

“Car Accident? What you need to know”

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People who are not experienced in the situation sometimes make mistakes that prevent them from receiving full recovery for an injury caused by another. Failure to investigate an accident quickly and preserve evidence can decrease your chances of recovery. General advice follows that will help you avoid mistakes:

1. UNDERSTANDING THE PERSPECTIVE OF THE INSURANCE COMPANY

Insurance companies' claims adjusters are professional negotiators. They have extensive experience in dealing with people and getting the advantage over their insured. They will use intimidation, “hassling”, delay, and every psychological technique to maneuver a claimant into settling for the lowest possible dollar, including discouraging people from using a lawyer.

Basic advice that should be followed is to never give an oral statement to the other side's insurance company. If you do, you will regret it. Claims adjusters are hired because they “sound good” over the telephone and they are well-trained to ask questions in a manner designed to hurt you and help them. You cannot beat an adjuster at his or her game so don't try it.

Insurance companies know that if they keep a claimant negotiating with the adjuster then there is a high probability of a successful settlement in their favor. Anyone who negotiates directly with the carrier cannot file a lawsuit and is therefore not to be feared. While this sounds like an ad for lawyers, the truth is that studies have shown that experienced lawyers can negotiate settlements that are multiples of what individual claimants can negotiate for themselves.

If you do attempt to negotiate, first set a realistic goal. Do not begin a negotiation until you are absolutely sure that you know the full extent of your injuries and damages. For instance, sometimes it takes six months or more to know the full extent of a back injury. Do not begin negotiation if you are not sure of the full extent of your injury.

Second, just because an insurance adjuster calls and talks does not mean that you have to talk. Do not get into a discussion no matter how tempted you may be to do so. Use the occasion to listen and when it is over say: “I will think about it and get back to you.” Do not say: “Let me think about it.” You do not need permission to do anything in negotiation when you have been damaged. Look at your Insurance Contract or your policy to see what it requires you to do however. It should not require you to give a “recorded statement” over the telephone though it does require you to notify the company about the accident and cooperate.

Never bid against yourself if you are attempting to negotiate. You don't want to make a demand (an offer to settle by a claimant) and then at the end of the phone conversation make a lower demand. If you make a demand for say \$20,000, then wait to see what the offer by the insurance company may be. Don't bid against yourself.

Fourth, take your time. When you receive an offer, think about it. Do not respond immediately. Also, if an offer is slow in arriving, try not to become agitated or restless as those emotions work against you. Realize that it may take some time to resolve your claim fairly.

2. DEADLINES ON FILING SUIT

Every state has a statute of limitations and procedural requirements that place deadlines on when you can file a lawsuit. If you wait too long, your claim may be barred. In an automobile accident, Mississippi has statute of limitations that generally sets a time limit of three years after an injury during which your lawsuit must be filed or it may be barred. Exceptions can apply which may extend deadlines so what I say here is not legal advice because under different facts, different statute of limitations can apply. For instance, if you did not receive an injury until years after a wrongful act or did not discover that you were injured until years later, then the statute of limitation possibly can be extended.

There is one major exception to the general rule. If an injury or death is caused by a government entity in Mississippi (for example, a city, county, governmental entity, state hospital or community hospital, etc.), a formal written claim must be filed with the proper representative of the governmental entity prior to the statute of limitations and prior to a lawsuit being filed. Generally, there is a one-year statute of limitations in Mississippi against a governmental entity, community hospital, or similar entity. It is very important that a lawyer be contacted to assist you in drafting both the Notice and then in filing the lawsuit after the appropriate time period has passed after serving the Notice (many defendants attempt to obtain Summary of Judgment against a Plaintiff for failure to follow the technicalities required by statute and Caselaw regarding the proper Notice and filing of a suit against a governmental entity so be careful).

Statute of limitations differ depending upon the nature of the lawsuit or claim so an experienced attorney will benefit you.

The effect of a statute of limitations will be nearly the same in every case. If the Notice and/or the Complaint is not filed properly within the requisite time period or in improper form or improper service then your action will be completely barred. Even though your claim may be completely meritorious, if you file one day after the time limit allowed by law, you lose forever.

