything at the deposition about the true facts of the claimant's previous accidents. The defense attorney simply asks a sufficient amount of questions to give the claimant "enough rope to hang himself".

At trial, before the judge and jury, the defense attorney has the claimant placed under oath. The defense attorney then asks the claimant if he or she has ever injured the same part of the body claimed to have been injured in this case. If the claimant answers "no" again, the defense attorney then introduces the records that show that the person testifying did have a previous injury and lied about it in a sworn deposition testimony.

The defense attorney has now proven to the jury that the claimant is a liar. Once that happens, the jury will most likely not believe anything the claimant has said about anything. Even worse, the jury may decide to punish the liar by awarding a jury verdict of zero dollars. The case, at that point, has become a complete disaster.

Clearly, hiding the truth about previous accidents or injuries is a big mistake in a personal injury case. You need to disclose all prior injuries or problems to your physician so that he or she can give you the care that you need. If you have an attorney, you need to disclose prior

injuries to him or her so that your case will not be ruined and turned into a defense attorney's dream case.

### CHAPTER TIP

You need to be upfront with your attorney and doctor about any previous accidents or injuries you have had. The insurance company will be looking into this information and the more you disclose the better.



## Mistake #8

### *Having a Gap in Treatment after You Start Your Medical or Chiropractic Treatment*

Just as insurance company computers are programmed to deduct money for claims that have an unexplained delay in treatment, the computers will deduct money for an unexplained gap in treatment. For instance, a person who has been in an accident sees an M.D. (or chiropractor or other health care provider) within a reasonable time after the accident. The M.D. prescribes medication and physical therapy, and the person goes to physical therapy for two or three weeks on a regular basis. Then the person starts having conflicts with work, school, or family responsibilities and starts missing one, two or three weeks of treatment at a time. After having one of these gap periods, the person does get back in for one, or two weeks of treatment, but then begins missing treatment appointments again. Without a reasonable excuse for missing treatment, the person's claim will be penalized.

If you have a reasonable excuse for missing a treatment or treatments, for example, a family member became ill or a crisis occurred at work, you should tell your doctor, and ask for it to be recorded in your medical records. This provides the insurance adjuster with a reasonable explanation for the gap in treatment. Another alternative is to ask the physician if there is some way to receive in-home care during the time you will be missing appointments. Perhaps a chiropractor could prescribe a home exercise program, or bed rest to get the person through the troublesome period. Insurance companies love this, because it is treatment they don't have to pay for. When the gap in treatment is handled with home exercise, two things happen. First, the person has explained why he or she is not in the physician's office, and second, there is no gap, because he or she is following the instructions of the physician, by doing the exercises.

## Case Study

### *If You Are Hurt in an Accident, Get All the Medical Care You Can*

One of our clients, Susan, was hurt in an accident where the other driver ran a red light. There were three witnesses to the crash, all of who gave statements in Susan's favor. The police officer, who arrived at the scene of the accident, found the other driver to be one hundred percent at fault. Even the at-fault driver's insurance company completely accepted fault. Therefore, establishing who caused the accident wasn't a problem.

Immediately after the collision, Susan went to the emergency room. A physician examined her and diagnosed a sprain and strain in her neck and lower back. The x-rays showed no fractures. Susan was given anti-inflammatory prescription medication for the pain. The doctor also prescribed eight to ten weeks of physical therapy.

Susan went to one or two physical therapy sessions, but then decided that she was too busy at work to continue. That is when our problems began. About eight weeks following the accident, Susan came to see me. She told me that she still had neck and low back pain, but that she wanted to settle her case. According to Susan, she was just too busy to continue with her treatment.

I tried to advise Susan that stopping her physical therapy treatment was jeopardizing her health, not to mention the value of her case. Despite my warning, Susan refused to continue with her therapy sessions and instructed me to settle her case.

