

SEVEN

FATAL MISTAKES VICTIMS
OF ACCIDENTS MAKE IN PA

And How to Avoid Making them

Christopher J. Marzzacco

ABOUT THE AUTHOR

Attorney Christopher J. Marzzacco represents injured victims throughout the Commonwealth of Pennsylvania. Mr. Marzzacco earned his law degree from Widener University School of Law and received his undergraduate degree from Wilkes University. Beginning his legal career as a Deputy District Attorney with the Dauphin County District Attorney's Office in Harrisburg, Mr. Marzzacco gained valuable jury trial experience, litigating numerous cases before juries.



As a plaintiffs' personal injury lawyer, Mr. Marzzacco has successfully handled countless cases for his clients against those responsible for injuring them. Mr. Marzzacco's practice emphasizes representing persons injured by others in automobile and trucking accidents, but also represents persons injured in slip and fall accidents, work accidents, animal bites and other incidents where others have caused injury.

In his career, Mr. Marzzacco has handled Wrongful Death cases and complex cases involving serious, permanent injuries. In 2008, Mr. Marzzacco obtained a \$2.15 million dollar settlement in an automobile accident injury case. As a result, Mr. Marzzacco was certified as a Life Member of the Multi-Million Dollar Advocates Forum and the Million Dollar Advocates Forum, a prestigious trial lawyers organization that is limited to attorneys who have won million and multi-million dollar verdicts and settlements. Fewer than 1 percent of all attorneys are members. Mr. Marzzacco belongs to the American Association of Justice, the Pennsylvania Association for Justice, and has served on York and Dauphin County's panel of Arbitrators in general civil litigation cases. Mr. Marzzacco has taught trial advocacy at Widener University School of Law's Intensive Trial Advocacy

Program (ITAP) since 2001 and has coached Widener University's Mock Trial Team as well.

Mr. Marzzacco has authored articles on automobile injury law, automobile insurance issues and other related topics and is available to conduct public seminars on automobile injury law and automobile insurance issues.

In his spare time, Mr. Marzzacco serves on the Board of Directors of Vinny's Kids, a charitable organization devoted to helping hospitalized children, children with special needs and their families. Mr. Marzzacco also volunteers as head softball coach for the Central PA Krunch Jr. Olympic Team, as well as donating his time to other charitable, church and community organizations throughout Central Pennsylvania.

Mr. Marzzacco used his experience as a Pennsylvania Personal Injury Lawyer to write this book to help Pennsylvania injury victims avoid many of the "fatal mistakes" he has seen people make over his legal career. Consumers of legal services should use this book to warn them of pitfalls in the automobile injury claim process, and educate them on the mistakes they could make in pursuing their own injury case without an experienced personal injury lawyer.

Seven Fatal Mistakes Victims of Accidents Make in Pennsylvania is written in plain English, without complicated legal language. This book will be a valued aid for everyone forced to fight the big insurance companies to get the benefits they deserve!

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SEVEN FATAL MISTAKES VICTIMS OF ACCIDENTS MAKE IN PENNSYLVANIA

And How to Avoid Making Them

This book examines and explores:

- Common automobile personal injury myths
- How insurance adjusters handle the claims process
- Why you don't need a lawyer in every accident case
- What you should do before hiring a personal injury law firm
- 10 questions to ask before hiring a personal injury lawyer
- The fee guarantee you should get before hiring a lawyer

If you have recently been injured in an accident, or if someone you care about has been injured, chances are you're worrying about what you should do next. You may also be feeling scared, angry, frustrated, or just wondering if there is a simple way to handle your unfortunate situation. Some questions people have after getting injured in an accident include: "Can I trust my insurance company to take care of me? How do I deal with the other driver's insurance company? Should I get a lawyer?"

Will I be able to make a claim if I didn't see a doctor right after the accident? Will my own insurance company give me what I actually deserve for the damage to my car?" If you have any of these questions on your mind, then keep reading. My hope is that this book will answer many of your questions, and that it will ease some of your stress and frustration during this difficult time. If you have not been injured in a car or other motor vehicle accident, please feel free to keep reading as well — this book contains useful information that can inform you in case you ever have to advise a friend or family member.

This book is primarily about automobile injury cases, but most of the information in the book also applies to injuries sustained in other ways such as from “slip-and-fall” incidents, injuries caused by defective products, animal attacks and many other types of accidents.

Before we begin, here’s a little background on the origin of this book. A version of this book’s content was originally developed by Attorney Kenneth L. Hardison, an attorney who has been representing injured and disabled clients in North Carolina for over 25 years. Having read Mr. Hardison’s version of this book while in North Carolina on business, I thought that the people of Pennsylvania deserved to have their questions answered using Pennsylvania law, practice and procedure as their guide.

Like Mr. Hardison, I will not represent insurance companies, as my allegiance and sympathy has always been to accident victims and never to insurance companies or government agencies. I too want to help as many injured or disabled people as possible and I believed that this book would really benefit those who I fight for - injured victims throughout Pennsylvania. To bring this information to injured people in Pennsylvania, I completely edited the content of this book and added new material so that it complies with the law and claims procedures used in Pennsylvania.

Enough about history. Today, more than ever, I am frustrated by how hard it is for people to get straight answers to their questions during the stressful time after an injury caused by someone else. If you should find yourself in such a situation, frankly, I hope you call me to represent you. But I wrote this book and I’m making it available to Pennsylvania residents because I want them to have this valuable information whether they hire me, hire someone else, or hire no one at all.

If you’ve been in an accident, there are some things that you absolutely must know. In fact, you should know these things before being involved in an accident because after an accident, time is

precious. That's why I've adapted this book to help injured Pennsylvanians. After an accident, I have seen many people just give up and not try to fight for their rights. This book details some of the critical things you need to know, and even more importantly, details critical mistakes you **MUST AVOID** in order to protect yourself and your family from the other driver's insurance company after your involvement in a motor vehicle accident. If you have been injured in an accident caused by someone else, don't give up. Try not to feel overwhelmed. Read this book and slow the process down so you can focus on the most important thing after an accident-getting well.

As a lawyer who works with injury cases day in and day out, I am becoming more and more concerned that most hardworking Pennsylvanians are being taken advantage of by big, uncaring insurance companies, government agencies, and even by our legal system itself. As a result, I determined the content to be included in this book by asking myself this question:

"If a member of my family was in an accident and I couldn't be there to help, what are the most important things I would want him or her to know?"

It is my genuine hope that this information will help you learn the important things that you should and should NOT do after being involved in an accident. An accident injury can be one of the most tragic and stressful events that can happen in a person's life. With recent changes in Pennsylvania injury and auto insurance laws, and with the way insurance companies are handling claims these days, I am even more worried that you may not get the help you really need. That said, I think that the information I give you here will help you protect yourself and your family and allow you to receive fair compensation for your injuries and damages.

As lawyers do, let me give a few provisos. Even though I refute many of the arguments the big insurance companies will make to deny or minimize your claim, I am not giving individualized legal

advice in this book. In other words, reading this book does not create the Attorney—Client relationship. I can offer suggestions and identify certain pitfalls and traps that I have seen handling numerous automobile injury claims, but please do NOT take anything in this book to be personal legal advice unless you have agreed to hire me and I have agreed, in writing, to accept your case.

Thank you for buying or requesting this book. I believe you will find it helpful, and I would appreciate your comments after you have read it.

WHAT IS A PERSONAL INJURY CASE?



When lawyers say that they handle “personal injury cases” or “accident cases” or “wrongful death cases,” I’m not sure that non-lawyers understand exactly what they mean. A personal injury case, automobile injury accident case, or wrongful death case occurs when a person has been injured or killed due to someone else’s carelessness or negligence. If you bang up your ear in a “fender bender” and do not suffer an injury, you don’t have a personal injury case, you simply have a property damage case. Like most firms in this area, our firm does not handle claims involving only property damage. If both you and your car have suffered damage, then you have both a personal injury and a property damage claim. In those circumstances, either your insurance company or the other person’s insurance company will usually take care of your property damage claim, with your injury lawyer giving you some free guidance on the property damage portion of the claim.¹

If someone’s negligence causes the death of another, a “wrongful death” claim may arise. The laws of each state differ significantly regarding what damages can be recovered in a wrongful death case

¹ Be careful if you handle your property damage claim on your own. Please consult your injury lawyer because if you litigate your property damage case on your own, you could be precluded from bringing your injury claim in court at a later time.

and who may make that recovery. When someone dies in a Pennsylvania accident, family members and the estate usually have separate causes of action under the Wrongful Death and Survival Acts. When an accident causes the death of a loved one, you need an attorney who understands these laws. Please do NOT attempt to handle a wrongful death case without a lawyer!

