

10 DEADLY MISTAKES That Can KILL Your Texas Accident Case

**THE ESSENTIAL GUIDE
FOR TEXAS ACCIDENT VICTIMS**

Stacey Marc Barrus
Texas Injury Attorney

10 DEADLY MISTAKES That Can KILL Your Texas Accident Case

Stacey Barrus

Design:
Davor Dramikanin

Copyright © 2016 by Stacey Barrus

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the author, Stacey Barrus.

Printed in the United States of America.

ISBN:

A SPECIAL THANKS

I would like to thank all of the clients my firm has helped throughout the years I've been practicing injury law. It is always an honor and a privilege when people trust you to handle something as significant as an injury claim for them. Especially with all of the other attorneys out there—many of whom can be seen on television every thirty minutes, beating on their chest like a gorilla—knowing my clients have entrusted their case to my firm is a great honor. And, I thank our clients for this book. If not for my experiences in handling their cases, I would not have the experience and knowledge to impart in this book. Thank you for your trust.

I would also like to thank my wife, Emma, who is also acting editor-in-chief and mother to our four wonderful, little girls. Thank you for your love and support. Without your love and patience, I would not have been able to write this book.

TABLE OF CONTENTS

CHAPTER ONE	11
<i>Why I Chose To Be A Personal Injury Attorney</i>	
CHAPTER TWO	15
<i>The Legal Requirements of a Valid Texas Injury Claim</i>	
CHAPTER THREE	21
<i>Are You Really In “Good Hands”?</i>	
<i>Why You Shouldn’t Trust Insurance Companies, Even Those That Claim to Be a “Good Neighbor”</i>	
CHAPTER FOUR	33
<i>A Look at The Texas Legal System</i>	
CHAPTER FIVE	37
<i>10 Deadly Mistakes That Can Kill Your Texas Accident Case</i>	
1. Failing to Properly Report and Document Your Accident.	38
2. Failing to Properly Manage Your Medical Treatment, including:	42
a. Not promptly obtaining medical care	
b. Not reporting all injuries to your doctor	
c. Not documenting your injuries during treatment	
d. Failing to cooperate with your doctor	

e. Not Submitting Medical Bills to Your Insurance Provider	
3. Trusting ANYTHING an insurance adjuster tells you (including your own insurance carrier)	52
4. Making a Written or Recorded Statement to the Insurance Company	54
5. Hiding Information From Your Lawyer (e.g., previous accidents, prior injuries, criminal history, driving record, etc.)	57
6. Exaggerating your injuries or inability to work	58
7. Not Having the RIGHT Kind of Insurance Coverage	59
8. Failing to Utilize All Insurance Available	62
9. Trying to Settle Your Claim Too Quickly	67
10. Failing to Obtain Proper Legal Representation, including:	69
a. Waiting too long to hire a personal injury attorney	
b. Not Hiring the RIGHT Type of Attorney for Your Case	
c. Trying to Handle a Serious Injury Case On Your Own	
CHAPTER SIX	83
<i>Filing a Claim: To File or Not to File, That is the Question!</i>	
CHAPTER SEVEN	97
<i>Determining the Value of Your Injury Claim</i>	

CHAPTER EIGHT	113
<i>What the RIGHT Lawyer Can Do For You & How to Choose the RIGHT Lawyer for Your Particular Case</i>	
CHAPTER NINE	119
<i>Client-Centered Representation: How We Help Our Clients Recover From Their Injuries</i>	
CHAPTER TEN	125
<i>Insurance Coverage 101 – What You Need To Know About Insurance Coverage</i>	
ABOUT THE AUTHOR	139

NOT YOUR TYPICAL LEGAL DISCLAIMER

Now, I couldn't really call myself a competent attorney if I didn't preface this book with a legal disclaimer, so here it is:

The information contained in this book is based solely upon my experience helping injury victims recover compensation. However, please realize that I'm not giving you "Legal Advice", nor does reading this book create an "Attorney-Client Relationship" with me.

Why? Well, if you have not hired me by written agreement, then you are not my client. If you are not my client, then I am not your attorney. If I am not your attorney, there is no attorney-client relationship between us. If that's the case, then nothing on my website or contained in this book can be considered to be attorney-client communications. Simple enough, right?

That being said, even if you are not our client, feel free to get answers to your questions and any other information you need right here in this book or on our website (www.BarrusInjuryLawyers.com). Thousands of people who are not our clients do that every month.

If you want some real "legal advice", give me a call. We offer a free case evaluation and consultation with an attorney (not just a case manager, like a lot of other injury firms), and we can answer any additional questions you have about your case, You can reach us at (210) 910-HELP [(210) 910-4357].



CHAPTER ONE

WHY I CHOSE TO BE A PERSONAL INJURY ATTORNEY

As a personal injury attorney, I make my living fighting for the rights of those who have been injured by the carelessness of others. But why did I decide to make my living fighting for the rights of others?

Well, in part, it was due to personal experiences with my own family wherein I saw how despicable insurance companies could be in handling the claims of injured people.

A couple of years before I started law school, my brother's wife, who was seven months pregnant with their first child, was killed by a careless driver who pulled out in front of her on a busy highway. That horrific day, my brother lost his wife and unborn child—indeed, he lost his whole life that day! To add insult to injury, the insurance company refused to take responsibility and compensate my brother for the damage caused by the carelessness of their insured driver. Thankfully, my brother hired a very skillful injury attorney who was willing to fight the insurance company to get my brother the compensation he needed to help him put his shattered life back together again. And while this experience wasn't the only reason I decided to represent injured persons, it was certainly a major contributing factor.

Since becoming a personal injury attorney, I am often asked the same common questions about Texas law and its impact on handling a personal injury claim. I have also seen hundreds of clients who have managed to ruin an otherwise valid injury claim by making avoidable mistakes. It is heartbreaking to have someone in your office who has suffered serious injuries and have to break the news to them that they will probably not recover any compensation for their injuries due to mistakes they made in handling their claim. As such, I wrote this book to help answer these common questions and to help inform Texans regarding many avoidable mistakes that can literally kill their injury claim.

Meanwhile, some people think that making an injury claim and getting rich go hand-in-hand. In reality, nothing is further from the truth! The stark reality of injury claims is, the civil justice system is a battleground, one fraught with landmines and pitfalls. Therefore, in order to receive fair compensation for your injuries, you must be prepared to put on your armor and go to war. My dad used to tell my brothers and I, “knowledge is the key to everything”. That saying can certainly be applied to handling a Texas injury claim. Knowledge is your best weapon in this war and is the reason I wrote this book.

You may be asking yourself whether or not you need this information. If you have been injured, then answer is a resounding “yes”. If you haven’t been injured in an accident, the answer is still a resounding “yes”, because statistically, the chances are very good that at some point every American will be involved in a motor vehicle accident. Understanding your rights and knowing what to do after an accident will empower you to make the right choices should the need arise.

This is especially true once the insurance adjuster comes knocking at your door following an accident, asking you for a recorded statement or to sign this document or that document (and yes, they will actually come to your door—literally). Often times, these insurance companies will give you a small amount of money and require that you sign a “release”. They may tell you they will take care of everything and help you through this process, which is almost NEVER the case.

WARNING: Any release you sign will permanently affect your rights! You should never sign any documents after an accident without consulting with an attorney first. Doing so could not only destroy your case, but could leave you on the hook for thousands in medical bills.

I hope you’ll take the time to read this book because I believe it will educate and inform you as to how you should handle your injury case, while also telling you what your next steps should be.



CHAPTER TWO

THE REQUIREMENTS OF A VALID TEXAS INJURY CLAIM

Let's start by assuming you've been involved in an accident. You are now hurt, have missed a bunch of work, and your medical bills are starting to pile up. For people who are faced with the scenario, it is often frightening, and they do not know what to do or where to turn for help. Many people who have been injured in an accident wonder if they even have a case or who will compensate them for their lost wages and medical bills. So, let's start by considering the elements of a valid injury claim.

In determining whether or not you have a valid personal injury claim, there are two important elements which must be present in every claim:

1. There must be a negligent act committed by another person (or entity); and
2. This negligent act must've caused injury to a human being

Let's discuss each of these factors in turn.

1. Negligence (a negligent act). The first element that needs to be present in every Texas injury claim is the existence of

negligence on the part of another person or entity (a business, corporation, etc.). Under Texas law, negligence is defined as “failure to use reasonable care”. But what does this mean exactly? To illustrate the concept of “negligence”, I will use an example from one of my favorite cartoons as a kid, “The Flintstones”. Example:

Fred is in a hurry to pick up his friend Barney for a bowling tournament and is not paying attention to the road. Fred then blows through a stop sign and slams into Pebbles’s car, injuring Pebbles and her pet “Dino”. Under Texas law, by running the stop sign, Fred was not using reasonable care and is therefore negligent. This is because a reasonable person would stop at a stop sign. Blowing through the stop sign was below the level of care that most people would exercise in the same situation.

2. Personal Injury. In Texas, a valid injury claim requires some sort of injury to a person. Using the same “Flintstones” example above, let’s analyze the potential damage to see which, if any, would be considered a “personal injury”.

- **Damage to Pebbles’s Car.** No, this would not be included in a personal injury claim because her car is not a “human being”. However, Fred, if found to be negligent, would be liable for the damage to Pebbles’s car, but this would be a “property damage” claim rather than a personal injury claim.

- **Injuries to “Dino”, Pebbles’s Pet.** No, this would also not be included in a personal injury claim because, while Dino is a beloved member of Pebbles’s family, it

is not a human being, and therefore any injury sustained by Dino is not considered a “personal injury”. While many states recognize injury claims to pets, Texas is among the most restrictive in regard to injury claims and does not recognize injury to pets as personal injury claims. Instead, Texas classifies a pet as “property”, thus the injuries to Dino would be similar to the damages to Pebbles's car.

- **Injuries Sustained by Pebbles Herself.** Yes, because Pebbles is a human being, any injuries she sustained as a result of Fred's negligence would be considered a personal injury claim.

It's important to point out, however, that while injuries to cars, pets, cell phones, or other property are not considered a “personal injury” claim, my law firm still routinely assists our injury clients in settling these property damage claims. We offer this as a service to our clients while we are assisting them with their personal injury claims, but we do not accept property damage only cases where there is no personal injury involved.

Another very important factor in determining whether or not you have a valid injury claim is something referred to as “causation”. Essentially, you must show that the injuries sustained were actually “caused” by the other person's negligence. To illustrate this point, let's look at another example:

Fred Flintstone is rushing home from work because Wilma has prepared one of his favorite dishes for dinner, Brontosaurus burgers. In his rush to get home, he runs a stop sign at an intersection. Pebbles is on her

way home from shopping when she approaches the intersection at the same time as Fred. Suddenly, at the exact moment Fred runs the stop sign, Pebbles falls asleep, sending her car into a light pole. Pebbles is badly injured.

Let's analyze the above fact pattern:

1. Was Fred negligent in running the stop sign? Yes, he probably was negligent.
2. Did Pebbles suffer a personal injury? Yes, she did.
3. But, did Fred's negligence (running the stop sign) cause Pebble's injury? No, Pebbles fell asleep and ran off of the road, thus, Fred running the stop sign did not cause the accident in which she was injured.

Therefore, in the above example, Pebbles does not have a valid injury claim against Fred.

While understanding causation in the above example is somewhat straight forward and easy to understand, there are many times when causation is not so clear. For example, when an accident aggravates a pre-existing injury. Often times in cases where a person is "re-injured", it will be necessary to hire a medical expert to determine whether or not the accident actually "caused" the aggravation or worsening (re-injury) of the preexisting injury.