In recent years, legislatures have been influenced by the insurance industry and the business lobby groups. As a result, laws and interpretations of those laws by the courts have become more pro-business and pro-insurance industry. The statute of limitations have been shortened and statutes have been "re-interpreted" to favor defendants. Questions of fact that

typically are for a jury to determine have been characterized by the Courts to be “question of law” so that jury awards in favor of the Plaintiff can be reversed in favor of the Defendant.

Therefore it is even more important to be aware of the current law, preserve evidence, work up your case and be ready to try it to have the best record for the jury to consider and, if necessary, for appellate purposes.

3. PRESERVING THE EVIDENCE

Take two rolls of film of the accident location immediately after a crash from every conceivable angle and location. Lay a yard stick next to skid marks so that someone can readily compute actual distances based on the photograph. Look for impending skids. Tires just don't begin skidding. As a braked tire begins to skid it first leaves faint marks on the roadway known as impending skids. Measure and photograph these marks. They disappear within 48 hours so move quickly to record them. An impending skid and a skid mark when taken together gives a very accurate report of the actual speed of a car before brake application.

Take distance and close-up photographs of scenes and objects from every point on the compass. When in doubt, take another set.

You cannot take too many photographs of the aftermath of a collision, explosion, fire or other loss.

Remember that all evidence must be secured immediately. Never be afraid to buy wreckage and if anyone should have second thoughts about buying a wreck Bronco, a Jeep that rolled or a vehicle that has a gas tank that failed, keep in mind that it is comparatively inexpensive to buy a wrecked car for example compared to the value of a successful product liability case and if worse comes to worse it can be sold. But once it is lost it is gone forever.

Once you gain ownership of the defective product, lock it up in a facility that you control. Never assume that no one will want the wreckage of a destroyed automobile or that teenagers won't attempt to play or damage with the wreck.

If the evidence cannot be bought, at a minimum put everyone on notice by certified mail including owners, tow operators, wrecking yards, police impounds, and the sort that they must take every step to preserve important evidence and the failure to do so will subject them to being sued for allowing evidence to be destroyed.

When the product is in the possession of a third party or one of the anticipated defendants, hire a lawyer to immediately file an independent action for a temporary restraining order and a preliminary injunction to avoid alterations or destructive testing. The temporary restraining order should be carefully drafted so that anyone receiving notice of the order and in control of the article will be required to deliver it to the possession of a neutral person and to

initiate preventative measures against damage in transit.

Always preserve written materials that came with a product, packaging, inserts, manuals, warranties and similar written materials.

Lastly, let no one destroy, throw away, or leave behind anything that is part and parcel of any product.

Photograph the location where evidence is found and then remove it for safe storage.

4. MAKE A RECORD

The corollary to preserving evidence is to also document damages. Report physical injuries to doctors and/or emergency rooms and obtain appropriate medical treatment. Appropriate treatment is that care recommended by a doctor. Do not substitute your judgment with that of an experienced medical professional. If you overdo it or exaggerate your injuries, it will often be used against you so be frank and truthful.

Do not hesitate to “get checked out” when you feel “okay, but shaken up.” Many times the onset of physical complaints begin 12 to 36 hours later. Maybe you did walk away from being rear-ended by a truck and only feel “shaken up”, but tomorrow morning when you get out of bed it may be different. See a doctor following the collision who will ensure that a preliminary diagnosis is made that perhaps will minimize the discomfort and future treatment you may need later.

When reporting to doctors, take extra care to identify specific complaints. If something does not feel “right” it should be documented in your medical file and provided to your physician in order to allow the doctor to render an informed medical opinion. Even though you feel that it is “no big deal” now, several weeks from now when the minor crick in your back blows out and becomes a fully ruptured disc requiring major surgery, it would have been better for you to have the initial medical entry in a chart to allow an orthopaedic surgeon to opine that the onset of the fracture to the outer wall of the disc was the initial insult, not bending over at the toilet three weeks later as the defense will argue to the jury.