When I sent all of Susan's medical records and bills to the insurance company, the settlement offer that was made was very small. When I asked why the offer was so low, the insurance adjuster told me, "We don't think your client could have been badly hurt, because her medical bills are so low. All she had was one emergency room visit and one physical therapy visit. If you don't like our offer and file a lawsuit, we don't think there is any jury who won't feel the same way as we do about the value of your client's claim."

While it is tragic that Susan basically threw away money, that is not the worst part of the whole situation. Because Susan wouldn't continue with physical therapy, she pretty much condemned herself to lifelong back and neck pain. When someone receives an injury similar to Susan's, without the proper physical therapy, scar tissue can accumulate in the muscles. Scar tissue is hard and presses against the nerves, tendons, ligaments and other tissues. Without treatment, this scar tissue often remains in the body for life.

Susan made a big mistake. If you are ever injured in an accident, please get all the medical care you can. It will pay big dividends in terms of your health, as well as the value of your case.

As defined by insurance companies there are two types of treatment—passive and active. The patient is considered in passive treatment when health care providers (M.D.s, chiropractors, etc.) are providing treatment, or providing therapy. In other words, in passive care the patient is passively allowing health care providers to do things to his or her body. The patient is in active treatment when the injured person is actively engaged in his or her own care—using prescription medication, engaging in exercise, taking bed rest, or other treatments or therapies that are self directed.

Insurance companies love active treatment, because they are saving money. The injured person is not incurring more medical or chiropractic treatment bills, which the insurance company is going to have to pay while the person is in treatment. The insurance companies reward the gap in treatment if the reason is fully explained in the records and the injured person reports that he or she did engage in the out-of-the-office prescribed treatment.

In spite of the above, it is much better for people's health and their cases if they do not have a gap in their treatment. In my experience, people who attend all their physical therapy or chiropractic treatment, and make all their medical appointments, seem to recover much better than those who miss appointments. In summary, a gap in treatment is

not good for a case, but using the above guidelines, it may be possible to reduce its negative impact

### CHAPTER TIP

It is important to follow through with the medical treatment recommended by your physician. If you cannot do so, you need to provide a good reason.

## Mistake #9

### *Failing to have a Physician Determine if Your Injuries Qualify You for a Permanent Impairment Rating*

Have you ever known of someone who was in a collision, received treatment, and then continued to have a sore neck or back for years thereafter? If so, that person may have suffered a permanent impairment from the collision.

When you have completed your treatment, your health care provider should have restored you to your pre-accident condition. If the provider cannot restore you to your pre-accident condition, he or she is supposed to return you as closely as possible to that condition. In other words: to maximum medical improvement (MMI).

If, however, you have residual physical problems from the collision certain physicians may be able to qualify you for an American Medical Association (AMA) impairment rating. This impairment rating can then be sent to the insurance company to increase the value of your claim. A permanent impairment rating is the second highest value driver under the insurance company claims evaluation software programs. If your doctor knows how to do an impairment rating correctly and gives you one, the value of your claim could increase greatly.

An AMA impairment rating is usually determined at the end of your treatment. Part of the rules of the AMA is that the body part you had injured in the collision is static and stable and your physician does not expect it to change. That is what defines it as maximum medical improvement (MMI), which is one of the requirements to qualify for a permanent impairment.

Your physician, or a physician you are referred to by your attorney, will use a book entitled *The American Medical Association Guides to the Evaluation of Impairment, 5th edition* (referred to hereafter as the *Guides*). That is the edition that is being used by doctors as this book is written; newer versions of the *Guides* may be used in the future. The *Guides* set

forth the AMA rules for granting a permanent impairment rating, and also defines percentages for the levels of impairment. For example, if in the final examination the physician finds that you still have spasms in the muscles injured in the collision the physician can quantify the degree to which you are impaired and assign you a permanent impairment rating.