Proving Damages in Injury Cases

In Texas, to have a successful injury claim you must also prove that you have been damaged as a result of your injuries. Damages

come in many forms. Fortunately, Texas law allows you to be compensated for many different types of damages. Here are the most common types of damages people declare in connection with a personal injury claim:

- Medical expenses (expenses you have either paid or will be expected to pay)
- Pain & suffering
- Mental anguish
- Lost wages (money you have lost from being unable to work)
- Disfigurement (permanent scars, etc.)
- Loss of consortium

In Texas, an injured person must prove each and every type of damage they claim to have suffered. Having practiced injury law in Texas for years, I can attest that proving these damages, which often requires medical experts, requires a significant investment of time and money. That is why we help our clients evaluate each of their potential damage claims to help them determine if all the necessary elements exist and to garner evidence supporting each of those claims at the onset of their case.

Catastrophic Injury Cases

(Injuries Resulting in Death or Permanent Disability)

In what we hope are rare occurrences, but occur all too often, sometimes the negligent acts of another person are so detrimental that they result in either death or permanent disability.

Negligent acts leading to another person's death are called wrongful death claims. Under Texas law, there are only certain individuals who are allowed to file a wrongful death claim, including: a spouse, children, or parents of the deceased individual. In some cases, the deceased individual's estate can also file a claim to recover compensation for the pain and suffering of the deceased person prior to his or her death.

Negligent acts that lead to permanent disability are also catastrophic injury cases. Often times in these types of cases, the difficulty lies in proving the extent or amount of damages sustained as a result of the permanent disability suffered by the injured person. Because it is difficult to put a price tag on these types of injuries, it generally requires expert opinion from economists, life care planners, and medical experts, in order to prove the extent and amount of damages connected with the permanent disability.

Because there are so many pitfalls and obstacles presented in connection with wrongful death and catastrophic injury cases, it is more important than ever that injured victims and their families seek competent legal representation in the handling of these types of cases. These cases require an immense amount of time and money, and one mistake can destroy an otherwise valid personal injury claim, leaving an injured person without compensation. This is why I always advise for injured persons to seek a free consultation as soon as possible following an accident.



CHAPTER THREE

ARE YOU REALLY IN “GOOD HANDS”?

Why You Can't Trust Insurance Companies, Even Those
That Claim to Be a “Good Neighbor”

Let me tell you this, most injury lawyers I know could write an entire series of books about why you cannot, and should not, trust insurance companies. They spend millions each year trying to convince consumers they will take care of them should the need arise—which I am confident in telling you could not be further from the truth.

Whether the insurance company is claiming to be “on your side”, tells you they are a “good neighbor”, or that you are in “good hands”, any person who has submitted an insurance claim before, particularly an injury claim, knows that all of the self-proclaimed neighborly kindness goes out the window the minute you file your claim.

To the surprise of many injured people, this is true even with their own insurance company. I hear it all the time from clients, **“Why is my own insurance company fighting against me? I have faithfully paid my premiums for years!”** The simple truth of the matter is, insurance companies are insurance companies. Whether it be the other driver’s insurance company or your own, they are all in the business of making money, not in

the business of paying claims. Every insurance company, even your own, has but three simple goals:

1. Pay you nothing, if possible
2. If they must pay, pay you as little as possible
3. Delay paying you anything for as long as possible

INSURANCE COMPANY GOAL NO. 1:
Pay You Nothing, if Possible.

Nothing would make an insurance company happier than not paying you a single dime. After all, the major insurance companies in the U.S. are among some of the biggest, and most profitable businesses in the entire world! Do you know how they make their billions? Their formula for success goes something like this:

They collect insurance premiums from millions of customers, and when presented with a valid claim, they either refuse to pay it (often fabricating an excuse why they don't have to pay it) or offer to pay a fraction of what is actually fair.

Yes, essentially the insurance industry makes billions by lying, cheating, and stealing—legally! And don't think your own insurance company won't do this to you. Clients are often surprised when their own insurance company throws them under the bus and refuses to pay an obviously valid claim. "You mean to tell me, that month after month they accept my money, but when it comes time to use the coverage I've been paying for, they refuse to pay my claim?" Yes. That's exactly how insurance companies operate—and they make billions doing it.

Don't get me wrong, there is nothing wrong with making a profit. Obviously, I want my law firm to be profitable, just as you want your own endeavors to be profitable. However, if you or I treated our customers, clients, or associates the way insurance companies treat injured people, I suspect none of us would be in business for very long. However, insurance companies get away with this type of behavior because the law requires us to purchase insurance coverage.

INSURANCE COMPANY GOAL NO. 2:

If They Must Pay, Pay as Little as Possible

One of the biggest problems with insurance companies is that they make their profit by paying as little as possible on EVERY claim, without consideration for the claims merit. Whether you've been in a minor car accident, or your spouse has been killed by a drunk driver, or in an eighteen-wheeler accident, one thing is absolutely certain: the insurance company will do all it can to you pay as little as possible for your injuries, no matter how serious the injuries may be.

In the years I've been practicing injury law, I have come to believe that insurance companies care very little about anything or anyone, except profits. It's become reasonably clear to me that insurance companies really do put "profits before people". Which is why you must be ready, willing, and able to stand up to these powerful and well-funded insurance companies if you want to receive fair compensation for your injuries.

So, why is pursuing a personal injury claim so difficult, and how do insurance companies get away with treating people so badly? It's because resolving an injury claim is not like a normal business

transaction. For Example:

Normal Business Transaction. In a regular business transaction, both parties have something to gain from their dealings together. Lets say you go into a store to purchase a gallon of milk. You and the store both have an equal interest in your purchase: you want the milk, for which you are willing to pay, and the store wants to give you the milk in exchange for payment. You get the milk you want, and the store makes a profit. Both parties want the transaction to occur. **This is nothing like the transaction that occurs in an insurance claim.**

Insurance Claim Transaction. In an insurance claim, instead of both parties having something to gain, one party has something to gain from the transaction (the person filing the claim), and one party has everything to lose from the transaction (the insurance company). Instead of having a common goal, the goals of each party are the exact opposite of the other. After all, the insurance company has already been paid by their insured, and they have no incentive to pay you any of that money. Their incentive is just the opposite, to pay you as little as possible and keep as much of the money they've been paid in their pockets!

Because the insurance claims process is an adversarial one, with each party having opposite goals, the at-fault person's insurance company has no incentive or duty to treat you fairly. The only protection you are afforded is the legal process, which is why nearly all injured people will need an experienced injury attorney to help them receive fair compensation for their injuries.

If the insurance company believes they can bully you into accepting very little for your claim, it will offer you next to nothing. Having an experienced injury lawyer on your side increases your chance of winning, which in turn increases the insurance company's incentive to pay you fair compensation for your injuries. However, the insurance will not pay you anything until they are convinced it is in their own best interest do to so. Even then, they don't pay you until they are good and ready.

INSURANCE COMPANY GOAL NO. 3:

Delay Paying the Claim for as Long as Possible

In nearly every injury claim, the insurance company has a distinct advantage over and injured person. This is because, following an injury, an injured person has medical bills piling up and has likely missed a lot of work, resulting in them being unable to pay their bills. As such, the injured person has an interest in being compensated as soon as possible. However, the insurance company is not in any hurry whatsoever to settle an injured person's claim. After all, they aren't the ones who have had to miss work, they don't have piles of medical bills, and bill collectors aren't knocking on their doors. Some kind of "Good Neighbor", right?

Delaying payment is just one of many of the tactics insurance companies use to strong-arm injured people into settling their claim for a lot less than they should. The mounting pressure to pay medical bills, the runaround from the insurance company, and the stress and financial burden often causes the injured persons to become desperate. Insurance companies know that if they can push a person to the point of desperation, that person will likely settle their case for much less than the case is actually worth.

Make no mistake about it, the insurance company is well aware of your situation, the stress your injuries have caused you, and the difficulty the situation has caused for you and your family. In fact, not only are they aware of how difficult this situation is for you, but they use your pain and suffering to their advantage—yes, they capitalize from your suffering. Why? Because it's all about the bottom dollar—period. Insurance companies know they don't have to pay you a penny until someone (a judge or jury) forces them to.

How Does David Fight Goliath? (You Against The Insurance Company)

You may be wondering then, “How can an injured person fight the tactics of insurance companies?” Frankly, there is only one way: having a dedicated and experienced injury attorney on your side. Someone who will take the fight to the insurance company—a fighter who aggressively and unrelentingly holds the insurance companies feet to the fire, often via a lawsuit (or threat of one). Many times, the only way to win adequate compensation is to take your case before a jury and win. This is why having an aggressive, experienced, and dedicated team behind you greatly affects the outcome of your case.

Trust Should Be a Two-Way Street (But Know This—The Insurance Company Doesn't Trust You at All)

If you watch any amount of television, you're probably very familiar with the saying “innocent until proven guilty”. This basic

premise gives the benefit of doubt to someone charged with a crime. Wouldn't it be nice if insurance companies gave injured people the benefit of doubt in regard to their injuries? But, they don't. In fact, insurance companies assume from the start that you are making a fraudulent claim, and it's then up to you to prove you were really injured.

Following an accident, the insurance company (including your own) will scrutinize your case at every turn, looking for any reason to either deny you coverage or limit the amount they pay you for your injuries.

Because insurance companies automatically operate under the assumption you are not hurt, they will look for any indication that you are lying about your injuries. Therefore, if you are claiming that you have been injured and are not able to work, or that your injuries have affected your daily activities, you should assume the insurance company is spying on you. I know it sounds a bit crazy, but it's a very common practice in the insurance industry. Larger insurance companies often have their own team of investigators that are paid to watch and videotape people who have filed injury claims. So, if your injuries are severe enough to keep you from working or have caused you to significantly alter your daily living, there is a good chance the insurance company will be checking up on you. Therefore, you should assume someone is watching and recording you at all times.

Insurance Company Dirty Trick: Liar, Liar, Pants on Fire

If you have filed an injury claim, at some point during your claim you can rest assured the insurance company will call you a

liar. Yes, they will accuse you of lying about your injuries, even when it is glaringly obvious you are not lying.

For example, as we age, our spine undergoes changes, or degeneration, from normal wear and tear as a result of everyday life. These degenerative changes can be detected by diagnostic tests such as MRIs. Insurance companies will point to these degenerative changes, claiming you had a bad back or neck before the accident, and that your injuries weren't caused by the accident at all. Like an ostrich, the insurance companies will bury their head in the sand and refuse to acknowledge the fact that you were pain free prior to the accident. This usually forces the injured person to hire a medical expert to prove the injuries were a result of the accident. Hiring these experts is expensive and less experienced attorneys, or those who do not specialize in injury law, will often fail to recognize the need for an expert, thus sabotaging their client's case. This is why I always recommend consulting an attorney who focuses only on injury law, as opposed to an attorney who handles every type of case that walks through their door.

The Insurance Company Will NOT Pay Your Medical Bills

You would think that once an insurance company admits their driver was at fault they would pay your medical bills. However, I have never seen this happen, and it's fair to say it will probably never happen. So, while you are missing work, losing wages, and incurring large medical bills, the insurance company simply sits back and ignores the stress, anxiety, and financial hardship you are going through—a hardship that was caused by their insured driver. But, sadly, the insurance companies couldn't care less about your situation. The simple fact is, they will not give you a penny

until at the very end of your case. That doesn't seem fair, does it? Nevertheless, that is exactly what will happen in your case. If you have Med Pay coverage through your own insurance policy, they could pay your medical bills as they come due. However, I think Med Pay is a waste of money (read why in Chapter 10).