In a typical personal injury case where the injured person or “claimant” has completed medical treatment, negotiations begin with the other driver’s insurance company in an effort to settle the claim for a fair amount of money. In my experience, nearly all cases settle if both the insurance company and the claimant act reasonably. If the insurance company does not make a fair offer, however, a lawsuit must be filed by the injured person’s lawyer. In Pennsylvania, a lawsuit is usually filed in the county where the accident happened, in the county where the injured person lives or in the county where the other driver lives, or if the other driver was working for a business at the time of the accident, in any county where that business has its principal place of business.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Through discovery, each party investigates the claim to try to figure out what the other side will say at trial. The defendant (other driver) will be permitted access to your medical and work history, including your income records. You may have to give a deposition (or sworn statement) under oath. The defendant is also subject to discovery. The defendant will answer written questions, under oath, about his or her background, and about the incident at issue. Your lawyer will also get to depose the defendant and other defense witnesses.

After discovery, more negotiations usually take place with the other driver’s insurance lawyer in an effort to settle the case again. At this point in the process, some jurisdictions require the parties to consider mediation. If a settlement is not reached, either side may file pre-trial motions. Once a Judge decides all motions, the case is ready for arbitration or trial. A trial or arbitration hearing is held

and a judge, arbitration panel or a jury will determine both fault and damages.

As I mentioned earlier, almost all cases settle without the expense and delay of a formal trial. In fact, if handled properly by an experienced automobile accident lawyer, most cases resolve for fair compensation without even filing a lawsuit.

Many of my clients, particularly those in South Central Pennsylvania, do not like to file law suits. In my experience I have found that these hard-working people simply want to recoup what the other driver has caused them to lose. These folks want to have their medical bills paid, they want reimbursement for their lost wages and they want an amount of fair compensation for their troubles — what we lawyers call “pain and suffering? I often hear my injured clients tell me that they are “not the suing—type,” but because the other driver’s insurance company took advantage of them, they needed to hire me to help.

In most cases, had these folks read this book before the accident, I could have spared them much grief and aggravation. Unfortunately, people injured in some type of motor vehicle accident — whether it’s a car, tractor trailer, truck or motorcycle accident - are not prepared for what lies ahead of them. When dealing with the aftermath of a motor vehicle accident, people learn quickly that you cannot trust the enemy. The enemy, of course, is the other driver’s insurance company.

AT WAR - BUT A WAR THAT CAN BE WON



Without exaggeration, I can say that when you were injured by the other driver in the accident, you entered a war zone. Of course, you did not ask for this to happen, and of course, you did not want this to happen. Nonetheless, you must face a very worthy, often intimidating adversary - the other driver's insurance company. Initially, you will feel alone and helpless. But, if you have an experienced injury lawyer by your side, you can gain an ally willing to fight this war with you.

Figuratively speaking, big insurance companies have declared war on the people their drivers have injured. Insurance companies have waged this war in the legislatures and in the media, and the hundreds of millions of dollars they have spent on propaganda has had a tremendously negative effect on juries and jury verdicts. Because of these untruths, some citizens of this Commonwealth unjustifiably view injured victims with skepticism. Except for the greater Philadelphia, Pittsburgh and Wilkes-Barre-Scranton areas, this is particularly true in Pennsylvania. This propaganda campaign has also resulted in bad laws being passed in other states, in the name of "tort reform." The success that the insurance companies have had in tainting the minds of jurors and the public has emboldened them to frequently make unreasonable settlement offers until you prove to them that you are ready, willing, and able to go to trial.

The Insurance Company's "Game":

To understand and appreciate the Seven Fatal Mistakes Victims of Accidents Make in Pennsylvania, you have to learn about and understand the process that occurs in the days, months or even years that follow your accident. We'll call this the insurance company's "game." The true rules of the game, and the vocabulary needed to communicate in the game, actually come from Pennsylvania's Motor Vehicle Code (MVC) and the provisions of its Motor Vehicle Financial Responsibility Law (MVFRL). Reading the law really won't help you though. Why? Because the insurance industry is so powerful that they control the entire process! So if you're unfortunate enough to get injured an auto accident, you'll soon learn that your claim will actually be handled by the insurance company for the person who caused the accident. Sounds unbelievable, I know, but yes, your claim will actually be handled by the insurance company for the person who hurt you!. Who handles the claim against you? An automobile insurance bodily injury adjuster (adjuster). Initially, this person gets to make vital decisions such as if his or her driver caused the accident; if you were injured by his or her driver; what injury you actually suffered, if any; what medical bills will be paid, if any; what wages you have lost, if any; and what amount of money, if any, they will offer you to compensate you for any other damages he or she feels you may have suffered, if any.

Crazy, right? I guess the obvious conflict of interest is the same reason for the type of government we have in America — one based on checks and balances. Sadly, innocent victims of auto and other accidents do not have this protection if they handle their claims without a lawyer. Therefore, if handling an injury claim against an insurance company alone, you must learn to play the insurance industry's game.

A Few Automobile Insurance Definitions:

You need to have a basic understanding of the various types of automobile insurance coverage available before we get into the “Fatal Mistakes” chapters of this book. A simplified, plainlanguage description of the most common categories of auto insurance coverage and how they may benefit you are listed below.

Bodily Injury Liability

In Pennsylvania, all drivers must carry auto liability insurance to pay for any bodily injuries they cause to other drivers in an automobile or other type of motor vehicle accident. A Pennsylvania driver must carry a minimum amount of \$15,000 to comply with the law. The insurance company’s obligation to pay any claim is limited, however, to the amount of coverage you purchased. For example, if you carry the state minimum liability coverage of \$15,000 per person and \$30,000 per accident, your insurance company will pay no more than \$15,000 to each person you injured in the accident, but no more than \$30,000 total - regardless of how many people get hurt - for any one accident. In serious injury cases, therefore, you will be personally responsible for any damages over and above the amount of your insurance coverage. On your policy “Declarations Page” you may see shorthand references to liability insurance limits as 15/30, 50/100, or 100/300, indicating amounts per person/per accident.

Property Damage Liability

This is similar to bodily injury liability except that it covers damage caused to another person’s property rather than physical injuries. The insurance company’s obligation to pay is also limited to the amount of coverage you buy. The minimum limit for property damage coverage in Pennsylvania is \$15,000. Of course, \$15,000 doesn’t come close to repairing a badly damaged new vehicle these days, so I always recommend that our clients purchase additional coverage above the minimum required by law.

Comprehensive

This category of protection generally requires your insurance company to pay for damage to your car caused by something other than an auto accident (for example, fire, theft or vandalism). The company's obligation to you will be limited by the amount of any "deductible" you may have purchased. A \$100 deductible means that you pay the first \$100 and the insurance company pays the rest.

Collision

Your insurance company pays for damage to your car caused by an auto accident. Deductibles also are common with this coverage, so the company's obligation to you will be limited by the amount of any deductible specified in the policy you purchased.

Medical Payments Coverage

Your insurance company will pay the reasonable medical expenses of anyone in your car injured in an accident. Under this coverage, it does not matter who was at fault in the collision. Moreover, under Pennsylvania law, this coverage also pays medical bills when you or a family member get injured by or while in/near a car or other motor vehicle. For example, this coverage applies if struck by a car while crossing a street or if injured while unloading hay out of the back of your pickup truck. You, as an owner of a car, must carry medical coverage as part of your automobile personal injury protection (PIP), the minimum of which must be \$5,000. If you own a motorcycle, this coverage is not offered in Pennsylvania. You also have the right to purchase extraordinary medical expense coverage of up to \$1,000,000 to protect you and your family and to pay for medical bills that result when you or a family member are seriously or permanently injured.

Income Loss Coverage

This coverage provides income when an injury renders you incapa-

ble of working. In Pennsylvania, this coverage is optional. If purchased, you must carry a minimum of \$5,000. Under Pennsylvania law, this coverage does not cover your first five (5) days of missed work. After the first five days, your insurer will pay 80% of your lost wages up to your monthly maximum payment. For example, if you have \$5,000 of coverage with a maximum payment of \$1,000 per month, earn gross wages of \$6,000 per month and cannot work for two (2) months, your insurer would only have to pay you \$1,000 for month one and \$1,000 for month two.