It makes sense that this is the second highest value driver in the insurance company software. The accident has impaired you, for the rest of your life, even if the impairment is not major. With the impairment rating in your medical records, the insurance company software will add value to your claim. Furthermore, with the impairment designation your claim will be evaluated for two other value drivers: Duties Under Duress and Loss of Enjoyment of Life.

Duties Under Duress refers to the things you had to do while you were in pain or discomfort from the collision. They are things you would have not done if you had a choice, but had to do because of your life obligations. They include (1) work, (2) school or studies, (3) domestic duties inside the house and, (4) household duties in the yard or around the outside of the house. You had to do them, so you were working under duress.

Loss of Enjoyment of Life, although it would seem to refer to similar attributes, actually applies a different standard. The loss of enjoyment applies to the things you used to enjoy doing, but which you no longer enjoy after your injuries. They include your loss of enjoyment in your (1) work, (2) school or studies, (3) domestic duties inside the house, (4) household duties in the yard or around the outside of the house, (5) hobbies, and (6) sports or sporting activities on a social, competitive or professional level.

In order for the adjuster to give you credit for duties under duress or loss of enjoyment of life, your physician must have recorded those losses in your medical records. It is thus very important that you make sure that your physician records that information in your medical record

when he or she assigns you a permanent impairment rating and discharges you.

There are higher degrees of permanent impairment ratings under the Guides. A diagnosis of ligament laxity and segment motion instability (SMI) in the neck, mid-back or low back receives a very high value rating.

The way that SMI might be diagnosed, is when a patient has been discharged, but remains highly symptomatic. For example, the collision was a year ago and the patient has been through extensive treatment, but still has headaches, neck pain, low back pain, or other similar complaints. If that occurs, it is usually helpful to ask the physician to order what is called flexion-extension x-rays or MRI. Flexion refers to the patient's x-ray being taken while the patient leans forward as far as possible, and extension means that the film is taken with the patient leaning backwards as far as possible. With these films, doctors can obtain a real life picture of the person's spine when the person is standing, bending far forward, and then bending far backward.

Each vertebra in our spine is normally held in alignment with the other vertebrae by small ligaments. Those small ligaments are like rubber bands. Once they have been stretched too far, they never return to their normal size without treatment. Segment motion instability (SMI) refers to vertebra sliding backward and forward. If the radiologist sees the vertebrae sliding backward and forward, as the person leans forward and backward in the x-rays, we know that the ligaments have been stretched and damaged.

For example, we call the neck the cervical spine. We call the vertebrae of the neck the cervical spinal vertebrae. If a person leans forward and one of the cervical vertebrae moves two millimeters forward, and then when the person moves backward it moves two millimeters backward, we have a total of four millimeters of movement. Under the Guides, if a cervical vertebrae moves more than 3.5 millimeters between leaning all the way forward and then leaning all the way back, the physician can

assign a permanent impairment rating of 25 to 28 percent. The bad news is this person may then need to see a neurosurgeon for a surgical evaluation. In fact, if the movement is even greater, there is a danger to the safety of the spinal cord.

It is important to know that many health care providers have little or no understanding of the AMA Guides, or how to assess a permanent impairment rating under the Guides. You would be wise to have your attorney refer you to a medical doctor who specializes in such testing.

In a permanent impairment case, the insurance company software does make some distinctions between medical records from chiropractors vs. those from medical doctors. While the insurance company claims evaluation software does accept chiropractors as physicians, there are certain areas where the software will not give credit unless a medical doctor has signed that he or she agrees with the chiropractor. Those areas are as follows:

- **Prognosis:** A prognosis is a medical doctor or chiropractor's prediction of the future for the patient. If an M.D. makes a prognosis of continuing symptoms/continuing care needed, the insurance company will factor in the costs of the amount of future medical care as prescribed by the doctor. Any other prognosis will not provide that benefit. If, however, a chiropractor issues a prognosis of continuing symptoms/continuing care needed, the insurance company will disregard it unless a medical doctor validates that prognosis in writing.**Future Medical Care:** Although most chiropractors will record the amount of future medical care they think you will need, again, insurance companies will not accept their future medical care cost estimates unless a medical doctor agrees in writing.
- **Permanent Impairment Rating:** Although a chiropractor can assign a permanent impairment rating, the insurance company software will only accept it if a medical doctor agrees and signs off.