Why do the insurance companies treat injured people like this? One word: Leverage. That is, the longer your case drags on, the more work you miss, and the more medical bills you incur, the more stressed and desperate you will likely become. The stress and financial hardship will generally become more difficult for you month after month. Eventually, injured people may become so desperate that they will accept a low-ball offer from the insurance company.

To add insult to injury, the insurance company will almost always try to claim that much of the medical treatment you received was not needed or was unreasonable. Forget that your doctor, who went to years of school to learn to practice medicine, felt the treatment was necessary. The insurance company will pretend to know more than your doctor and will almost always claim you didn't need a particular test or treatment or that you were over-treated. Talk about arrogant—but that's how the insurance companies are. It's all about their bottom line, and they will act irrationally, arrogantly, and deceptively to protect their bottom line.

And, speaking of arrogant insurance adjusters, not only do insurance adjusters pretend to know more than your doctors, but they also often try to act as if they are engineers as well. For example, I cannot tell you how many times I have heard an insurance adjuster maintain that the injuries claimed by my client

didn't match the level of damage sustained by the vehicles. It's not like these guys are engineers who understand the biomechanics behind a collision—they are simply grasping for straws in an attempt to justify paying you less for your claim.

Conclusion

Unfortunately, if you have been injured in an accident, you simply cannot trust the insurance company to treat you fairly, especially if you are trying to handle your claim without an attorney. The insurance company will not treat a victim fairly, and unfortunately, their arrogance and attitude of indifference is present whether or not you are represented by an attorney. We are used to dealing with insurance company shenanigans, but our clients usually are not, and it tends to get under their skin.

To recap, here are some of the many issues you will likely experience when dealing with an insurance company, including your own insurance company:

- Failure to accept responsibility for the accident (even when the police report indicates the other driver was at fault)
- Delay in confirming the availability of insurance coverage
- Delay in investigating your property damage
- Refusal to authorize a rental car or authorizing a rental car for fewer days than needed
- Low-ball offer on your totaled vehicle
- Refusing to honor your claim because “the car wasn’t damaged enough for you to have actually been hurt”
- Telling you that you waited too long before going to the doctor, so you must not really have been hurt (I have had insurance companies argue that going the very next day was too long of a delay)
- Claiming your injuries were caused by a previous injury, even when you were pain free prior to the accident

- Refusing to honor your claim for lost wages, even with proof from your employer
- Claiming the treatment you received was not needed, even when an experienced physician said the treatment was necessary
- Delay in making you any type of offer, even though your medical bills are coming due

Doesn't dealing with the insurance company sound like fun? Yeah, we didn't think so. Most injured people have better things to do (like focusing on getting better) than to waste their time with the games and delay tactics employed by the insurance companies. Because insurance companies utilize these types of games, delay tactics, and deceptive practices, we recommend that people who have been injured hire an experienced injury attorney to handle their claim.



CHAPTER FOUR

A LOOK AT HOW THE TEXAS LEGAL SYSTEM WORKS

If there is one thing most clients don't understand about their injury claim, it is how long it will likely take to resolve their claim. While I wish the legal process moved as quickly as it does on television, real-world injury claims take more than sixty minutes to resolve. Real-world cases take significantly more time than the cases you see on *Law & Order*. However, while real cases require many more steps than those you see on television, the real-world injury claims process can be broken into two distinct phases:

1. Pre-Litigation – pre-litigation includes all activity that takes place BEFORE a lawsuit is filed in the claim
2. Litigation – the litigation phase includes all activity that occurs AFTER a lawsuit has been filed

Pre-Litigation

It is rare that a lawsuit is filed immediately after an accident occurs. There are three basic reasons for delaying the filing of a lawsuit in an injury case:

1. Investigation of the facts of the case, including liability and damages
2. Allowing the injured party to complete treatment so a true measure of damages is known
3. To see if the case can be settled without the need to file a lawsuit

Resolving Cases Without Filing a Lawsuit

In many cases, an injury claim can be resolved without the need to file a lawsuit. However, there are certain factors, if present, which will increase the likelihood that a lawsuit will need to be filed. While all cases are unique, here are some of the factors which may indicate whether or not a claim can be resolved without the need to file a lawsuit.

Factors in Favor of Settling Case Without a Lawsuit:

- Clear liability
- Damages are at or near policy limits
- Damages are minimal, and the insurance company is willing to settle for a fair amount

Factors that May Indicate the Need to File a Lawsuit:

- Liability is being disputed by the insurance company
- Lowball settlement offer is far below policy limits
- Damages incurred are life changing, and there is a large policy or a defendant with assets

Liability is one of the main factors that will generally determine whether or not a lawsuit needs to be filed in your case. Often times, liability is pretty clear, especially when there is a police report that places one driver at fault for the accident.

However, if liability facts are in dispute, then it will be very difficult to resolve the case without filing a lawsuit. Insurance companies will seldom pay fair money until they are convinced their insured was at fault for the accident. When liability is in dispute, it will take witnesses and other evidence to convince the insurance company (or jury) their insured was at fault. This is best achieved through litigation after filing a lawsuit.

The injuries sustained are also a key indicator of whether or not I will file a lawsuit or try to settle the case prior to filing suit. When a case involves significant injuries or death, it becomes very difficult to resolve without filing a lawsuit because insurance companies do not want to pay the true value of the claims (they'll do everything they can to hang onto every penny).

Sometimes people will try to handle their injury case on their own. While this may work fine for a very small accident with a very small amount of damages, in most cases it's not a good decision. We generally recommend that if your claim is worth \$5,000 or more, you should hire an injury lawyer. This is because you have no leverage against the insurance company without a lawyer. As a non-lawyer, filing a lawsuit is not really an option for you, and the insurance companies know this. Therefore, because they don't have to worry about you filing a suit against them, they have no incentive to give you a fair offer. As a result, you're likely to get an insultingly low offer. There is almost zero chance the insurance company will pay you fair compensation without at least

the threat of a lawsuit hanging over their heads. This is why it's almost always better to have an experienced injury attorney handling your case.



CHAPTER FIVE

10 MISTAKES THAT CAN KILL YOUR TEXAS ACCIDENT CASE

After years of practicing injury law, I have helped many clients who initially tried to handle their claim on their own. I have also had to turn other potential clients away because they made too many mistakes in trying to handle their own claim that there was simply no way to salvage the damage they had done to their claim. It's heartbreaking to see an otherwise strong injury claim ruined because of simple mistakes which could have been easily avoided. That is why I wrote this book, to help injured people avoid making mistakes that could ruin their claims. While there are many, many mistakes which can destroy a valid claim, there are ten mistakes people make most frequently, hence the title of this book, "10 Mistakes That Can Kill Your Texas Accident Case".

I highly recommend all injured people take the advice in this chapter seriously. If followed, I believe the advice in this chapter will help injured Texans avoid making an unfortunate situation even worse by ruining their chances at recovering compensation for their injuries and damages.

MISTAKE NO. 1

Failing to Properly Report and Document Your Accident

Following an accident, there are a few things you **MUST** do to make sure you are protected in regard to both your medical treatment and the prosecution of your potential injury claim.

Obviously, when an accident occurs, your first priority should be to ensure that you and others involved receive immediate medical treatment if needed. Generally, you should call 9-1-1 and have injured people taken to the hospital for treatment. Additionally, it's nearly **ALWAYS** a good idea to call the police to report the accident and ask them to send a unit to the scene of the accident. Making sure an officer comes to the scene of the accident is very important since the investigation and police report is generally some of the most important evidence in your case.

Not calling the police and requesting an official accident report is one of the **BIGGEST MISTAKES** accident victims make. So, why is an accident report so important?

Police Officer Crash Reports v. Blue Driver Crash Reports

In Texas, there are two types of accident reports:

1. Texas Peace Officer's Crash Report (form CR-3),
and
2. Driver's Crash Report (form CR-2), often called the
"blue form".

While these are both referred to as “crash reports”, they are not even close to the same thing, especially when it comes to evidence in an injury claim. The Texas Peace Officer’s Crash Report is often referred to as the “police report” or “accident report”. This is the form an officer completes after he investigates the scene of an accident. The form will generally contain the contact and insurance information for both parties, as well as the officer’s impressions and opinions regarding the cause of the accident, including which party was at fault.

Without this independent investigation and report performed by a peace officer, it becomes easy for the at-fault driver to deny liability and tell a different story of how the accident occurred. This presents a very difficult situation because in almost every circumstance when the other driver denies liability and lies about how the accident occurred, their insurance company will not accept liability and will thus refuse to pay your claim. This is true even when it is obvious the other driver was at fault in the accident. Remember, the other driver’s insurance company is already looking for a reason to deny your claim, and having their insured deny that they were at fault is all the reason they need to deny liability and refuse to pay your claim. Having the opinion of the peace officer who investigated the scene of the accident and a documented report with the officer’s opinion regarding who was at fault is invaluable to your claim. In fact, in many car accidents, the absence of a Peace Officer’s Crash Report is enough to kill an injury claim dead in its tracks.

The other type of crash report, the Driver’s Crash Report, is worthless in most injury cases. This is because a Driver’s Crash Report is a form (blue form) that is completed by the driver of each vehicle rather than by a peace officer. As such, there is no

in-vestigation by an independent third party. Because each driver involved in the accident completes and files his own report, it is easy for the at-fault driver to change his story and lie about the facts to avoid liability. Where possible, it is best to avoid the blue form, Driver's Crash Report.

So, if the "blue form" crash reports are so bad, why do people do them? Well, first, most people don't realize how much having a blue crash form instead of an officer's report will affect their injury claim. Second, sometimes they receive bad advice by the police, who either, because they are busy, or out of laziness, recommend that each party complete the Driver Crash Report instead of investigating and completing a Peace Officer's Crash Report. This advice can be FATAL to an injury case because not having the independent investigation performed by the officer makes it very easy for the at-fault driver to deny liability and change his story of how the accident occurred. This makes it very easy for the other party's insurance company to deny liability.

The Importance of Witnesses

Another important piece of documentation after an accident pertains to witnesses. Nearly as important as having an investigation and a Peace Officer Crash Report, you'll need to try to obtain the names and numbers of all witnesses who observed the accident. One difficulty with regard to witnesses is that in most cases, people who were not involved in the accident don't stay around the scene for very long. This is why it's important for accident victims or their families to obtain the names, phone numbers, and addresses of any witnesses to the accident as soon after its occurrence as possible. Sometimes the investigating officer will gather the names and contact information of any

witnesses, but not always. Therefore, if at all possible, it's important to gather the name and contact information for all witnesses to the accident.

A Picture is Worth a MILLION Words!

Another very important point of documentation accident victims often overlook is pictures of the damaged vehicles. Pictures can help corroborate your version of how the accident occurred. While most accident victims have ample opportunity to snap some pictures of their own vehicle after the accident, many forget to take pictures of the other driver's car as well. These pictures are important because they can help show the severity of the collision. Photographs of the scene of the accident, damage to vehicles, and the actual injuries sustained are critical in every injury case. Pictures help the attorneys, insurance adjusters, and the jury understand what happened and how severe the accident and injuries were. This is important because, while memories fade, cars are repaired, and bruises heal, a picture is forever and will help the insurance adjusters and the jury understand the true extent of the injuries sustained in the accident.

Often times insurance adjusters will try to argue that you are not hurt as badly as you claim based on the damage to your automobile. However, in many cases, one car will be severely damaged, while the other sustains minimal damage. Having pictures of all vehicles involved allows you to fight back against the insurance company. Also, these pictures will play an important role if your case goes to trial.