Tort Selection

When it comes to auto insurance, “tort selection” is, without a doubt, the single-most important concept for any person who owns a vehicle in Pennsylvania to understand! Simply stated, you can choose “limited-tort,” and save on your annual insurance premium. In return for making this selection, however, you give up your rights to recover non—economic damages in almost all instances if injured by another driver. On the other hand, if you choose “full-tort,” you will pay slightly more each year in premiums, but you can recover all economic and non-economic damages if injured by another driver. Non—economic damages include pain, suffering, humiliation, mental distress and disfigurement. Generally speaking, without full-tort, you exponentially increase the chances of the other driver’s insurance company denying or limiting your claim. Also, selecting limited—tort practically eliminates your ability to make a UM or UIM claim.³

² Exceptions do exist, such as when you are hurt by a DUI driver, an uninsured driver, a driver in a car registered in another state, a driver who intentionally tries to cause an accident, or if you are “seriously injured.”

³ None of the exceptions that apply to the limited-tort selection described in footnote 2 apply to UM and UIM claims except the “serious” injury exception.

Underinsured Motorist (UIM)

If a driver injures you or the occupants of your car, and his or her liability insurance is insufficient to cover the full value of your claims for physical injuries, this coverage applies and will pay your claims. This coverage is optional in Pennsylvania, as it serves as a supplement to the bodily injury liability insurance that the other driver carried on the car that hurt you, your family or your car's occupants. Under Pennsylvania law, you can only purchase UIM in an amount equal to or less than your liability coverage. However, when you have multiple cars insured under one policy, you can elect to "stack" your UIM coverage or add the amounts together to get more protection against drivers with insufficient liability coverage. For instance, if you insure two cars in your household with UIM coverage of \$100,000 on each and you stack the coverage, you would then have \$200,000 available to you in a serious accident caused by a driver carrying minimum coverage.

Uninsured Motorist (UM)

If an uninsured driver, i.e., a driver without liability coverage, injures you or your car's occupants, this coverage will take care of your claims. Again, this is optional coverage in Pennsylvania, as this coverage serves as a substitute for the bodily injury liability coverage that the other driver did not carry on his or her car. Remember that your insurance company's obligation to pay you UM benefits is limited to the amount of coverage you purchase. The rules for this coverage are essentially the same as those for UIM, so you can stack this coverage too.

Back to the Insurance Company's "Game":

Under the injury claims processing system the insurance industry has developed, you can bet that the insurance adjuster assigned to your claim knows the law and is well trained to save his or her company money by interpreting the law in their favor. You see, the auto insurance companies write their policies in a manner that is

best for them, not you. Often, an adjuster will undervalue your claim or, in some cases, deny your claim altogether, simply because you don't know how the process works or do not speak the language of the game. If an adjuster denies your claim and then tells you that the law and your insurance policy allow him or her to do so, what are you going to do about it? For example, if the other driver's insurance adjuster doesn't pay your claim in two years, do you think he or she will advise you that Pennsylvania law bars you from ever bringing a formal law suit to enforce your rights? In a serious accident where you are permanently disabled, what if the adjuster says the insurance company won't pay your future lost earnings? Finally, what if the other driver's insurance adjuster makes you a small, "take it or leave it" settlement offer right after the accident? Do you think the adjuster will tell you that as soon as you take the money and sign a release the claim is over? You better hope your injuries don't get worse!

If you think these things don't happen in the auto insurance industry, get on the internet and research it. In fact, there is a book entitled ALLSTATE: From Good Hands to Boxing Gloves, that exposed that insurance company's policy of the "Three D's: deny, delay and defend." This strategy helped ALLSTATE save billions of dollars that it should have paid to countless auto accident injury victims without legal justification for doing so. The point is, that the other driver's insurance company tries to control the entire claims process from the time they first call you until the time they refuse to make you a fair settlement offer. The claims process and time frame can be rushed, for example, when an insurance adjuster quickly offers an injured person a small amount of money a few days after an accident in attempt to get that person to sign away their future rights. Or, the adjuster could decide to delay. Thus, the claims process could take months or even years, like when an insurance adjuster refuses to make a settlement offer to an unrepresented victim with serious injuries, even though they know that they should do so under the law. Often adjusters employing these tricks justify their behavior by claiming they need more information from you, the injured person. This behavior is particularly troubling to an experi-

enced automobile personal injury lawyer because he or she knows that most accident victims are unaware of the information needed by the insurance company and the format in which it must be presented. Realizing that insurance companies employ various tricks and use numerous approaches to prevent paying you a fair settlement, you deserve to know your legal rights before you get thrust into this one-sided game.

Is the game the same in a Harmful Product (product liability), Dog Bite, Slip-and-Fall or other accident case? Whenever you are hurt by anyone's negligence, including that of a professional, a builder, a manufacturer or a business owner, you have a personal injury claim. Generally speaking, whenever an insurance company is involved in handling the claim against the responsible party, the "game" is the same.

How Insurance Companies and Adjusters Really Operate:

After an accident, while you are still receiving treatment for your injuries, the party at fault in your accident has probably notified his or her insurance company. The insurance company's adjusters and investigators are experienced – most handling hundreds or even thousands of claims in their careers by the time your claim crosses their desks. Every insurance company knows that time is on their side when one of their drivers has caused an injury-accident. Recognizing the advantage and importance of immediately investigating and "processing" accident sites, most insurance companies use their experience, power and unlimited financial resources to get a jump on you, the innocent, injured person. A few insurance companies even have "initial response" adjusters, adjusters who respond immediately to an accident scene or who attempt to meet with an injured driver to entice them to take a fast settlement offer. In my career as an automobile injury attorney, I have seen more than a few instances where an insurance adjuster has convinced a seriously injured victim to take a few hundred or thousand dollars right after an accident. In one case, a young man came to me for representation shortly after accepting a \$1,500 check and signing a release with an

insurance company. The man informed me that he was hit from behind in the collision, violently struck his head as a result of the impact and was transported to an area emergency room. After diagnostic testing and basic treatment, the man returned home from the hospital later that day. That evening he received a call from the other driver's insurance company and agreed to meet the adjuster to discuss the case. As he explained to me, the adjuster told him to take the \$1,500 settlement because the man's injuries didn't require extended hospitalization, and therefore, were not "serious" under the law. The adjuster also pointed out that the man had selected limited-tort on his auto policy. The man, thinking he had no other option, took the check and signed "some paperwork" without any question or negotiation. As it turned out, the man was taking several medications at the time he accepted the settlement and was suffering from what he later learned was a significant traumatic brain injury (TBI). The gentleman eventually required extensive medical care and treatment and was unable to work for months. By the time he came to see me, several months after the accident, it was too late. He had signed a release. I informed him that had he consulted me earlier, I might have been able to recover non-economic damages for him under an exception to the limited-tort law. In fact, the gentleman was probably entitled to a six-figure settlement.

You must realize that in an accident case, the other driver's insurance company does not have a legal obligation to inform you of your rights. Every insurance company employs experienced defense attorneys who operate behind the scenes, and whose sole responsibility is to protect the financial interests of the big insurance company. Insurance companies are obviously in business to make money, and the less they pay out on claims, the greater their profit margins. Insurance company adjusters are trained to take advantage of the fact that claimants have little knowledge or experience in determining the fair value of their claims. Be careful because the other driver's adjuster may be very pleasant, appear to be concerned, and even try to be your friend. The adjuster may be a wonderful person, coach the local soccer team, and belong to your own church or civic group. But always remember that the adjuster's job is to protect the

insurance company — to find a reason NOT to pay you. Or, if they must pay, to make sure you receive as little money as the insurance company can possibly get away with in order to “make the matter go away.”

In a “statement” made over the phone or in person, the adjuster will often try to get you to minimize the nature and extent of the pain or impact of any injury, get you to accept full or partial responsibility for the accident when it was really not your fault, or tell you how difficult it would be for you to win your case in court. Sometimes adjusters will even advise you that you don’t need a lawyer! These are insurance adjuster tricks that an attorney can help you avoid.

If you have been injured in an accident what should you do next? First, let me suggest what you should NOT do. Don’t let anyone push, force, threaten or convince you to sign any document, or try to entice you to make a quick settlement. I realize that \$1,000 would come in handy, but as the earlier example showed, sometimes after an accident you really don’t know the severity and extent of your injuries. As the ALLSTATE book and my earlier example show, you really need to focus on getting better after an injury, but should also seek experienced counsel and advice regarding the legal aftermath of an accident. Need more proof? About a year or so ago I read an article in a well-respected legal journal reporting that one big insurance company had started a new program for their claims adjusters. Under this program, the adjusters were encouraged to do “whatever they could” to contact injury victims before they hired lawyers. This policy included monitoring police radios and visiting accident scenes! Sound familiar? Another study by the Insurance Research Council found that injured people using lawyers in personal injury claims received MORE money than those without lawyers. This was true even AFTER paying legal fees!