- **Duties under Distress and Loss of Enjoyment:** Again, despite the fact that a chiropractor can record a patient's duties under distress and a patient's loss of enjoyment of life's activities, the insurance company software will only assign credit if signed off by an M.D.

### CHAPTER TIP

Ask your doctor if you qualify for a permanent impairment rating. If you do, you could be entitled to higher compensation. If you are seeing a chiropractor, get secondary support from a medical doctor.

## Conclusion

The time period immediately following an accident is nothing short of overwhelming, confusing and stressful. It is hard to know what steps you should take to get compensation for your injuries and which steps should be avoided.

This book was written to educate you about some of the common mistakes people make after an accident so you can avoid these pitfalls. After reading this book, you should be better prepared to take the right actions that will help your injury claim. You can find even more tips and insight regarding injury claims at my website, [www.johnburnslawoc.com](http://www.johnburnslawoc.com).

Not every accident case requires the assistance of a lawyer. However, when serious injuries are involved, a lawyer might be just what you need. An attorney can step in on your behalf to ensure you are treated fairly by the insurance company. For more information, feel free to contact my office at (949) 496-7000 or toll free (877) 320-1338.

## About the Author

John P. Burns, a former U.S. Marine Officer, Marine Corps pilot and Airline Captain for Trans World Airlines has a passion for helping people. He has handled numerous significant personal injury cases throughout Southern California. He represents people injured in motor vehicle collisions, airplane crashes, and railroad derailments. He has an in depth knowledge concerning injuries to the neck, back, arms, legs, brain, and whiplash and related injuries. He has also represented individuals injured by unsafe products and slip/trip/fall accidents.

Mr. Burns has extensive experience trying cases. He has served as the president of the Orange County Trial Lawyers Association, an organization composed of attorneys in Orange County who represent injured people against insurance companies. He is a graduate of the National College of Trial Advocacy and has lectured to the Orange County Bar Association and Orange County Trial Lawyers Association on trial skills.

# Appendix I

## *Bonus Item*

### **Failing to Claim Your Lost Income and Mileage to and from Your Doctor's Visits**

In addition to compensation for your medical bills and pain and suffering, people injured in California by the carelessness of another are entitled to recover their lost income. The trick to obtaining that lost income is in preparing the documentation properly so that the insurance company will pay it.

For a lost income claim in California and many other states, the Collateral Source Rule applies. Under this rule, the fact that a worker was lucky enough to have paid sick days, paid vacation days, or other payment for days of work lost does not mean that he or she cannot submit a claim for the value of that time. He or she is entitled to payment for those days from the at-fault party. After all, the at-fault party had nothing to do with the paid sick days the injured person earned through his or her own employment or labor. There is no reason why the at-fault party should be rewarded for what the injured party obtained through his or her own efforts. Those employment benefits are considered a collateral source owned by the injured party, and the injured party may claim lost income without discount of the amount of the collateral source payments paid to the person by his or her employer.

For people who are employed by a company, the process is fairly simple. Have your employer prepare a letter, on company letterhead, stating the following:

- The average salary of the injured person, by day or week.
- The number of hours or weeks that person lost while he or she recovered from the injuries suffered in the accident.
- The total amount lost by the injured person.

- A supervisor must sign his or her name over his or her typed name so that the information can be verified later, if needed.

Then, you need to include the injured person's pay check stubs for a period of three to four months before the accident until a period of three to four months after the end of treatment. That way, the insurance company has added proof that the amounts set forth in the company letter accurately reflect the average salary of the injured person.