MISTAKE NO. 2

Failing to Properly Manage Your Medical Treatment

Failure to Promptly Obtain Medical Care

If you have been hurt in an accident, one of the MOST important things you should do is obtain medical attention as soon as possible. If you are severely injured, you should call for EMS service to transport you. However, in many instances, a person who has been injured in an accident may be in shock at the time and not realize the extent of their injuries. However, after the shock wears off, either later that day or in the morning, and the injured person realizes their back, neck, or other areas are hurting, they should seek medical care, either at an emergency room or from their primary care doctor. Failing to obtain medical care soon after the wreck is one thing that will kill your accident claim faster than anything.

Failing to obtain prompt medical care will kill your accident case because insurance companies and juries alike will almost always assume that if you were really hurt, you would have gone to the doctor. Trying to “suck it up” or “tough it out” and hope it gets better not only will KILL your accident claim and ability to recover for your injuries, but it also impairs your ability to recover from your injuries. Not only is seeking prompt medical treatment following a wreck or injury the smart thing to do, it’s essential for your body’s ability to heal and for obtaining compensation in an injury claim. The chances of convincing a jury that you were actually injured decreases every day you delay seeking medical care for your injuries.

In fact, obtaining prompt medical care soon after an accident is so important that if you don't go to a doctor or hospital soon after the wreck, you probably don't have a viable injury claim. Yes indeed, delaying medical care will KILL your Texas accident claim.

Prompt medical care is so crucial to a valid injury claim that my firm will generally not accept a case if there is an unreasonable delay in seeking medical care.

What if I Don't Have Health Insurance?

Depending on how severe your injuries are, your first medical care may be via EMS and an ambulance ride to a local emergency room. However, as I mentioned previously, sometimes people don't realize they have been injured until later that day or the next day, at which point they should visit the emergency room on their own. However, not having health insurance should NEVER be a reason to postpone being treated for your injuries.

While the presence or lack of health insurance will dictate where you receive treatment, whether at the ER or by your own primary care physician, the lack of health insurance should never dictate whether or not you seek treatment. There are ALWAYS better options than going without prompt and proper medical treatment. You should never be afraid to seek treatment because you don't have health insurance. In fact, there are three main options for injured persons who do not have health insurance:

1. Emergency Room. You can always start by visiting a local emergency room, who cannot refuse to treat you because you don't have insurance.

2. Local Public Health System. After your initial emergency room visit, you can also seek treatment from local public health systems. While receiving treatment from the public health system can be frustrating at times, it's far better than going untreated.

3. Attorney Medical Care Program. Another option you have is to contact an attorney who specializes in personal injury cases. Most experienced attorneys have a medical treatment program for clients without health insurance. My firm has a network of top doctors and treatment providers that have agreed to treat patients but withhold billing the patients until their case has been settled or resolved via trial. This way, our clients are able to receive the medical treatment they need without the need for insurance or out-of-pocket costs. The doctors are simply paid at the conclusion of the case from the settlement proceeds.

Generally speaking, for most uninsured clients, I have found that the best course of treatment for them is as follows:

1. Initial Emergency Room Visit
2. Treatment Via Attorney's Medical Treatment Program

No matter which course of treatment you choose, it's very important that you seek medical treatment as soon as possible following an accident. Not doing so will almost always KILL your injury claim.

Failing to Report All Injuries to your Doctor

Another mistake injured persons often make is in failing to report ALL of their injuries to their doctor, including injuries they feel are relatively minor. Often times, those little “aches and pains” don’t go away like you thought they would. In fact, I have seen many cases where the little “aches and pains” have ended up being the main issue in the case and end up being the biggest injury.

This happens sometimes when an accident causes a sudden jerking motion of the upper body from the lumbar area of the spine to the cervical, or neck, area. Whiplash is a common instance of this. These sudden jerking motions can cause significant internal soft tissue damages, including herniated and bulging discs. These types of sudden jarring or jerking motions often cause neck, back, and shoulder injuries. And, in many cases, these injuries start as minor aches and pains, which remain and get increasingly worse over time.

Failing to report all of these injuries at the onset of your treatment doesn’t allow your doctor to diagnose and treat you for these injuries. This can have a significantly negative impact on your injury claim because your medical records will not show a well-documented trail that connects all of your injuries to the accident. This is something that both insurance companies and juries will want to see in order to award you compensation for all of your injuries. It’s often difficult for an injured party testifying at trial to explain to the jury why they didn’t report a particular injury from the beginning. Additionally, the insurance company will try to say that these later-reported injuries were not caused by the accident, but rather occurred sometime after the accident. This is why it’s

very important to report ALL of your injuries to your doctor, even the ones you feel are minor aches or pains. It's best to report the injuries, and let your doctor determine which injuries are minor.

Helpful Tip: I encourage my clients to start an injury journal where they can record their pain levels and medical problems they are experiencing after the accident. The journal could include things such as

- pain level from day to day;
- how the injury and pain has disrupted your daily living activities;
- instances where you had to cancel plans, vacations, or miss important events as a result of your injuries;
- a complete list of all of your injuries;
- things you could do before the accident but cannot do as a result of your injuries;
- anxiety and stress caused by your injuries
- days missed from work;
- etc.

Having an “injury journal” is important because you can take the journal with you to your doctor appointments, which will allow you to remember to mention aches, pains, and what you are experiencing. It's important to not only mention the injuries to all parts of your body, but to also inform the doctor how these injuries are affecting your daily living. For example, if you are unable to sleep well at night because of neck pain, the doctor should know this so he can properly treat your neck and prescribe medication to assist with pain or sleeping.

Not Documenting Your Injuries During Treatment

Another important aspect of properly managing your medical treatment is properly documenting your injuries. As I mentioned before, I believe a picture is worth a MILLION words. This is especially true when it comes to winning an injury claim.

Just as memories fade, bruises will heal and fade over time. Pictures of your injuries will help show what the bruises and injuries looked like immediately following the accident and throughout the healing process. As such, it is important to document your injuries throughout the healing process. Don't limit yourself to a few pictures taken right after the injury, rather you should take a couple of photographs per week. This is especially true when it comes to bruises and scars.

Also, depending on your injuries, you might be in a cast, on crutches, or in a wheelchair following your accident. This can be a very difficult and nearly unbearable time for you. Photographs of you in this condition will be helpful in showing the true impact the injuries had on your life and just how miserable your situation was.

Perhaps the most important reason to document your injuries and the healing process is because most of the time injured parties look perfectly healthy by the time they actually walk into a courtroom to try their case. Injury cases take a long time to resolve, and it could be two years (or more) after the initial accident before a jury gets to see and hear from the injured person. By this time, most of the injuries will have been resolved to a great extent. Casts will have been removed, crutches are no longer needed, and bruises have healed. In fact, in most cases it

will be difficult for the jury to tell that the person was ever involved in an accident. However, pictures documenting the injury and healing process will help to paint a picture of the true extent of the person's injuries and what really occurred during the long and painful healing process.

Equally important in the documentation process is the paperwork related to your claim. Most of the paperwork will deal with your medical treatment and bills. This documentation will help your attorney document all of your medical expenses. At a minimum, you should keep the following documentation and provide a copy to your attorney:

- Documents from your doctor in regard to work restrictions or lost time from work
- Discharge documents
- Medical bills received for emergency room and doctor visits
- Out of pocket expenses for things like prescription medication, over the counter medication, bandages, wraps, or appliances, such as crutches, etc.
- Documents from your employer regarding lost wages or missed work

In fact, keeping a record of your claim is so important that at my initial meeting with a new client, I provide them with a folder and instruct them to keep every single piece of paper remotely related to the accident and to place the documents into the folder. For each client meeting thereafter, they are instructed to bring the folder. That way, my staff can make copies of important documents, which will help ensure we have all of the documentation needed to help win their claim.

Failing to Cooperate with and Follow Doctor's Orders

As a practical matter, all accident victims are held to a certain standard, that of being a “good patient”. While this is not a true legal requirement in the state of Texas, it is absolutely critical. Juries will hold an injured person to this standard almost invariably. So, what does it mean to be a “good patient”?

To be a “good patient” you are expected to do everything the doctor instructs you to do. This includes:

- Attending all of your doctor appointments
- Obtain and take prescribed medications
- Make appointments with specialists as directed
- Attend and perform exercises and therapy as directed from the doctor
- Abstain from activities the doctor deems to be detrimental to your recovery
- Report all injuries to your doctor (even the ones you feel are “minor”)

If your case goes to trial, I can almost guarantee you the defense attorney will point out things in your medical record such as “no shows”, and will argue that a person who is really injured would attend all of their doctor appointments. Additionally, if the doctor tells you to refrain from a certain activity, such as drinking alcohol, smoking, running, or lifting heavy items, it does not look good to a jury if your medial records indicate that you have not been following the doctor's orders. I can almost guarantee you an insurance company's defense lawyer will bring these issues up EVERY time during trial. They will imply that a person who was truly injured would have followed their doctor's advice.

Also, they will tell the jury that if you had followed your doctor's advice, you would have healed much more quickly, and your impact of your injuries would have been decreased.

In Texas an injured person has a legal duty to mitigate their damages, meaning that as an injured person, you are expected to do all you can to lessen your injuries, which includes following your doctor's orders. Failure to do so can severely limit your attorney's ability to recover the compensation you deserve.

Not Submitting Medical Bills to Your Insurance Provider

For those fortunate enough to have health insurance, consider yourself lucky. Health insurance is becoming more of a luxury than it once was. While the Affordable Care Act (Obama Care) has helped millions obtain health insurance, it is still too expensive for most people. Additionally, because of the rising costs of health care insurance, fewer employers offer it anymore.

If you have health insurance, you need to use it! I know, that sounds obvious, right? But you would be surprised how many people don't want to use their own medical insurance because they feel the at-fault party's insurance should pay for their medical care. However, the problem with this line of thinking is that the liability insurance provider for the at-fault driver is not required to, and in fact will NEVER, pay your medical expenses as they come due. The liability insurance provider will only pay for your medical expenses at the end of your claim as a part of your settlement. This occurs only AFTER your treatment is complete. This is why you should ALWAYS use your own health insurance if you have it. If you have PIP insurance, which everyone should have, it can be used to help cover your co-pays and out of pocket expenses.

Many times my clients tell me they don't want to use their own insurance because they don't think it's fair that their own insurance company get stuck with the bill when it was the other driver's fault. However, they fail to realize something very important: insurance companies have a right to be reimbursed (subrogation). At the end of your case, your health insurance provider is entitled to be reimbursed for the expenses incurred in providing for your treatment. They will be reimbursed out of the settlement in your case, reimbursement they are legally entitled to referred to as "subrogation". Therefore, while your insurance company may pay for your bills upfront, they will be reimbursed in the end. Similarly, hospitals, by law, have a right to be reimbursed for any treatment they provide to you that has not been paid by your insurance carrier, which is referred to as a "hospital lien".

Additionally, by using your own health insurance, you will be protecting yourself from getting stuck with medical bills if something should go awry in your case. For example, if you seek treatment from a hospital or other medical provider for which there is an outstanding bill, what happens if it is later discovered that the at-fault driver let his or her insurance coverage lapse? All of a sudden there is no insurance from which to collect. If you have not promptly submitted your medical bills to your own health insurance provider, they do not have an obligation to pay for your medical treatment. In this scenario, who gets stuck with the medical bills? Yes, YOU DO. This is actually a very common scenario, especially in Texas. If you are involved in an accident in Texas, the chances are very high that you will be involved with a driver who either has no insurance or has let their insurance lapse by failing to pay the required premiums. Often times you may not find this out until a month or two after

the accident when the insurance company fails to honor your claim.