Please remember this - an insurance company increases profits by reducing the amount of money it pays out in claims. Saving money for the business is important - to both ownership and the employees. For example, how many insurance adjusters do you think have

received promotions or raises after bragging to their supervisors about how MUCH money they paid to deserving claimants? Exactly. Trust me, despite claiming otherwise, the insurance company is NOT “on your side.”

If someone hurts you or a loved one in a motor vehicle or other accident, be prepared to get thrust into a war with the other person’s insurance company. To survive this war and get back to work, your life and your family, educate yourself about the insurance industry, injury claims and injury lawyers.

AUTO ACCIDENT INJURY MYTHS



Unfortunately, well over 100,000 people will be injured by others in motor vehicle accidents this year in Pennsylvania. Each year, I estimate that thousands of people never take any action to claim the compensation that they rightly deserve. Most folks don't get proper help, either because they get bad advice from insurance companies, friends or relatives, or because they are afraid, intimidated, or confused. Don't let that happen to you. After suffering an accidental injury, doing nothing is one of the worst things you can do!

Some free advice on listening to insurance companies, friends, co-workers and even family members, when it comes to handling your claim: be careful. As our common sense and life experience tells us, no two situations are the same. Many myths exist about injury claims, just like anything else. Here are the most common:

- If you write the other driver's insurance company a letter and

⁴ Pennsylvania Department of Transportation, 2008 Pennsylvania Crash Facts and Statistics.

⁵ Please note that under your insurance policy, you may be required to give a statement so your insurance company can pay medical or other benefits. To be safe, before speaking to any insurance company, call an experienced personal injury lawyer.

you are reasonable, you will get a fair settlement proposal.

- When you are in an accident and the other driver's insurance company calls you to ask for a recorded statement, you have to give them one or they won't settle with you.
- The other driver's insurance company must pay your medical bills as they are incurred.
- The other driver's insurance company has a duty to treat you fairly and an obligation to use good faith. If you go to court and just tell your story, the jury will feel sorry for you and award you adequate damages to compensate you for all your losses.
- Pennsylvania juries are always fair and generous.

The "good old days" when your family lawyer (the one who drafted your will, helped you buy your house, got you out of the parking ticket, handled your divorce, etcetera) could write a single letter to the other driver's insurance company and settle your case are long gone! In today's world I can assure you writing a letter yourself won't work either. The insurance industry has intentionally made the claims process a complex, tedious, and technical undertaking, frequently requiring specialized knowledge.

Speaking to the other driver's insurance company after an accident is never a good idea. We've all seen police shows on TV where the officer advises the alleged criminal "you have the right to remain silent. Anything you say can and will be held against you in a court of law." Auto accident claims don't fall under criminal law, but the principle is the same - don't speak to the other driver's insurer.

In Pennsylvania all medical bills are paid by your auto insurance policy, without regard to fault. Only if you do not own a car or do not live with a relative who owns a car will the insurance company for the car that injured you have to pay your bills as you incur them.

The insurance company for the driver that hurt you does not owe you any duty of good faith, generally speaking. The insurance company may owe its driver this duty, but believe me, their unspoken duty is to protect "the bottom line."

Admittedly, most adjusters I routinely deal with in and around Pennsylvania are nice people. Their interests, of course, lie with their employers, not with you. By effectively doing their jobs, adjusters cannot have your interests in mind. If injured in an automobile or other accident, you have an absolute right to represent yourself in court against the insurance company and the person who hurt you. Getting past the other person's insurance claims adjuster, the insurance company's defense attorney and the rules of procedure and substantive law that guide you in the matter - that's the real trick. The law surrounding automobile injury issues is complex and ever-changing. In fact, most general practice lawyers refer cases to personal injury lawyers.

If you research jury verdicts in Pennsylvania, you will find that juries are very fair in and immediately around Philadelphia, Pittsburgh, Scranton and Wilkes - Barre. In all other jurisdictions, folks tend to return very small verdicts even in serious cases. It makes sense, if you think about it, as the areas other than those mentioned above are predominantly rural, made up of hard - working people who often come from backgrounds that are anti-litigation. Also, many folks in the South Central region of Pennsylvania are employed by the insurance industry or are very conservative politically. The insurance industry has done a good job of making people think that injured victims are filing frivolous lawsuits or that medical doctors are leaving the state because of huge jury verdicts. Research into these and other issues shows otherwise. That said, a jury trial can truly be a roll of the dice.

FATAL MISTAKE #1

NOT TAKING IMMEDIATE ACTION AT THE ACCIDENT SCENE TO ENSURE YOUR RIGHTS ARE PRESERVED



Immediately after an accident, shock and confusion can make anyone forget to use their common sense. There are certain steps you absolutely must take, though, beginning the instant after the accident. If you miss that opportunity, you will never have a chance to completely correct your mistake. Remember, even though these comments may refer to automobile collisions, many also apply to other types of accidents.

If you were in an automobile collision, stop your vehicle immediately, but do not block traffic. Pennsylvania law requires that you not leave the scene of an accident if injury or severe property damage has resulted. If you cannot immediately move all vehicles out of traffic lanes, warn oncoming drivers by setting out road flares, turning on hazard lights, or raising the hood or trunk of your vehicle and other vehicles. Assist anyone who may be injured. If you are injured, get to a safe area and wait for emergency responders. Make sure that you or someone else calls for an ambulance, even if you are not

sure of the severity of your injuries. Once emergency medical providers respond, allow them to examine you. Never refuse treatment, as your symptoms may not be obvious to you yet and may intensify soon after the accident. If the medical providers feel you should go to the hospital, let them transport you.

Keep calm, don't argue with the other driver, don't accuse the other driver, and don't admit fault. Things you say immediately after the accident can be used against you later. Under the Pennsylvania Rules of Evidence, an "admission" by you or the other driver is admissible in court. Because of this, do not discuss the accident with the other driver. If for some reason you are ultimately found at fault later, you will have an opportunity to apologize to the other driver. At the scene, if the other driver admits fault to you or anyone around you, try to take a note of what he or she actually said.

Once the police arrive, cooperate fully with the investigating officers. However, again, do not describe the accident to the officer at that time. Instead politely indicate that you are hurt and would prefer to speak about the accident at a later time. Do not allow the other driver to talk you into not contacting the police. In many cities, police will not come to the scene of a minor collision. Let the police make this decision — you call them anyway. If a police officer does come to the scene, ask him or her to give you the "Accident Exchange Sheet," which will contain all of the other driver's information. Also make sure to point out any independent witnesses to the officer while still at the scene.

If your injury was not a result of an auto accident, but instead occurred at a business or restaurant, insist that the manager talk with you and make a written incident report. Make sure you receive a copy of this report. If there is any chance your injury may have been captured by a security camera, tell the manager to preserve that evidence. This evidence could be essential to proving your case later. After you have sought medical treatment, make written notes of the names, addresses, phone numbers, and license plate numbers of all parties involved, including any witnesses to the accident. Fortunately—

ly, many people now carry cell phones that can take photos. If you don't have one, keep a cheap or disposable camera in your vehicle. At the accident scene, if you can do so safely, take photos of all vehicles from various angles. Photograph the street scene, including traffic control devices (stop signs, yield signs, or stop lights), skid marks, and any physical objects (such as guard rails or light poles) that were struck by any vehicle. Even photograph the other drivers, passengers, and witnesses, if possible. If you are injured and cannot take photos, ask someone to do it for you. If your cellphone or camera has video capability, a short video of the entire scene can be extremely helpful in showing a clear depiction of the relationship of vehicles and objects. Good photos showing extensive property damage to your vehicle can often convince an insurance company or jury that you suffered serious injuries. Remember that a picture is worth a thousand words.

FATAL MISTAKE #2

NOT DOCUMENTING EVERYTHING THAT HAPPENS AFTER THE ACCIDENT OCCURS



When your claim is ultimately presented to an insurance adjuster for settlement or to a jury for verdict, trial lawyers always say “it’s not what actually happened in and after the accident, it’s what you can prove happened in and after the accident.” In other words, neither the insurance company nor the jury has any obligation to believe what you say. You’re going to have to prove your facts and prove your damages. How? You prove your facts and damages by documenting everything you possibly can. In the last chapter I suggested documenting everything at the scene of the collision or accident. But the need for documentation only begins at that point. Thorough documentation makes or breaks your case.