Lastly, keep receipts of everything and maintain a calendar of post-accident events that will help you recall later the days you could not work, were unable to enjoy your leisure time, or spent Saturday at the physical therapist. No matter whether it is a personal injury claim or any action in which you are the plaintiff, keep a fully detailed record of the harm you suffered.

5. HIRING THE “RIGHT LAWYER”

You want to hire an experienced lawyer who has an interest in actively pursuing your

case to the fullest extent. That lawyer needs to plan to go to trial the first day that you meet. Many attorneys simply attempt to settle cases and in the vast majority of instances the dollar amount is poorer as a result. Unfortunately, the legal and political system of the United States is heavily influenced by special interest campaign contributions. Those contributors have real power over politicians and as a result special interest legislation is routinely added to unrelated legislative proposals as a “rider.” More and more law is being generated which is only fully understood by a few lawyers who specialize in a specific areas. For example, no one in the United States has read all of the U.S. Tax Code or all IRS regulations. Law, like medicine, has become a specialty of information providers.

Many times it is easier to choose a lawyer who is friendly and supportive without conducting research into his background and experience. Choosing a lawyer simply because he is likeable may lead to later dissatisfaction. Many who televise on TV are not experienced and not a good choice.

There is no substitute for meeting with the lawyer who you potentially plan to hire. When talking with a lawyer you are talking with a specialist with unique knowledge, just like your auto mechanic. Always ask these questions to start out with a clear discussion of money:

- What will it cost?
- How bad is it?
- How soon do I have to do something?
- Have you done this before?
- Are there any options?
- What are the odds of getting it fixed?
- When will it be done?
- Who is going to do the work?
- When can you get started?

Every major insurance company and corporate defendant begins investigating potential claims immediately. So should you. Evidence should be preserved instantly and in some cases a professional engineer is required rather than an investigator. Discuss what kind of investigation would be appropriate and who the lawyer recommends. Attempt to hire a lawyer who is “over-qualified”. For instance, if you have a personal injury claim as a result of a car accident you might do well hiring a lawyer who does both medical malpractice and personal injury cases arising from car accidents. The medical malpractice attorney has an in-depth knowledge and experience of medical records, bodily function, and restrictions/limitations often times greater than that of a car accident attorney who has less medical knowledge.

No one can guarantee the outcome of a lawsuit. But Dunbar Law Office can guarantee that we will work with you, provide advice and share decision-making. We schedule regular meetings to review our progress with you and to make sure that we are informed about your progress. We welcome phone calls from you at all times. We are not paid unless we collect for

you and as long as you follow our advice, if there is no recovery there are no charges: no fees and no cost.

We cannot take on everyone who calls but we do provide referrals to professionals in whom we have confidence. We never charge for giving advice and have enjoyed a reputation for caring, commitment, and good results. Our track record speaks for itself.

If you have been a victim of an automobile accident, call Dunbar Law Office, P.C. immediately to protect your rights. Your privacy is assured. Act now, as delays can harm your case. You may contact us with a simple form below or you may call us toll free at 800-985-6469 or in the Jackson, MS area at 601-366-3170.

CLIENT APPLICATION FORM

First name: _____ Middle Initial: _____

Last Name: _____

E-mail: _____

Day phone #: (____) _____ - _____

Night phone #: (____) _____ - _____

Cell phone #: (____) _____ - _____

When is the best time to call? _____

What is your time zone? (e.g. - EST, PST, etc.): _____

Street Address/Apt. #: _____

City: _____ State: _____

ZIP: _____

When were you injured, or when did you first learn that you had been harmed? (e.g.- 11/20/2004)

What happened (how did the car accident occur and who was at fault)?

In what city, county, and state did it happen?

State the names and addresses of the wrongdoers.

Describe in clear detail the injuries you have suffered.

Please be aware that the transmission of an e-mail inquiry itself does not create an attorney-client relationship. We cannot service your counsel in any matter unless you and our firm expressly agree in writing that we serve as your attorney. You should also be aware of the statute of limitations (the deadline imposed by law within which you may bring a lawsuit) that may severely limit the time remaining for you to file any potential claims that you may have. E-mail is sometimes unreliable. If we do not respond to you within a reasonable amount of time, please feel free to call us at 800-985-6469 or 601-366-3170.