Therefore, the bottom line is this—If you have health insurance, don't hesitate to use it. It will make resolving your case much easier, and you will be protecting yourself.

MISTAKE NO. 3

Trusting the Insurance Adjuster

I know that I already covered this topic at length in Chapter Three, but this topic is so important that I felt like I needed to reiterate a few points again here. However, this mistake really focuses on one particular individual within the insurance company—the claims adjuster.

Generally speaking, insurance adjusters are well-trained, and often well educated, professionals who represent the insurance company in an accident claim. These adjusters are trained to pay out as little money as possible, and they are trained and skilled in every tactic imaginable to either deny or limit claims. In fact, that is the No. 1 goal of any insurance adjuster because their ability to deny or limit payment on claims is a reflection of his or her job performance. They are trained to pay as little as possible to accident victims, and their bonuses and advances greatly depend upon their ability to achieve this goal. As such, it is in the claims adjuster's personal interest to pay an injured person as little money as possible. Their interest isn't in treating you fairly or helping you. In fact, their interest is just the opposite of that of an injured victim. That is why you should not trust them, no matter how nice they may seem and no matter what they may tell you.

In most cases, the first interaction an injured person has with an insurance adjuster is in regard to the property damage to their vehicle. If the accident was clearly the other driver's fault, the property damage portion of the claim is usually handled quite smoothly. The insurance adjuster will usually authorize a rental car and start the process to have your car repaired. While there may be a few unwanted delays with regard to having your car repair, the process generally goes smoothly.

This initial interaction with the insurance adjuster often gives an injured party a false sense of security in a couple of ways:

1. The injured person may believe the adjuster will treat them fairly when it comes to resolving the injury portion of their claim.
2. They may believe that because the property damage claim went so well, they could simply resolve the injury portion of their claim on their own without a problem.

WARNING: There is one important principle you **MUST** Realize - Getting your car repaired and getting fair compensation for your injury claim are two completely different things!

Don't forget the insurance adjuster's No. 1 Goal: to pay you nothing if possible! In order to get fairly compensated for your injuries you will have to go to battle with the insurance company. Just as you wouldn't trust a foe in the heat of battle, you should not trust the insurance adjuster either. The only one you can trust is an experienced attorney that specializes in injury cases.

MISTAKE NO. 4

Making a Written or Recorded Statement to the Insurance Company

After you file your initial claim, usually for property damages, the insurance company will almost always request you provide them with a recorded statement. Often times the adjuster will tell you that the recorded statement is to help the insurance adjuster evaluate your claim and determine your side of the story. In many cases, insurance adjusters will tell injured victims they cannot evaluate the claim until they receive a recorded statement. This is utter HOGWASH!

Is a recorded statement important? YES. But only for the insurance adjuster. Everything you say will either help or hurt your claim, and insurance adjusters are skillfully trained in conducting these recorded interviews. They know how to ask certain questions that may seem like a simple request for information but are really going to be used against an injured person to deny or limit their claim. I have listened to recorded statements on many occasions. Generally there are questions asked that are very tricky, and injured people should be very careful about how they answer these questions. However, in most cases, injured persons are not trained to spot these questions, which generally leads to problems. Invariably, the insurance company will use these misunderstood statements against the injured person. After all, this is their goal—to help their employer (the big insurance company) save money, and you **MUST ASSUME** everything the adjuster does will be done with that purpose and goal in mind.

I generally tell people to **NEVER** give a recorded statement, especially without consulting with an experienced injury attorney

first. On occasion, I will assist my clients in giving a written statement that either I or another one of the lawyers in my firm reviews, thus allowing us to make sure there is nothing in the statement that could be taken out of context to hurt our client's claim. But generally, we simply refuse to give any statement at all, instead letting the police report and property damage serve as the primary information regarding the claim. If the insurance adjuster has legitimate questions about the accident or injuries that are not contained in the police report, we will address their questions once they are raised.

Time and time again I have seen accident victims severely injure, and sometimes destroy, an otherwise valid injury claim by not understanding the question being asked during a recorded interview and providing an answer the insurance adjuster will use against them to hurt their claim. I know I probably sound like a broken record at this point, but it is important to understand that insurance companies (and their adjusters) are in the business of making money. The less they can pay you, the more they keep in their pocket. Everything the insurance company and its agents do is with an eye single to this mission, including getting recorded statements. Do you really think it is in your best interest to trust that the insurance adjuster will treat you fairly during a recorded interview? Do you really think the adjuster is looking out for your best interests? I guarantee you they are not!

Recorded statements can have such a devastating impact on an injury claim that after my firm is hired to represent an injury victim, one of the very first things I find out is whether or not my client has provided a recorded statement. If they have, I will immediately request a copy of the recorded statement (a client has the right to obtain a copy of the statement). Knowing what

is contained in the recorded statement can help me know if there are issues that need to be addressed and gives me an idea of any potential pitfalls present in the claim.

Common Insurance Adjuster Lie:
You Must Give a Recorded Statement

It's not uncommon for insurance adjusters to lie to injured victims (gasp . . . sarcastically, of course), telling the injured person that they are required to give a recorded statement. Sometimes they will tell the person that they cannot continue to investigate or move the claim forward without a recorded statement. These are all LIES!

Just as the insurance company is under no duty or obligation to treat you fairly (some exceptions apply with your own insurance company), you similarly have no obligation to provide them with a recorded statement. As mentioned above, it is NEVER in your best interest to provide the insurance adjuster with a recorded statement. In fact, rarely is the statement ever used for any other purpose than try to limit the value of your claim. The insurance companies rarely need anything from a recorded statement to determine if they will accept or deny liability in your claim, though that is usually what they tell injured people. Truth be told, they can almost always obtain all of the necessary information to determine liability from the accident report. The true purpose of the recorded statement is to trap the injured person into admitting certain things about the accident, which will later be used to deny or limit the value of the person's claim.

MISTAKE NO. 5

Hiding Your History from Your Lawyer (i.e., previous accidents, civil claims and criminal matters)

Another big mistake injury victims make is hiding, or failing to inform, their attorneys about their past history. While you may not think things that occurred in the past are relevant, or even important, to your injury claim, in many cases they are. I know it sounds obvious to tell people to be truthful, but it is natural to want to conceal things you are embarrassed about or aren't flattering. However, it's absolutely crucial that injured persons be up front and honest with their attorneys.

With the proliferation of computers, social media, and the Internet, almost any piece of information about your past is easily retrieved by the insurance company. In addition, nearly all of the major insurance companies report to and subscribe to large databases that record every injury claim brought by a particular person. For example, if you were in a motorcycle accident ten years ago in which you injured your back, you must assume the insurance company in your current claim has that information about you.

Likewise, information regarding criminal proceedings is public record. This means that with a very simple search of one of the many criminal databases, insurance companies can find out the details of any criminal history you may have. In most cases, a person's criminal background will not be admissible in court and is usually irrelevant to an injury claim. Even so, it's still important to be upfront and honest about your criminal background because lying about it casts doubt on your honesty, which can be used

against you to demonstrate that you have a history or inclination to lie about things. A skillful defense lawyer will be able to admit this evidence against you to show that you lack the trait of honesty, implying that because you lied about your past, you are also lying about your injuries. While you may think this sounds absurd, this line of reasoning is extremely effective with juries and will cause them to question and distrust everything you tell them during a trial. Juries are often reluctant to award damages to someone they feel was not being honest with them. This is especially true in most venues in Texas.

MISTAKE NO. 6

Exaggerating Your Injuries or Your Inability to Work

You should NEVER exaggerate your injuries or inability to work in order to try to increase the value of your claim. While you may be tempted to do so, this will backfire on you every time. If you try to exaggerate the extent of your injuries, your level of pain, or your inability to work, then you must assume that you will get caught.

Not only will you get caught, but it's illegal in Texas to make a fraudulent claim, which includes exaggerating the extent of your injuries. Make no mistake about it, if you do this you will get caught because these exaggerations are easily detected. Remember, doctors treat patients all day, every day. They have an almost innate ability to discern those who are making legitimate complaints about specific injuries from those who are not. They know when someone is exaggerating their injuries or inability to work. Furthermore, doctors do not take kindly to a patient who lies about their symptoms and will often turn on the patient,

making sure to note their suspicions in the patient's medical record. Since medical records are such an essential part of an injury claim, any negative notes can lead to big trouble in an injury claim. That is why I always advise clients to be honest and truthful with their doctor. It's okay to let the doctor know how you feel or your level of pain on your worst day, but don't over-exaggerate your symptoms or pain level in order to try to increase the value of your claim. This will backfire on you every time.

Another big mistake is claiming that you are unable to perform the functions of your job, when in fact you could perform these functions without problem. If you exaggerate your inability to work, you must also assume that you will get caught in this lie, which can have grave consequences for your injury claim. Insurance companies will often hire private investigators to track and video record injured people. If you're claiming you cannot do your job because it requires bending, but are then seen and videotaped at the golf course hitting a bucket of balls, it will certainly come back to bite you!

Important Tip: You must assume the insurance company is watching you during the pendency of your entire claim.

MISTAKE NO. 7

Failing to Have the Right Kind of Insurance Coverage

In a perfect world there would be no uninsured drivers on the road, and you could get by with simply having liability insurance required by law. However, we live in Texas, a state with a very high percentage of drivers who have no liability insurance at all.

While this is obviously against the law, this fact doesn't do you much good after an accident, especially when you are injured and have mounting medical bills and other expenses. In fact, it's been estimated that 20% of the cars on the roads in the state of Texas illegally fail to carry any type of liability insurance. These figures increase the farther south you travel. For instance, it's been estimated that in south Texas, such as San Antonio and southward, as many as 35% of drivers on the road do not have any kind of insurance. What does that mean to you as a Texas driver? It means you can no longer rely on the other person having liability insurance to protect you in case of an accident. As such, it's increasingly important that you carry uninsured/underinsured motorist coverage under your own insurance policy

It seems like we get calls every week from injured parties who want to make claims against drivers who don't have insurance. If you don't believe me, a quick search on the website Avvo.com will verify this. In fact, here are several of the recent posts on Avvo.com:

"The driver that caused an auto accident gave me a bogus insurance card after he ran from the scene. It turns out that he didn't have any insurance. What can I do legally?"

"I was hit from the rear totaling my vehicle, and the at-fault driver had no insurance. He was in a car he had just purchased from a car lot. What happens if the driver who hit me has no insurance?"

"I got hit by an uninsured driver. An uninsured driver came right out into rush hour traffic and hit my vehicle. The driver, a nineteen-year-old girl said her mom let her take the car.

The police were called and the officer ran her info, and it turns out that the car had no insurance. I only have liability insurance. What can I do to get my car repaired?”

These are just a sample of some of the many questions that get posted online regarding uninsured drivers. Unfortunately, the answers are usually always the same, which usually goes something like “I’m sorry, you’re out of luck”.

When we receive these calls, the first question we ask is whether or not the caller has uninsured motorist coverage under their own insurance policy. If the answer is “no”, then we have to give them the bad news that we cannot assist them. Why? Because there is no insurance company responsible for compensating them for their damages. In most cases, the injured caller wants to know whether or not we can help them sue the driver personally. However, in almost every case, this is an exercise in futility. After all, if the uninsured driver had any money, he or she would almost certainly have insurance. In the vast majority of uninsured cases, the driver has no assets or money to satisfy any judgment you may obtain. So, the answer is “yes, you can sue them”, but you’ll have to pay an attorney out of your own pocket to do so, which is generally not economically feasible.