An automobile, motorcycle or tractor trailer accident causes extreme confusion. After an accident, our bodies and minds kick into survival mode. Even a few days after a traumatic event, we naturally try to return to “normal.” It’s amazing how quickly we forget the details of the experiences we have gone through. Written words help us

remember. Photos can actually tell the story when minds forget. Recovery from the injuries suffered in an automobile or other accident can be a long and grueling process. During the weeks or months during your recovery, keep a detailed daily diary. If you can't write because of your injuries, dictate your thoughts to a family member or friend. This simple task creates a powerful tool for a fair settlement. It is important to make your diary entries as frequently as possible as a summary at the end of each month will not be nearly as accurate as daily entries. Note things such as how you sleep, the intensity of your pain and other symptoms, what personal tasks you cannot perform and what activities and functions you need assistance performing.

If you suffered swelling, bruising or scarring, take photos and date them! In any scarring or bruising claim, you must take photos frequently to document the injuries as they progress and heal. Again, in personal injury law, a picture is truly worth a thousand words. Pictures can make difference between an average settlement and a great settlement. The right photographs can motivate the insurance company to make a fair settlement offer. Similarly, video taping is also a very effective tool. Video can show the "loss of range of motion" caused by an injury. Video can dramatically illustrate the important aspects of your case. The point is that in an accident claim you are trying to recreate the past. The more effectively you can do that, the better you can prove your case.

Upon returning home from medical examinations or therapy sessions, write down some of the things you discussed with your doctor or therapist. Usually, your doctor or other medical services provider will take excellent notes of your examination or appointment. Knowing this, insurance companies scrutinize every word in your medical records, often looking for phrases such as "patient reports she feels great today" or "patient reports that the injury did not bother him while working today." These innocuous statements come from you when your doctor asks "how are you feeling?" or "do you notice any problems your injury is causing you?" You must understand that what you say will appear in your records under the

“history” section. Knowing this, I strongly suggest that when your doctor or other medical services provider asks these types of questions, you answer with detailed responses. For example, answers like, “I feel fairly well, but I’m still not able to put my full weight on my foot,” or “my neck still causes me problems at work when I lift anything,” provide details that help your doctor understand your injury. These same statements also show the insurance company how your injuries impact your daily and work activities. Remember, be honest with your doctor, but never minimize your symptoms or the negative affects of your injury on your life and work.

Keep a record of when your doctor prescribed items like crutches, when your doctor took you off crutches, when you stopped wearing a neck brace, etcetera. Get the correct addresses and phone numbers of all doctors or other providers who treated you. Picking up business cards or keeping appointment reminder cards also helps. Save all your pill bottle labels, casts, braces, and any other similar items you receive from your doctors. And don’t forget to document your mileage to and from all related doctor’s appointments or therapy sessions.

If you do choose to handle the claim without a lawyer, or when dealing with an insurance company on your own before hiring a lawyer, documentation is the key to keeping an insurance company honest and on their toes. If you want to get reimbursed for an expense, you will first have to show proof of the expense. For example, if because of your injuries, you have to hire someone to cut your grass or clean your house, you need receipts to prove you spent the money. It is amazing how many of these reimbursable expenses slip through the cracks, unless you make notes, keep receipts, and bring them to the adjuster’s attention. Just like you would for the IRS at tax time, keep receipts for everything!

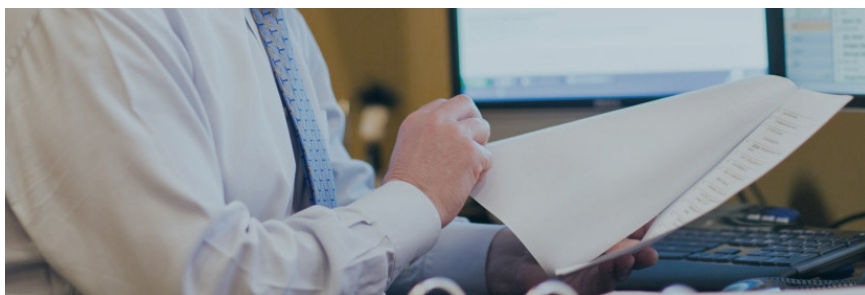
Although I generally don’t recommend handling a claim on your own or speaking to an insurance company at all, if you choose to do so, be careful. Any time you speak to an insurance adjuster, keep detailed notes and get the names and phone numbers of everyone you

talk with. If you have a problem with someone from an insurance company, ask to speak with that person's supervisor. Keep copies of all written correspondence sent and received.

Document your lost wages. Just like the IRS, the insurance company will not take your word for anything. If you want to recover any earnings you lost because of this accident, you must prove to the insurance company every penny you lost. To prove wage loss, you will need a statement from your employer and copy of one or more of your pay checks. If you are selfemployed, or paid on commission, it can be a real challenge to convince the insurance company of your lost income. The insurance company may want to see copies of your tax returns for before and after the injury. In Pennsylvania, you'll need a letter from your doctor stating that you were incapable of working because of the accident. In other words, staying home from work because you did not feel capable of working is not sufficient proof of lost wages.

FATAL MISTAKE #3

NOT SEEKING IMMEDIATE MEDICAL TREATMENT OR NOT FOLLOWING YOUR DOCTOR'S ORDERS



You **MUST** go to the hospital or see your doctor immediately after the accident- even if you don't feel seriously injured. After representing hundreds of injured clients, I can say with near certainty that you will feel worse the day after the accident and you probably will feel even worse the second and third days after the accident. Do not assume that just because you don't feel immediate pain, you have not been injured. I'm not a doctor, and I cannot explain this in medical terms, but our bodies just don't exhibit the symptoms of soft tissue injuries immediately. If you break your arm, you'll know it right away. But, if you sprain your neck or back, you may not really feel it for a couple of days. Then, by the time you can get in to see your doctor, you may be in excruciating pain.

After an accident, many people try and "tough it out," even though they may be in great pain and in need of medical care. Some people are even embarrassed to ride in an ambulance! In a personal injury claim, this behavior will be used against you by the insurance

company. The adjuster will say, “Well, if you were really hurt in the accident, why didn’t you immediately go to see a doctor?” Also, an insurance adjuster may argue that the failure to see a doctor immediately indicates that an injury must have resulted from an unrelated event after the accident. The longer you wait for medical treatment, the more difficult it will be to connect the injuries to the accident.

When you first seek medical treatment, tell the doctor about every injury that bothers you - even if it only bothers you a little bit. Insurance adjusters will absolutely point out anything you did not complain about the first time you saw the doctor.

Therefore, to the insurance company, any injury that intensifies or develops after your first treatment must have happened after the accident. Of course it’s just human nature to tell the doctor about what hurts the worst at that time, and not mention the little aches and pains. But six months later, what used to hurt the worst might be healed, and that little ache or pain might have developed into a serious problem. So at every doctor’s visit, from the first to the last, tell the doctor every single problem you have, no matter how insignificant it may seem to you. I always tell my clients to let the doctor or therapist know about every pain or problem they have, and let the doctor decide what is important and what is not. You may even want to keep a list to make certain you don’t forget to mention all your concerns to the doctor. Don’t try to diagnose yourself - you may make your injury and your case worse.

In a personal injury claim, there is almost never a good reason or excuse to miss a doctor’s appointment. By missing an appointment, you are telling the doctor and the insurance company that your injury doesn’t matter that much. Each time you report that you are still experiencing pain or other symptoms, your doctor makes an entry in your records. It is important for your doctor to have up-to-date information on your condition. Remember, to make a financial recovery for the pain and suffering in your claim to the insurance company, you must prove it. Missing medical appointments is a good way to “prove” that you are NOT hurting, and that you don’t

care. If you don't care, the doctor may not care and discharge you prematurely. It is very important for you to work hard to get well, and to go to every one of your medical appointments.

Although I touched on this last chapter, make sure you give detailed descriptions of the problems your injuries have caused you. When describing the accident and your injuries, make sure you note things like loss of consciousness or nausea after bumping your head. Do not leave out details, Always be honest with your doctors and never leave out prior injuries when giving your doctor your past history.

You should also cooperate by following all of your doctor's orders. If your doctor prescribes a certain treatment modality or medication, make sure you accept the treatment and take the medication as directed. If your doctor says rest, make sure you rest. If you don't understand any treatment prescribed by your doctor, don't ignore it- ask him or her to explain it. Your failure to follow medical advice will absolutely hurt your claim and will prevent the most important objective - getting well.