If you are self-employed, the documentation needs are different. You need to use any other documents that can be found to substantiate your income loss. For example, bank statements showing deposits of certain amounts every month until the accident date and then a big drop off in deposits until some date after treatment has concluded. Any other document you can find will usually suffice, as long as it makes logical sense and the drop in income can be tracked somehow.

An injured person in California is also entitled to mileage costs. We presently use the rate of 48 cents per mile, which includes the injured person's gas and car costs. Use Yahoo or Google Maps to calculate the distance from your home or work to the doctor's office and back.

We also use the doctor's bill to calculate how many days the injured person went to the doctor's office. After that we simply "do the math" and multiply the round trip at 48 cents per mile times the number of doctor visits. That is how we come up with the dollar amount of the mileage costs to which the injured person is entitled.

## Appendix 2

### *Frequently Asked Questions\**

*\* By answering these questions this book is not providing specific legal advice, as each case is unique. The subject matter is for informational purposes only and is based upon California law. For specific legal advice regarding your case, consult with an experienced California personal injury lawyer who will be able to review your situation and the factors involved.*

#### **Is there a deadline to file a personal injury claim in California?**

Yes. The deadline, which is known as a statute of limitations, is currently two years from the date of injury for most personal injury claims. There are, however, many exceptions to this rule and you cannot rely on this statement alone in protecting your right to recover money for your case.

For example, at the time of this writing, lawsuits against government entities, such as the United States Federal Government, State of California, cities, water districts, and many other governmental entities require you to file a claim within six months of the injury or be forever barred. Also, medical malpractice claims have a statute of limitations of one year from the date a claimant knew, or should have reasonably known, of the alleged medical malpractice.

It is important for you know that these periods of time may and do change. From time to time, Federal and State entities change the time for you to file a mandatory claim, and so does the California state legislature. For that reason It is imperative that you take the time to contact an attorney right away and get an opinion on the statute of limitations which applies to your particular case. Serious injury cases can take time and you do not want to forfeit your chance to collect compensation for your injuries, simply because you missed this deadline. Just as importantly, you want to take the time to have a professional give you the information you need to know, as to your particular case, so that you can

correctly calendar the exact statute of limitations which applies to your particular case.

### **What happens if the at-fault driver was not insured?**

You would be surprised at how many drivers in California do not have insurance or have inadequate coverage. If the other driver does not have insurance, you may be able to recover compensation under uninsured motorist coverage. This coverage is a part of most insurance policies sold in our state. It is designed to cover your losses caused by a driver without insurance. Review your policy to see if you have this coverage.

### **The insurance adjuster made it seem like I don't need a lawyer. Is that true?**

It depends on the severity of your case. For example, if you have suffered serious injuries, it would be wise to consult with an attorney. A lawyer will be able to step in on your behalf and work to get the compensation to which you are entitled. The insurance company can become challenging to work with, but an attorney will ensure that you are treated fairly. Plus, research has shown that people who are represented by lawyers tend to receive, on average, higher settlements, than those who are not represented.

### **The insurance company offered me a quick settlement. Should I accept it?**

This tactic is actually a common one used by insurance companies. They know that you might not recognize the extent of your injuries immediately after an accident. Some injuries, as we mentioned previously, don't become symptomatic right away. If you agree to a settlement too early, you could end up putting yourself in a bad position. For example, if you find out later that your injuries were more severe than you originally thought and extensive medical treatment will be required, you will be the one responsible for the additional medical expenses. Once your case is settled, it is nearly impossible to try to recover additional compensation.

## **How much is my claim worth?**

This question is one of the most commonly asked after a serious accident. When it comes to calculating a claim's worth, there is no magic, "one-size-fits-all" formula. There are many factors that go into determining the value of a claim, such as the amount of medical expenses, lost income, vehicle damage, and other related costs. We also consider your pain and suffering, the impact the accident has had on your life and whether the injuries are permanent. Each case is unique and it would be best for you to talk with a lawyer for assistance with determining the value of your claim.





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