What makes matters worse is these callers have usually incurred thousands of dollars in medical expenses they will now be stuck paying for. Additionally, they are stuck with a wrecked car, which may or may not be drivable, but they still must continue paying on. Are you starting to see the value of having uninsured motorist coverage now? For the few dollars it will cost you each month, it’s really not worth the risk of NOT having it. In fortunate situations, which are surprisingly rare, the caller will have

uninsured motorist coverage. We are able to assist these callers with their uninsured motorist claim, which will cover both medical bills and property damage.

The bottom line here is that uninsured motorist coverage is NOT OPTIONAL, at least not for those of your living or driving in Texas. Obviously, if you're reading this book because you have been injured in an accident, it's too late to take advantage of uninsured motorist coverage, but it's never too late to protect yourself against future accidents. After all, in Texas, it's not if, but when, you get hit by an uninsured driver!

MISTAKE NO. 8

Failing to Take Advantage of all Available Insurance Policies

In Texas, juries and insurance companies alike are becoming ever conservative in the value they affix to personal injury claims. As such, it's more important now than ever before that you take advantage of every insurance policy that could cover the accident. In a typical car accident case, there will be several different policies to explore, depending upon the facts surrounding the accident.

To illustrate this, let's return to our favorite cartoon characters from the Flintstones.

Scenario No. 1: Third Party Liability Insurance

Fred is driving home from work at the quarry when he comes to a stop at a stop sign. Betty, who was driving her car behind Fred is texting on her new iStone 6 and fails to

see that Fred has stopped. She slams her car into the rear end of Fred's car. As a result, Fred suffers from a neck injury, and his car is severely damaged.

In this scenario, we would start by looking to Betty's liability insurance coverage. If Betty had liability insurance, her liability insurance would cover both Fred's injuries and property damage, up to the coverage limits. If Betty did not have liability insurance (which is illegal), Fred would then have to look to his own insurance policy to see if he had purchased uninsured motorist coverage.

Scenario No. 2: Employer's Liability Insurance

Fred is driving home from work at the quarry when he is struck broadside by Rock, a delivery driver for Bruno's Brontosaurus Burgers, a local restaurant. It turns out that Rock was working and was on his way to deliver a burger platter to a party at the local bowling alley. As a result, Fred suffers from a severe back injury, and his car deemed a total loss.

In this scenario, because Rock was on the job and was performing his duties for Bruno's Brontosaurus Burgers when the accident occurred, Bruno's commercial insurance coverage would be triggered to cover Fred's injuries and property damage claims.

Scenario No. 3: At-Fault Party Driving Another Person's Car.

Barney is preparing to leave to pick up Betty at the airport

after a weekend trip to Hollyrock with her friends, when his car won't start. In a pinch, Barney borrows Fred's car to go pick up Betty. In a rush, Barney runs a stop sign, colliding with Roger Marble. Roger is injured severely in the collision, and his car sustains a large amount of damage.

Under this scenario, Roger will have at least two different insurance policies to look to, possibly three. First, he can look to Fred's insurance policy because Barney was driving Fred's car. Second, Roger can file a claim under Barney's own insurance policy, assuming Barney has insurance on his own vehicle since Barney was at fault for causing the accident. Third, if the policy limits on both of Fred and Barney's insurance policies are not sufficient to cover his damages, Roger can look to his own underinsured motorist coverage, assuming he was smart enough to have uninsured/underinsured motorist coverage. Because these types of cases are complicated, it's important to get help from an experienced attorney that specializes in injury claims. Where there are multiple policies involved, none of the insurance companies will want to pay out on the claim but will often try to shift the responsibility to the other carriers. This is why it is important to have an attorney who specializes in personal injury cases.

Scenario No. 4: An Injured Passenger in Another Person's Car.

Wiggy Rockstone and his friend Edna Pearl had plans to go to the movies. Wiggy agreed to drive and picked Edna up at her house. Running late and not wanting to miss the start of the movie, Wiggy was driving too fast. As he

rounded a corner, he lost control of his car, sliding off of the road and colliding with a light pole. Edna was badly injured and suffered from broken bones and a back injury. Wiggy was also injured, and his car was a total loss.

In this case, Wiggy only has one insurance policy to look to—his own, assuming of course that he has more than just liability coverage. Edna, however, has two insurance policies she could look to for compensation. First, because she was a passenger in Wiggy’s car, she can look to Wiggy’s insurance policy to compensate her for her injuries up to the coverage limit, including any PIP coverage Wiggy may have. Additionally, assuming Edna also has a car, she could look to her own insurance policy and PIP coverage as well.

Don’t Forget About Your Own Insurance Coverage

While the above scenarios cover several of the most common scenarios, you shouldn’t stop there. One very common mistake people often make is not taking advantage of coverage available under their own insurance policy. Essentially, there are two different kinds of coverage you might have on your own policy that can help you out if you’ve been injured in an auto accident:

1. Uninsured / Underinsured Motorist Protection
2. Personal Injury Protection

Uninsured/Underinsured Protection. If the at-fault driver doesn’t have insurance, or doesn’t have enough insurance to fully compensate you for your injuries, then you should definitely file claim under your own uninsured/underinsured motorist coverage if you have it. While all Texas drivers are eligible to

purchase this type of coverage, the coverage is optional. If you are smart enough to have purchased uninsured/underinsured motorist coverage, you should also be smart enough to use it when the need arises.

Personal Injury Protection. The second type of insurance you should take advantage of, if you've purchased it, is Personal Injury Protection, often referred to as PIP coverage. Like uninsured motorist coverage, this coverage is completely optional. If you do have PIP coverage, then you should not hesitate to use it. Even if the at-fault driver has insurance, you can still use your own PIP coverage as well, even if your medical bills have been paid for by your own insurance. Because PIP coverage is something you have purchased, you should use it when needed.

Common Concern: If I file a claim under my own uninsured motorist or PIP coverage, won't my insurance rates go up?

Often times people are very reluctant to involve their own insurance coverage for fear that their insurance rates will go up. While that may be true for liability insurance, it is NOT the case for uninsured/underinsured and PIP coverage. In fact, it is against the law in Texas for an insurance carrier to raise your rates simply because you filed an uninsured motorist or PIP claim. Simply put, you pay extra for this added coverage, and an insurance carrier is not allowed to raise your rates for using the coverage for which you paid extra.

The thing you should take away from this section is that you should always explore all available insurance policies. In many cases, these additional policies will be the difference between

receiving full and fair compensation, and receiving less than what is fair.

MISTAKE NO. 9

Trying to Settle Your Claim Too Quickly

One of the most frequent questions I receive from prospective clients is, “How long will it take to settle my injury claim?” To this, the answer is almost always the same, “It's impossible to predict how long your case might take to resolve.” In fact, one mistake many clients make is trying to rush their claim or wanting to settle their claim too quickly.

In almost all circumstances, trying to settle your claim too quickly is a HUGE mistake. There are only a couple exceptions, which I will discuss below.

Truth be told, an insurance company will want to rush you into a quick settlement—they are notorious for pressuring injured people into taking a “quick settlement”. This is especially true for people who have suffered “soft tissue injuries”. These types of injuries are often subjective and very unpredictable. They often start off as a minor ache or pain, which increases over time. Moreover, these injuries can take months to diagnose and require expensive diagnostic tests such as MRI or other imaging tests. Once diagnosed, they can require months of physical therapy to resolve. Insurance companies know this, which is why they will often pressure an injured person into taking a quick settlement. Once you settle with the insurance company, they will have you sign a full and final release of your claims, which is a legally binding document that releases the insurance company from any further liability from the resulting accident. The problem with this

is that if you settle with the insurance company before the full extent of your injuries are fully known, you will not know how much treatment your injuries will require nor will you know how much your medical bills will be. This will almost always cause you to severely undervalue your injury claim, leaving you stuck paying the majority of your medical bills.

How Experienced Injury Attorneys Settle Injury Claims

Contrary to what some clients believe, or what they want to believe, hiring an experienced injury attorney to handle your claim does not speed up the process. In fact, it will generally take longer to resolve your claim if you have an attorney, but there are some good reasons for this.

First, an experienced injury lawyer will handle your claim correctly, which means it will take longer to resolve your claim than you would like. This is because an experienced injury attorney will not cut corners in handling your claim.

Second, an experienced injury lawyer will not settle your claim until you have completed treatment. The reason for this is that it's impossible to know the extent of your injuries, the full amount of your medical bills, or the pain and suffering you will have to endure until you have either: (1) made a full recovery, or (2) reached your "maximum medical recovery". Maximum medical recovery means that while you may not return to the level of health you enjoyed prior to the accident, you have recovered as much as you are going to. Until one of these two milestones has been achieved, it's impossible to know the true value of your claim. This is why a good injury attorney will not rush to settle a claim before you have completed your medical treatment, with very few exceptions.

Lastly, an experienced injury attorney will take the time necessary to collect all of the medical and billing records, and will take time to thoroughly review your medical records prior to making demand on the insurance company. Additionally, a good injury lawyer will take the time to draft a demand brochure rather than a simple demand letter that most inexperienced attorneys and general practitioner's use. A good demand package includes color illustrations of the injuries sustained by the injured party, along with excerpts from their actual medical records which highlight the extent of the person's injuries, including any future medical treatment that may be required.

For the above reasons, the proper resolution of an injury claim will probably take longer than most clients would like. However, a little patience is much better than settling your claim prematurely and being stuck with thousands in unpaid medical bills.

MISTAKE NO. 10

Failing to Obtain Proper Legal Representation

Last, but certainly not least, on the list of common mistakes injured people make that limits or destroys their injury claim is failing to obtain proper legal representation. When it comes to the most common mistakes for accident victims in relation to legal representation, there are three main mistakes:

1. Waiting too long to hire a personal injury lawyer
2. Not hiring the RIGHT type of lawyer for their injury claim
3. Trying to handle a serious injury case without a lawyer.

Waiting Too Long to Hire a Personal Injury Lawyer

In my experience, the longer an injured person waits before consulting with an injury lawyer, the more mistakes that person will have made by the time they finally do hire an attorney. Many of the mistakes a person may make are contained in this chapter. You may be asking yourself if these mistakes actually reduce the value of an injury claim. Simply put, you'd better believe they do!

It has become evident to me over the years that hiring a good, experienced injury lawyer as soon as possible will help you avoid the costly mistakes discussed in this chapter. The sooner you hire an experienced injury lawyer, the less opportunity there is for the insurance company to coerce you into making costly mistakes which can KILL your injury claim.

Another key reason for not delaying hiring an injury lawyer is that some types of injury cases, especially cases such as slip and fall, and truck accident cases, require immediate investigation. We have a full-time investigator we use to investigate and thoroughly document important aspects of our client's injury claims. The sooner my firm is hired, the sooner our investigator and staff can investigate and preserve important evidence in your case before it disappears.

You may be asking yourself how long is too long to wait before hiring an attorney? There is no specific time frame. Experience dictates that the best results are obtained when we are hired soon after an accident. Being retained soon after the accident gives my staff and I the chance to help our client avoid the costly mistakes outlined in this book.

One thing you must be aware of is if you are procrastinating hiring a lawyer or you are considering handling your claim on your own (which isn't recommended), there is a strict two-year statute of limitations for injury claims in Texas. This means you must either resolve your claims or file a lawsuit within two years from the date of your injury. If you fail to meet this two-year time frame, you will forever lose your right to bring your claim, with a couple of exceptions. One exception is for people who are injured as a minor. Minors have two years from the date of their eighteenth birthday.

If you've been injured in an accident, delaying hiring an injury attorney is one of the worst mistakes you can make. If you aren't sure whether or not you want to hire an attorney, you should at least consult with a personal injury lawyer regarding your case. We offer a free initial consultation with one of our experienced injury lawyers who can answer the questions about your claim. There is no obligation and no cost, so you really have nothing to lose.