FATAL MISTAKE #4

GIVING STATEMENTS, SIGNING PAPERS, OR ACCEPTING INSURANCE COMPANY ESTIMATES WITHOUT FIRST GETTING LEGAL ADVICE



Do not give any statements, written or verbal, to anyone concerning your accident or injuries without first getting your lawyer's approval. As described earlier, it is common practice for insurance adjusters to call injury claimants and attempt to record a statement before the victim has an opportunity to talk to an attorney. The adjuster might seem friendly and sympathetic, but remember, the adjuster actually wants you to make a damaging statement so the insurance company can deny or minimize your claim. Often, the injury victim is still in shock, or even under the influence of medication, and may not be thinking clearly when they speak to the insurance company. **THAT'S EXACTLY WHAT THE INSURANCE COMPANY WANTS!** So, if you want to fully preserve all of your legal rights, under **NO** circumstances should you talk to the other driver's insurance company without

having an attorney with you, or at least on the telephone with you.

Never sign a Medical Authorization form for the other side's insurance company! Why? Armed with a signed Medical Authorization, the insurance company will have access to every medical treatment you have ever had — related to this injury or not. This can harm your claim in many ways. Your lawyer can explain this further.

Do not give recorded or written statements to your own insurance company until you are sure you completely understand your coverage. If you are making a claim for Personal Injury Protection (PIP) benefits, or making an Uninsured or Underinsured Motorist claim (UM/UIM), your own insurance company may try to deny coverage or limit the amount of your recovery. Yes, this is shocking and unfair, but it happens every day! If you have doubts, please consult an attorney before you speak to your insurer.

Although in Pennsylvania you may accept a property damage settlement offer from your insurance company or the other driver's insurance company, DO NOT sign any releases or waivers of any kind until you obtain legal advice. A "General Release" essentially resolves ALL causes of action — including your personal injury claim - forever! If you accept a property damage settlement check, be sure to read the fine print on any payment or release from the insurance company. Moreover, do not accept any check from any insurance company that says "final payment" unless you are ready to settle your entire claim. Sometimes this may be a deliberate attempt by the insurance company to trick you into releasing all your rights. Sometimes it is just a clerical error, but even that can complicate your claim for injuries later in the legal process.

Do not ignore time limits set by your own insurance policy. Most policies require a signed proof of loss or the filing of a lawsuit within a certain time limit. Be sure you comply with this requirement unless you obtain a written waiver from your insurance company. All policies allow you only a certain amount of time from the date of loss in which to bring a legal action if your claim has not been ad-

justed fairly. As a rule of thumb, if your claim has not been settled to your satisfaction within three (3) months after your loss, consult an attorney immediately. If you are making a claim against any governmental entity, such as a city, county, or even the federal government, the deadlines can be much shorter. If you have any reason to believe your claim may involve a government entity, you need to contact a lawyer as soon as possible after your accident to protect your rights.

Keep in mind that you have a contract with your insurer. Your insurer has a legal obligation to provide the coverage it promised to you. In return, you have the legal obligation to comply with the policy requirements. You do NOT have a contract with the other driver's insurance company. As such, in Pennsylvania, there is NO requirement that they treat you fairly. I would not recommend accepting as true any statements from the other driver's insurance company. The adjuster may or may not tell you the truth. Understand that the insurance adjuster's job is to protect the insurance company and its own insured driver or property owner. The adjuster has NO duty to protect you. The adjuster's job is to pay as little as possible in order to get your signature on a release that forever prohibits any additional claims by you. Therefore, you should not accept a check or sign a release from the at-fault driver or his or her insurance company until after you have conferred with an experienced personal injury attorney.

As described in earlier chapters, some injuries develop and worsen over time. Many accident victims accept a fast settlement, only to find out later their injuries are worse than they thought. Then later, when they try to get more money, they can't, because they already agreed to a settlement. DO NOT make the mistake of settling your claim before knowing the full extent of your injuries.

Finally, do not take advice from anyone other than an experienced lawyer. Don't listen to your friend or neighbor about what you should or shouldn't do in your injury case. No two cases are the same - ever. What your neighbor did right in his case, may be the wrong thing for you to do in your own case.

FATAL MISTAKE #5

NOT HIRING A LAWYER, OR HIRING THE WRONG LAWYER



As mentioned in the previous section, research and experience show that many people do not hire a lawyer to help them after an accident. In my experience, people seem to offer five main reasons for not hiring a lawyer immediately after an injury accident:

- They underestimate the complexity of their case, thinking they really don't need a lawyer.
- They don't know a lawyer personally, so they don't bother to look for one.
- They aren't sure they can trust a lawyer, so they don't want to use one.
- They believe it when the insurance companies tell them that they will end up with less money if they hire an attorney.
- They do not want to pay legal fees.

In spite of all the lawyer jokes you may have heard, there are many honest, hard-working, and ethical lawyers who can help you deal with a personal injury claim. While you will pay your lawyer a percentage of the money you collect from the insurance company, it is

also true that a good lawyer can dramatically increase your chances of getting a larger settlement. After representing them in their cases, my clients consistently comment that using my firm allowed them to focus on getting better because they had peace of mind knowing that I was handling all the legal issues against the insurance company for them. I guess you heal better when you're not stressed!

In what I refer to as a "serious" case, you absolutely need a lawyer. A serious case causes death or permanent injuries that renders one incapable of working or performing daily activities permanently or for a significant period of time. Why do you need an attorney in a serious claim? Well, as you know by now, immediately after being injured in an accident, the insurance claims process throws you into an adversarial legal system.

In other words, the insurance company representing the party at fault for the accident has in place a team of adjusters, investigators and attorneys who are working against you, seeking to pay as little as possible to settle your claim. Serious claims develop slowly and all matters and issues require diligent investigation and legal skill.

When you suffer, for example, a back injury in a high-speed auto collision, you may only spend a few days in the hospital. If your doctors rule out emergency back surgery, you may undergo conservative orthopedic care for months. If later diagnostic testing such as an MRI reveals torn or ruptured vertebral discs, you may require a major surgical procedure or procedures to repair the same. Often I have seen these surgeries prescribed a year or two after the collision. Frequently, victims of these types of injuries cannot work, even if they have "desk jobs." And in some cases, doctors deem these folks permanently work-disabled. In these cases, only an experienced lawyer can protect you. Of course, depending on the insurance coverage available in the case, there are no guarantees. However, handling this type of claim on your own, essentially by relying on the other driver's insurance company, certainly presents many pitfalls.

So why do people handle claims without lawyers? Many accident victims, already in distressed physical, mental, and financial circumstances, understandably choose to delay what they consider to be the hassles involved in retaining a personal injury attorney. Some folks may have had a bad experience with an attorney, or they simply do not like or trust attorneys.

Some accident victims, in an attempt to avoid paying legal fees, try to represent themselves, and call an attorney only after they realize that they have gotten in “over their heads.” Unfortunately, there are many mistakes (such as providing damaging statements to adjusters) that cannot be “undone” by even the most experienced personal injury attorney. Plus, if you wait too long to get legal help, it gets harder to find evidence and witnesses. When you delay hiring a lawyer in a personal injury claim, you also risk losing your claim altogether because the deadline for filing a lawsuit has expired. I have even seen cases where an injured person has represented themselves against an insurance company, received a small settlement check and then has had to pay all of it or a large portion of it to his or her health insurance company at a later time!. The bottom line, therefore, is that I advise hiring an experienced personal injury lawyer to “level the playing field,” and to increase your chances of receiving maximum compensation for your injuries.

Having outlined the necessity for hiring a lawyer in almost all accident injury cases, sometimes an injured person can handle a personal injury claim without a lawyer. When? In a minor impact, soft—tissue case, i.e., where in a fender-bender you suffer minor cuts, bruising or sore muscles that require little or no medical treatment, you may be able to handle the claim on your own. When I

⁶ Paying part or all of your settlement proceeds to another party is called “subrogation.” This area of insurance law is ever-changing and extremely complex. In Pennsylvania, the Motor Vehicle Financial Responsibility laws prohibit subrogation. However, as in the example cited above, exceptions exist for certain types of health insurance plans.

receive calls from folks injured in these cases, I still give them some free advice and strongly suggest that they seek medical treatment. If you are released from medical care soon after the accident and without any permanent injuries, do not miss work or suffer any out-of-pocket losses, you may choose to handle the claim without a lawyer.

To summarize - if you've been seriously injured, you definitely need a lawyer. If a friend or loved one was killed in an accident, you definitely need a lawyer. If you haven't been injured at all or have suffered very minor bumps and bruises, you probably don't need a lawyer. If you're in that gray area, talk to a lawyer and get some free legal advice.