Not Hiring the Right Type of Lawyer

This topic is important enough that I dedicate an entire chapter to it later on in this book (Chapter 8). Injured persons who are trying to change lawyers have often contacted me. Usually, the person has come to the realization that the attorney they hired is not experienced enough with injury cases like theirs or is not equipped to handle their particular case. In most cases, the injured person hired an attorney who doesn't specialize in injury cases and has now realized their attorney doesn't really know how to best handle their injury claim. Often times, they hired their mom's cousin who mostly does criminal defense but claims he also handles injury cases too. Or they hire the guy that

handled their friend's divorce . . . Oh, and he also does injury law as well. These "general practitioners" who claim to handle every type of case that walks through their door can quickly destroy an otherwise strong injury case. Ask yourself this: if you needed life saving brain surgery, would you let your dentist handle it for you? Of course you wouldn't! You would want a brain surgeon, someone who specializes in brain surgery and has honed their skills and performed countless surgeries in the past. This seems to be common sense, right? Yet, I have noticed that when it comes to handling their injury claim, people will hand their case over to their mom's cousins's husband who is a divorce lawyer but claims he can handle your injury claim.

There are several reasons hiring the wrong type of lawyer can kill your injury case. First, if you hire an attorney who doesn't specialize in injury cases, they will not know the ins and outs of cases like yours. Inevitably, they will make mistakes that could destroy or devalue your claim. Consider the following example:

About a year ago my firm received a call from someone who had been in an accident with an eighteen-wheeler. The driver of the eighteen-wheeler was clearly at fault. The injured person had sustained severe injuries that required a lot of medical treatment, including at least one surgery. He had also missed a lot of work as a result of his injuries. The person was calling because he thought his attorney was trying to settle his case for too little and wanted a second opinion. He told me the fact, faxed me a couple of documents, and told me about the outstanding medical bills. It took less than ten minutes for me to confirm his suspicion . . . the attorney was trying to settle the case for FAR below its true value. I explained to him how difficult

it is to change attorneys but told him I would reach out to his attorney to see if he and I could come to an agreement that would let the case be transferred to us. Come to find out, he hired the attorney at the advice of his mother (more like insistence of his mother). The attorney had helped his mother a couple of years go with a family law matter but also claimed to do “injury law” as well. It became apparent the attorney had no idea what he was doing. The attorney was trying to settle the client’s case for about \$50,000. Our valuation put the case at about \$250,000. To make a long story short, the “divorce lawyer” turned “injury lawyer” didn’t realize the client would have to reimburse his health insurance provider for all of the medical bills they had paid for (this is known as subrogation). If he would have settled the case for \$50,000, not only would the client have gotten nothing, but he would have ended up owing about \$20,000 in medical bills. We were able to take the case over and got the client more than double what the other lawyer was trying to settle the case for. We explained to the client that we could have gotten him much, much more had his previous attorney not made so many critical mistakes. This client’s decision to hire his mom’s divorce lawyer to handle his injury case ended up costing him about \$100,000. That is an expensive mistake I hope you will avoid at all costs. Just as you would go to a dentist for a toothache, if you’ve been injured in an accident you should seek out an attorney who only handles injury cases.

The second problem with hiring the wrong type of attorney is that most firms, including my own firm, are hesitant to accept a

case that is being handled by another attorney. In such cases the chances are good that the previous attorney has done something to ruin the case. After all, there is a reason the injured person is looking for a new attorney. Also, there is also a high probability that there will be a fee dispute because the injured person is already under contract with the current attorney. There is somewhat of a stigma associated with cases that have had more than one attorney involved, and most lawyers don't want to touch such a case.

If your injury claim is important to you, then it's important you do your homework when choosing an attorney to handle your case. Here is a list of "do" and "don't" items for you to consider:

DON'T:

- **Don't hire a lawyer or law firm that doesn't specialize in injury cases.** These attorneys or firms will sometimes claim they are a "full service" law firm and try to spin this as being a positive, when really it's a negative. What you're actually getting is a jack of all trades, master of none. Imagine if, heaven forbid, your child was diagnosed with cancer. Would you take them to be treated by a general practice physician or your local family doctor? Of course not! You would want to get them treated by the best pediatric oncologist you could, someone who specializes in childhood cancer. For the same reason, you should not trust your injury case to a "full service" law firm or a "general practitioner". I cannot tell you how many clients have called wanting to hire us after hiring a general practitioner who made mistakes that significantly damaged their case.

• **Don't hire a lawyer just because you often see them on television or billboards.** Often times you'll see attorneys on television beating their chests, claiming they'll get you respect and justice, that they have your back or they'll hammer the insurance companies. However, truth be told, in most cases, these attorneys you see on television all the time have so many clients that you will simply become a number . . . a little fish in a great, big pond. In fact, in many cases you will never even meet the attorney who claims to be handling your case. Instead, you will be pawned off onto a paralegal or case manager. In fact, most (if not all) of the attorneys you see on TV and billboards frequently run a volume factory, which we refer to as a "personal injury mill". They take pretty much any injury case that walks in the door, and they rely on having a large volume of cases settled each month in order to pay for the expensive TV ads and billboards. A good friend of mine worked at one of these "personal injury mills" for a long time, and he often told me that their motto was "Stack 'Em Deep & Settle 'Em Cheap!", meaning they would bring in a high volume of cases and settle them as quickly as possible. This means they will try to convince you to settle your case for practically the first low-ball offer the insurance company makes. One big downside to this is that insurance companies know these firms will settle for next to nothing and that they will rarely take a case to trial. This means the offer you will get is likely to be far below what your case is actually worth. Unlike these "injury mills", we have built a reputation with insurance companies as a law firm that is not afraid to take a case to trial. As a result, I believe we get better

offers from the insurance companies because they know we're not in the business of settling claims cheaply. Ask yourself, would you want an attorney who would stand up and fight the insurance company or one who would roll over and pressure you into accepting a low-ball offer? Oh, and remember this: Just because you see an attorney on TV claiming they "have your back" or they will "hammer the insurance company", doesn't mean that they will. I would be willing to bet that if you hire one of these "volume" law firms, you will feel like you are lost in the shuffle and are just another number. We believe our clients' cases are too important to be just another number, and that our clients deserve the personal service they desire, which is why we don't take every case that walks through our door. But, you had better believe that if we accept your case, you will get a legal team that will fight for your case and provide you with the personal service you expect.

• **Don't hire an ambulance chaser.** Many consumers don't realize that soliciting cases from injury victims is illegal. Case solicitation is illegal in most states, including Texas, and is referred to as "barratry". Illegal case solicitation occurs when someone who represents an attorney or law firm approaches a potential client and persuades him or her to hire a particular attorney. People such as police officers, ambulance drivers, or tow truck drivers will often solicit cases on behalf of attorneys who pay them for every case they sign up. This is not only unethical, but it is illegal in Texas. Ask yourself this: Would you really want to entrust your case to an attorney who was willing to break laws and ethical

rules to get your case? If they disregard their ethical duties to obtain your case, can you trust them to treat you ethically when it comes to handling your case?

Don't hire an attorney from a referral service alone.

Most state and county bar associations have a referral system to help people find an attorney. At first blush, this may sound like a great service. Additionally, there are many private websites out there that market themselves as a local attorney referral services (for example, www.attorneys.com). Here is the problem with nearly ALL attorney referral services: None of these services screen any of the attorneys they refer you to. As such, you have no idea whether or not the attorney is even qualified to handle your particular case. These referral services simply send you to whichever attorneys pay them a monthly or annual fee with absolutely no regard to the quality of the attorney. By using these referral services, you are going into the attorney selection process blind, and you have no way of knowing whether or not this lawyer is experienced in handling your type of case or how good of an attorney he or she is. Injury attorneys are not all created equally, and not all law firms are the same. If you care about the quality and experience of the attorney you hire, you owe it to yourself to do your homework to find the attorney that is right for you.

DO:

- **Hire a specialist.** Just like you wouldn't hire a dentist to fix a broken bone, you shouldn't hire a general practitioner or "full service" law firm to handle your

injury case. If you want the best results, you need an attorney experienced in battling the insurance company tactics.

- **Visit the attorney's website.** You can tell a lot about an attorney or law firm by visiting their website. Does the website just talk how great the firm or lawyer is, or does it try to provide you with helpful information about your type of case? Does the website offer free information, such as a free book or report to help educate you about the legal process? If you want an attorney who is focused on you as a client, their website should also focus on you by providing you with helpful information.

- **Hire an attorney you're comfortable with.** While your attorney doesn't need to be your best friend, you do need to have a good relationship with him or her. I truly believe first impressions are important. Before you hire an attorney, if you can, you should visit his or her office. How are you greeted? How friendly is the staff? How much personal attention do you receive? Remember, if you don't receive the personal attention you expect BEFORE you become their client, it's highly unlikely you will receive the personal attention you deserve AFTER you become their client. My staff and I go out of our way to do our very best to provide the level of service our client's expect and deserve. After all, we believe the client is an important part of our team, and we do our best to ensure they are informed and up to date regarding their case.

Trying to Handle a Serious Injury Case on Your Own

Throughout this book I've stressed over and over again that insurance companies are in the business of making money, lots of it, and they will do whatever they can to keep from paying you a penny more than they have to. I often tell my clients that a seasoned injury lawyer is an insurance adjuster's worst nightmare. Likewise, an insurance adjuster's dream come true is when an injured person tries to handle a serious injury on their own. After all, the insurance company wants to pay as little as possible for every claim, and there is no better way for them to do this than to go up against someone who is unfamiliar with injury law and the injury claims process.

Inevitably, when an injured person tries to handle his or her own claim, the claim will be resolved for FAR LESS than what the case would have been had an experienced injury lawyer been handling the claim. There are a couple of primary reasons for this.

First, because most injured victims have never handled an injury claim before, he or she will inevitably make many mistakes along the way. These mistakes can be costly and can significantly damage the value of an injury claim.

Second, an injury victim that tries to handle his or her claim on their own doesn't have any leverage against the insurance company. One of the best tools an experienced injury lawyer has in his belt is the threat of a lawsuit. However, if you are handling a serious injury claim on your own, the insurance company knows full well that you will not know how to file a lawsuit against them nor do you know all of the ins and outs of the litigation process, such as discovery, depositions, and expert testimony. As a result,

they don't really worry too much about you suing them, and therefore they have no incentive to make you a descent settlement offer. Trying to represent yourself against the powerful and wealthy insurance company is like showing up to a gunfight without a gun. As you can imagine, it won't end well for you.

So why would someone try to handle their claim on their own? The only logical reason is that they want to save themselves from paying the one-third attorney fee most injury lawyers charge to settle cases pre-litigation. However, there is one HUGE FLAW in this line of thinking. The Insurance Research Institute published a study which showed that, on average, injured persons will receive 4-5 times more if they retain an experienced injury lawyer. So, lets do the math. Assume an injured person is able to settle their injury case for \$5,000 (which is probably more than the insurance company would offer them). Let's look at the table below to see how this claim would go with and without an injury lawyer. Assuming the low end of what the Insurance Research Institute found, you would receive 4 times more with an experienced lawyer.

Without A Lawyer		With An Experienced Lawyer	
Settlement Value	\$5,000	Settlement Value	\$20,000
Attorney Fee	\$0	Attorney Fee	\$6,666
Net to Client	\$5,000	Net to Client	\$13,334

Notice in the example above that trying to save a few thousand on attorney fees actually would likely cost the injured person more than \$8,000. Just as most people wouldn't try to rebuild an engine on their own, or try to give themselves a root canal, it's not a good idea to try to handle your injury case on your own either. In the long run, it will almost always cost you more than you save by not hiring an experienced injury lawyer.