The Search for a Good Personal Injury Lawyer:

OK, now you've decided to hire a lawyer, If you do want to hire a lawyer, how do you choose the best one for you? Obviously, hiring A lawyer is easy. Hiring the RIGHT lawyer takes a little extra work. Choose carefully!

Some law firms are personal injury "factories." These firms simply settle all their cases as quickly as possible to make room for the next one. Often paralegals handle every aspect of your case at these firms. There are other firms that take cases because they want to go to trial in as many cases as possible. These lawyers believe that their cases will change the law; often they would rather "fight the fight" than do what's best for their clients. Still, if you call almost any lawyer or firm when you have a serious injury case, chances are that any lawyer or law firm will get you into their offices as soon as possible, even if they do not concentrate on personal injury claims. Typically, these lawyers and firms will start your case and then refer you to a more experienced personal injury lawyer to resolve it, simply so that they can earn a referral fee on the case. I suggest that you stay clear of all three types of firms described above. When you or a loved one is injured in an accident, you need a law firm that will handle your case from start to finish, will pay personal attention to you, will be available when you need

them, and will do what is right for you, not for them.

How to Find the Best Lawyer for You:

One of the best ways to find the right lawyer to handle your injury case is word of mouth. Simply ask your friends and neighbors if they know a good injury lawyer. If someone you know has used a firm in the past and has been satisfied with the experience, contact that lawyer.

Today's age of technology makes finding an experienced personal injury lawyer easier than in the past. If you or a loved one is seriously injured in an accident, get on the internet and search for a lawyer. Even if you have already received a name from a friend or relative, do some research. How? If you already have a lawyer or firm in mind, go to their website. Check out everything about the firm, including its overall philosophy and experience. Make sure your injury lawyer has the appropriate qualifications, experience and ability. Also, make sure he or she has achieved good results in the past for other clients. Look for client testimonials too. If the injury lawyer has an injury "blog," read his or her articles. By reading an injury blog, not only can you get a good feel for the lawyer's knowledge of the law, you can also gain insight into the lawyer's personality and style. Finally, if the lawyer offers free information such as a "Decision Making Guide" or a free book on injury law, click to order the information.

If you begin your research from scratch, start with a "Google" search. I would use search terms such as "Harrisburg personal injury lawyer" or "York PA auto accident lawyer" to start. Once Google lists its findings, click on the first site and begin your re-

⁷ There are instances, such as in complex cases involving multiple defendants or in accidents causing permanent injury or death, where even experienced injury lawyers will bring on outside counsel to assist them in the litigation. Sometimes issues in other areas of law, such as worker's compensation, arise that require the assistance of another specialist.

search. Do not stop searching until you find an experienced injury lawyer. Although I would start with the listings at the top, I would click on every site on the first few pages. Why? Often some of the firms listed on the page do not even concentrate in personal injury law! Moreover, unless you read all the information on a firm's site, you really will not be able to narrow your search or compare firms. No matter how you search for a lawyer — word of mouth, internet, television, etcetera - make sure that you are comfortable with him or her before you make your final decision. Make sure you receive a FREE consultation with a lawyer, not an administrative assistant or paralegal. Make sure you ask your prospective lawyer questions. At my firm, unlike others in the area, I speak to all new callers directly. I think it's highly unprofessional and impersonal to do otherwise. I want the prospective client to ask me questions because I want the client to be confident that they have chosen the best lawyer for them.

Regarding legal fees, lawyers traditionally take personal injury cases on a contingency basis. Under that fee arrangement, you do not pay the lawyer a legal fee unless the lawyer makes a monetary recovery on your behalf. Typically, most lawyers charge you a percentage of the recovery they make on your behalf. Today, most lawyers' contingency fees range from 33 1/3% to 40%, although I have heard that some lawyers in the Philadelphia area charge as much as 45% in some cases. In cases involving injuries to children (those under 18 years of age), most lawyers charge fees that will get approved by a Judge; this will typically be around 25% to 30% for handling minors' cases. Also know that most lawyers' fee agreements state that although they charge 33 1/3% to settle your claim, they will increase the fee to 40% or higher if they file a lawsuit. Note that I used the word "file." I have heard of lawyers who file lawsuits rather early in cases just to earn a higher fee.

At my firm, I charge the same percentage (35%), even if I file suit and/or take the case to arbitration, mediation, or a trial. That way my clients know that I will do what's best for them, not for me. Also, I will reduce my fees to ensure that the client gets more compen-

sation than I do. At my firm, our motto is “every client matters.” To stand out from other personal injury law firms, we try to do the things that really make a difference: we answer questions, we return phone calls and we keep you informed. Although every lawyer owes these things to his or her clients, few actually practice that way. At my firm, we believe it’s our job to help you get through what is usually one of the most difficult times in your life. As lawyers, we handle dozens of cases at any given time, We understand, however, that while we handle many cases for many clients, for you this may be the only legal claim you will ever have. It is that understanding that sets us apart from others.

From the moment you become our client we want you to have peace of mind that your case will be handled from start to finish by an experienced lawyer who is ready, willing and able to help you. At my firm, we keep you informed during your case and will advise you of all options available under the law. Additionally, our team of paralegals and legal assistants provides the legal support that your case deserves. However, unlike at other firms, at my firm, your lawyer will actually handle your case. You will be able to speak to your lawyer throughout the case and will know that you have an advocate willing to protect your rights, not his or her own interests.

Questions to ask an injury lawyer before hiring him or her:

1. How much experience does your firm have in representing injured people?
2. Have you ever been sued for legal malpractice?
3. Are you covered by a legal malpractice insurance policy?
4. Does your firm litigate cases, if necessary?
5. Does your firm have the financial resources to take a serious injury claim to trial?
6. What are the qualifications and experience of the people (both attorneys and non-attorneys) assigned to handle the day-to-day duties of my case at your office?
7. Who at your office (both attorneys and non-attorneys) will be communicating with the insurance company on my case?

8. If I have a legal question during my case, will I speak to a lawyer or a paralegal about it?
9. Can I meet with my attorney during my case?
10. Can you guarantee that your legal fee will not be more than the amount I receive after paying medical bills and case expenses?

These last two points are very important. In any personal services business, the client must be able to meet with the person who actually handles the case and gives the advice.

Regarding legal fees, I have heard many stories of lawyers who will settle a client's personal injury claim, and then when all the bookkeeping is done, the lawyer ends up with more money than the client! THIS IS SIMPLY NOT FAIR. DO NOT hire a lawyer unless he or she guarantees you that the attorney fee will NOT be more than the amount of money you take home. Otherwise, the lawyer may be tempted to settle a claim just so the lawyer can get a "full fee," regardless of how much the client receives. You need to be sure that your goals and the lawyer's goals are exactly the same.

FATAL MISTAKE #6

NOT BEING HONEST WITH YOUR LAWYER, OR FAILING TO COOPERATE WITH YOUR LAWYER



Like Mom always said, “honesty is the best policy.” When it comes to your relationship with your injury lawyer, you must trust him or her and you must be honest. Do not try to hide past accidents from your lawyer. As soon as you start a claim against the other driver’s insurance company, I guarantee you that the adjuster will know your past accident history. How? All insurance companies subscribe to insurance databases that contain records of millions of accident claims. If you have been in prior accidents, your lawyer can investigate them to determine if they pose a problem in your current case. On the other hand, if you do not tell your lawyer about all prior accidents, you could hurt or even lose your current case.

In addition to prior accidents, never hide prior injuries from your lawyer. It should go without saying that you need to be up front and honest with your attorney about any injuries that occurred before or after this particular accident. Remember, if you saw a doctor or other healthcare provider at any time in your life, a record of that

treatment exists. If it exists, the other driver's insurance company will find it. Your lawyer can deal with this if he or she knows about it. If you lie about it and the insurance company finds out, again, you will hurt or even lose your current case. Nothing angers your lawyer more than sitting in a deposition while the insurance company's lawyer asks you, "So, Mr. X, earlier today you stated you never injured your back before this accident. Do you remember treating with Dr. Boris Bachsergeon five years ago?" At this point, your lawyer can only sit there and watch you flounder. Let me assure you, this scenario happens and when it does, it kills the claim.

Never misrepresent your income. In many cases, a claimant will have lost income or wages because of the accident. Your lawyer must get official records from your employer to make this claim for you. If you are self-employed, you don't want to risk losing your claim for lost income with inaccurate income tax returns. Therefore, be honest about your finances so your attorney can deal with any problems before the other driver's insurance company finds out.

Do not exaggerate or otherwise misrepresent your current ability to perform daily activities, work and recreation. Insurance companies routinely hire private investigators to conduct videotape surveillance. If you claim that you cannot run, climb, or lift, and you get caught on video running a 5k, climbing a rock wall at your gym or stacking firewood at your hunting camp, you will have problems with your claim. Do not change your address, telephone number, or employment without notifying your attorney. Your lawyer must be able to locate you immediately if an important question or problem arises.

Do not try to hide the truth from your lawyer about a past criminal history, or about drug or alcohol abuse. Once again, your lawyer can handle almost any problem if you tell him or her about it. If "ambushed" by the insurance company in a deposition, your lawyer cannot address the issue. If you tell him or her early in the case, however, your lawyer can prepare you to explain the issue.

Always tell your lawyer about every doctor's appointment or medical treatment related to your current claim. This is very important information for your lawyer. This goes back to the section on keeping complete records. If you fail to tell your lawyer about all of your treatment, you may miss out on recovering for those specific medical bills. Remember, communication goes both ways! Read every letter or email your lawyer sends you. Often in personal injury law, deadlines apply. Prompt responses to your lawyer's contacts help you win your case. Similarly, if you have questions about correspondence from your lawyer, make sure you ask them immediately.

FATAL MISTAKE #7

EXAGGERATING YOUR INJURIES OR NOT BEING COMPLETELY HONEST IN OTHER WAYS



When dealing with both the strengths and weaknesses of my clients' claims, I always say, "they are what they are." Despite the obvious grammatical mess of that phrase, it is very true. In other words, an ethical lawyer will not hide anything in a client's case. That is not to say that the lawyer will not do everything legally and ethically possible to minimize the weaknesses of his or her client's case. Rather, an experienced personal injury lawyer achieves success by artfully doing just that. Nonetheless, honesty remains the best policy. Hiding bad facts or exaggerating good ones will not help you.

When lighting an insurance company, you cannot get away with hiding anything, so don't even try. If an insurance company discovers even the smallest of "white lies," they likely will not believe anything else you present in your claim. This is true of juries also. One lie, even about a small matter, can kill your case - absolutely kill it. Intact under Pennsylvania law, a judge can give an instruction to the jury called "false in one; false in all." Under this principle of law, if a

juror believes a witness has deliberately told an untruth, he or she is free to disregard some or even all of that witness's subsequent testimony. As an injured victim testifying in your own trial, you can imagine the affect a lie can have on the outcome of the case. Therefore, I recommend that from the instant you suffer an injury until you have the final check in your hand, ALWAYS TELL THE TRUTH.

As mentioned in the prior chapter, your insurance company and the other party's insurance company have access to any and all past injury claims you might have made - auto, worker's compensation or other. Moreover, insurance companies have access to your past criminal records as well. Various databases exist to find out about your marriages, divorces, past addresses and past employment. Money and resources abound for insurance companies to fight your claim. Private investigators get paid big dollars to park outside your house and record your every move. The insurance companies always try to claim my clients aren't really hurt because they can perform simple activities. The insurance company investigator may follow you around town to see if you are working when you say you're too injured to work. Once more — ALWAYS TELL THE TRUTH.

Be honest with your lawyer and your medical providers about the impact your injury is having on your ability to function. If you cannot bend over because your back is stiff; do not parlay that into confining yourself to the couch for two weeks. Doing so simply will not increase the value of your claim. In most cases, an honest description of your injuries with supporting evidence from your doctors and other health care professionals will allow you to make a fair and reasonable recovery from the other driver's insurance company. If you limp or cannot raise your arm above your shoulder, your doctors will treat you in an effort to improve your condition.

Exaggerating these limitations and attempting to prolong your medical treatment for them will not help your claim. Again, an experienced personal injury lawyer will make sure you get the maximum compensation allowed for your true limitations. As they say, "keep it

real.” Don’t forget, juries and even some insurance adjusters will admire you for working through your limitations. In my career, I have been able to obtain the best results for my clients that have listened to their doctors and have honestly tried to get back to their normal lives as soon as possible after an accident.

Finally, be honest with your own insurance company. In most claims, particularly where fault and legal causation of my client’s injuries are clear, I allow my client to speak directly to his or her own insurance company. This policy allows my client to quickly get his or her medical bills paid and receive other PIP benefits such as checks for lost wages. You must be honest and forthcoming with your own insurance company. Even if it may seem embarrassing, it is better if your insurer knows all the facts. Failing to be candid with your insurer might invalidate your policy or cause a denial of coverage, thus ruining any potential claim you may have under your own insurance policy.

CONCLUSION



Hopefully, this book has introduced you to the insurance claims industry and has educated you about what happens after suffering an injury because of someone else's negligence.

As you may have concluded, what is often the most painful, traumatic time for a person in his or her life has sadly been turned into a game by the insurance industry. Almost all the advantages in this game lie with the other driver's or at-fault party's insurance company. However, with a basic knowledge of the issues discussed in this book, you can make educated decisions should you or a loved one face the horrible aftermath of an injury accident.

After reading this book, you should understand what a personal injury case entails and should know some of the terminology necessary to begin the insurance claims process. You should now understand under what limited circumstances you might choose to represent yourself against the insurance company. More importantly, after reading this book, you now probably realize that almost all injury accident cases pose complex legal and procedural issues that are best handled with the assistance and guidance of an experienced personal injury lawyer.

When searching for a personal injury attorney, make sure you thoroughly research your prospective lawyer to find the best fit for you. You now know, of course, that you can rely on friends and family to

recommend a good personal injury lawyer, but that you should not rely on legal advice from non-lawyers. You understand that you want to hire a lawyer who concentrates his or her practice in personal injury law and who possesses the knowledge, experience and ability to take on and defeat the other person's insurance company. And of course, you will want to hire a lawyer who will communicate with you directly, will treat your case with respect, will provide you with straightforward advice and will do what's best for you in your case.

As I write the final paragraphs of this book, I remind you that although facing the after effects of an injury accident by yourself poses extreme challenges and will certainly increase your stress, fear and frustration, I am available to help you. Unlike some law firms, I am one phone call away. At my firm, we want people to know that we are approachable - you can talk with us at no charge, and with no pressure. If you or a loved one has been hurt by another person, company or business in any type of accident, I would like to talk with you about your legal rights, answer your questions and try to put your mind at ease.

I offer a free phone consultation when you call about any personal injury matter. If after speaking with me on the phone you decide you may need my assistance in your claim, I offer an additional, free consultation to evaluate your claim and answer your questions. If necessary, I am happy to consult with you in your home or hospital room.

In a typical free office consultation, I will explain the injury claims and litigation processes from start to finish; explain how we get your medical bills paid; explain how we get your lost wages paid; identify all legal issues; provide information to help you get the medical help you need; explain how the fee agreement works and formulate a plan that will help you get back to your life, family and work as soon as possible.

In my practice, I have seen or learned of many mistakes that in-

nocent accident victims have made that substantially harmed or prevented them from making full and fair recoveries in their cases. I thank you for reading this book and hope it helps you, a friend or loved one before you make a mistake in the future.

Seven Fatal Mistakes Victims of Accidents Make in PA is an easy to read guide for anyone forced to fight the big insurance companies to get the injury benefits they deserve.

It provides valuable information warning consumers of the pitfalls in the injury claim process and the potential mistakes that may occur in pursuing their own injury case.

“Working with injured individuals for many years, I have gained an incredible amount of insight into the insurance claim process. Unfortunately, I see over again how insurance companies take advantage of injured individuals by minimizing their claims. As a result, I have prepared this book by asking this question:

‘If a member of my family were in an accident and I couldn’t be there to help, what are the most important things I would want him or her to know?’

I hope that this information will help injured Pennsylvanians make good decisions and avoid making costly mistakes after being involved in an accident.”

- Christopher J. Marzzacco

As a plaintiffs’ personal injury lawyer, Christopher J. Marzzacco has successfully handled countless cases for his clients against those responsible for injuring them. He was certified in 2008 as a Life Member of the Multi-Million Dollar Advocates Forum. Since then, he has made numerous other million-dollar recoveries. Marzzacco earned his law degree in 1996 from Widener University School of Law. From 2001 to 2010 Christopher served on York County’s panel of Arbitrators in general civil litigation cases, and he was appointed Chairman of a panel in Dauphin County from 2011 to 2012. Marzzacco has written about personal injury law, automobile law and automobile insurance issues for the Legal Intelligencer and other publications.