CHAPTER SIX

FILING A CLAIM: To File, or Not to File?

The decision of whether to pursue a personal injury claim can be a difficult one for many people. Not everyone who has a valid claim will want to pursue it. Many of those who have a valid injury claim struggle with whether or not they should pursue a claim and hire a lawyer. Sometimes they do not have sufficient information to help them with this decision. Injured persons are faced with a dilemma—to file or not to file, that is the question.

On one hand, they could take the opportunity to be compensated for their injuries, medical bills, and lost wages. On the other hand, sometimes people feel they should just move on and deal with the consequences of someone else's negligence, including paying their own medical bills. Other times, people struggling with this decision are torn and end up waiting too long to file a claim—this indecision will often times destroy their case.

Why the indecisiveness? Well, in my experience, there are several factors in play that may lead a person to be indecisive when deciding to pursue an injury claim. First, they may think it is against their principles to file a claim, especially for those who think there are too many “sue happy” people in our society. Some

people may wonder if pursuing a claim will be worth all of the hassle and trouble. Some people may be concerned whether or not they can afford an attorney; although this concern is usually because they do not understand how “contingency fee” injury cases are handled. Since no money is due up front in contingency fee cases, and you never pay a fee unless your case is won, being able to afford an attorney in an injury case should never be a concern. Some people are concerned about “going after” the other driver, or hurting or offending the other party, especially when the other driver’s actions were not intentional. Others may not want to file a claim because they think their insurance rates will go up, even though they were not at fault in causing the accident.

No matter the reason why some accident victims struggle with pursuing an injury claim or not, the decision is obviously a personal one that should be made after careful consideration, including a consultation with an attorney who specializes in injury cases (these consultations are almost always free, so there is no reason not to talk to an experienced attorney).

There are many questions I get asked frequently from those faced with the decision of whether or not to pursue their injury claim. Here is my advice in regard to some of the most common concerns injury victims face.

Receiving Compensation

The primary benefit in pursuing an injury claim is that, if successful, you will be compensated for your medical bills, lost wages, and the pain and suffering you experienced as a result of your injuries. But, the only way to receive this compensation is to

file a claim! Injury cases are “civil” cases, meaning there is no way to punish the “at fault” person other than monetary compensation. The civil justice system does not send people to jail, it cannot force them to do anything but compensate you for your injuries—and this compensation will generally come from their insurance company rather than the at fault person themselves.

If you are lucky enough to have good health insurance, being compensated for your medical expenses may not be much of a concern for you. However, if you either have no insurance or poor medical insurance, unexpected medical bills and out of pocket expenses can put extreme financial hardship on you and your family, and in some cases, can even bankrupt you! Yes, it happens frequently. In fact, the leading cause of bankruptcy in the United States is unpaid medical bills. These unpaid medical expenses are often the result of the negligence of another person and not the fault of the injured person themselves.

However, even if you have good health insurance, being injured in an accident can still cause you significant financial hardship. Most injured people are forced to miss work as a result of their injuries. The more serious the injuries, the more work you are likely to miss. As you can imagine, if you are unable to work and are not receiving a complete paycheck, your finances will begin to suffer. Missing work can put a real strain on your personal finances. In fact, I’ve seen injured people burn through their entire savings in a matter of a couple of months, all because of the carelessness of another driver. Generally, pursuing a personal injury claim will not solve your financial problems overnight, but it will almost certainly help you with your injury-related financial problems, including lost wages.

Another reason you should consider pursuing a personal injury claim is that you can be compensated for the physical pain and mental suffering you endured as a result of your injuries. Anyone who has been seriously hurt in an accident knows how real the pain, suffering, and trauma can be—both physical and emotional. The resulting pain and suffering is usually life altering, and in many cases, the injured person will never be the same again. Many people who suffer herniated discs in their neck or back will suffer with pain for the rest of their lives. Yes, pain can affect every aspect of your life. It can prevent you from doing things you used to enjoy prior to your accident. The loss of enjoyment from activities that once brought you pleasure, including playing with and caring for children, is a very real concept, and one for which you can, and should, be compensated for following an accident. Those that suffer serious injuries are often facing years and years of pain, suffering, and loss of enjoyment from activities they once loved.

The Benefit of Contingent Legal Fees

A clear advantage to pursuing an injury claim is the way that injury attorneys are paid. Personal injury contracts are almost always “contingent fee contracts”, which means the attorney collects no money from the client up front and only gets paid if he/she wins your case—meaning you receive compensation for your injuries.

The way our contingent fee contract at Barrus Injury Lawyers is written states that the law firm covers all of the necessary case expenses and time up front. If our firm is successful, and we win compensation for our client, then and ONLY then, are we paid a percentage of the recovery and reimbursed for our out of

pocket expenses we paid in pursuing and working your case.



In fact, Barrus Injury Lawyers offers a “**No Fee Guarantee**” which guarantees the following for our injury clients:

1. Clients never pay any out of pocket attorney fees or case expenses up front;
2. Clients never pay a fee, ever, unless we win your case; and
3. If for some unlikely reason we don't get compensation for our client (rare), he/she never has to reimburse us for any expenses we paid in handling their claim. We only get reimbursed for our expenses if we win their case.

In short, our injury clients never have to pay us a retainer fee when they hire my firm. They do not receive any billing statements from my firm each month. The only time we get paid is at the end of the case, and only after we have obtained compensation for you.

The contingency fee contract used in most injury cases provides some distinct advantages to the client. Most importantly, the contingency fee contract we provide to our clients allows EVERY injured person the opportunity to obtain justice and be compensated for their injuries, regardless of their financial situation. Unlike most areas of the law, we are able to offer our clients access to the legal system without consideration of their

financial ability to pay attorney fees. Without these types of contracts, very few citizens would be able to afford to hire an attorney to fight insurance companies and their battalion of aggressive, and often expensive, defense attorneys.

Some Common Concerns

While there are many reasons why some injured people wonder whether or not they should pursue an injury claim, there are several that I encounter most frequently. Here are a few of the most common concerns expressed by those who are unsure about pursuing an injury claim:

Filing A Claim Takes Too Much Time – Is It Worth It?

Another common concern injured people often share is their fear that the process of filing an injury claim will take too much time. Their real concern often seems to be whether or not pursuing a claim will be worth it in the long run. Most people lead very busy lives, and an injury claim is often another commitment competing for their time. However, while the injury claim process can take a considerable amount of time, having an experienced attorney on your side will help streamline the process and will greatly reduce the stress and demand.

How long will the claims process take? This, by far, has got to be one of the questions we get asked most frequently. The answer to this question depends upon several key factors:

1. Whether or not you have hired an experienced injury attorney

2. How badly you are injured
3. Whether or not your case goes to trial

1. Whether or Not You Have Hired an Experienced Injury Attorney.

While hiring an attorney will generally help move your case forward more quickly than if you tried to pursue your claim without an attorney, it's extremely important that you hire the RIGHT kind of lawyer for your case. Consider this: If you were told you had a brain tumor that needed surgery, would you try to find a dentist to operate on your tumor? Or, would you try to locate a brain surgeon who specialized in the specific type of surgery you needed? Both are doctors, aren't they?

Similarly, if you've been seriously injured in an accident, why in the world would you hire a lawyer who didn't specialize in injury cases? There are many lawyers out there who are "General Practitioners", which I often refer to as the "handy men" of the legal profession. They claim to be able to handle any type of case that walks through the door. Last week they were drafting wills, yesterday they were finalizing someone's divorce, today they may be handling a criminal matter, and tomorrow you want to entrust them with your serious injury claim.

Unfortunately, while these "handy men" attorneys may be legally "able" to handle your claim, I would certainly argue that most are not equipped, experienced, or knowledgeable enough to get you the results you deserve. In fact, I cannot tell you how many calls we get from people who want to switch attorneys because they hired a general practitioner (their mom's cousin, the

guy that handled their divorce, etc.), and the attorney has not handled their case properly. Sometimes we are able to help them, but in the vast majority of cases, the previous attorney has screwed things up so badly that their claim has either been ruined or so greatly impaired that we are not able to assist them. This is why it is important that you hire the RIGHT type of attorney for your claim. I always tell people to check out the attorney's website (if they don't have a website, that should be your first clue). If the attorney's website indicates they are practicing in more than one specialized field, such as criminal, family law, wills and estates, contracts, or business litigation, then they are usually a "general practitioner", and I would advise you look for an attorney who specializes in serious injury cases.

2. How Badly You are Injured.

I would bet that, in most cases, any experienced injury attorney would tell you, you should not settle your claim until you have completed treatment for your injuries. This is because it's impossible to tell how much your medical expenses will be, how much work you will have to miss, or whether there will be future medical care needed until you have recovered from your injuries (or recovered to the greatest extent possible).

In fact, if an attorney tells you they can quickly settle your case, even before you have completed treatment, I would strongly advise you get a second opinion before hiring him or her.

Because most cases cannot be settled until a person has completed treatment for their injuries, how badly you are injured will be a major factor in determining how long your claim will take to complete.

3. Whether or Not Your Case Goes to Trial.

While the vast majority of cases settle (usually between 95-99%) before going to trial, some do not. Whether or not your case goes to trial will be another factor in determining how long resolving your injury claim will take.

This is something that no attorney can tell you at the onset of your case (if they do . . . again, run!). The reason for this is because there are too many factors beyond the attorney's control, such as:

1. insurance coverage;
2. the insurance company involved;
3. the extent of your injuries; and
4. unforeseen circumstances.

As an injury attorney, I have learned that one of the factors which heavily influences whether or not I will have to file a lawsuit on behalf of a particular client is which insurance company the at-fault driver has. While all insurance companies are in the business of not paying claims and generally treat injured victims unfairly, some are far worse than others. There are certain insurance companies for which an attorney will need to take an aggressive stand against in order to get just compensation for their clients. For example, there was one insurance company that was denying almost every claim we had against one of their insured. We adopted the policy of simply filing suit against their insured in nearly every case. Once they realized we weren't going to take peanuts, nor their shenanigans and delay tactics, they dispensed with most of their games and started being a bit more reasonable.

Sue-Happy People – I’m Not One Of “Those People”

I’m certain at one point or another each of us has heard about a lawsuit that we felt was absolutely ridiculous. If you have ever heard of a frivolous case and thought that a person was just “sue-happy”, you are not alone. For those who have ever criticized someone else for filing injury claim or referred to them as “sue-happy”, filing their own injury may seem or feel hypocritical.

If this is a concern of yours, you need to keep one thing in mind: there is a big difference between legitimate injury claims and frivolous lawsuits brought by “sue-happy” people. Frivolous lawsuits, like one filed in Washington D.C. in 2007 where a man sued a dry cleaner for \$67 million over a pair of lost pants, give lawyers and plaintiffs alike a bad name. These types of lawsuits only add to the public perception that people who file injury claims are simply looking to make a buck, which in most cases, couldn’t be further from the truth.

As a personal injury attorney I am not sue happy, and I absolutely hate frivolous lawsuits. My firm refuses to represent people who are trying to pursue such claims. In fact, we have released cases in which it became clear our client misrepresented the fact that they were injured, even though we take a financial loss on these cases.

I feel that frivolous claims give a bad name to lawyers, our legal system, and to victims who have truly been injured. My firm and I only represent clients with legitimate legal claims. We pride ourselves in helping only those people who have truly been injured. I suspect that if you care enough to download and read

this book, you are not the type of person who's looking to pursue a frivolous lawsuit. In my experience, however, most people that have been injured in an accident simply want to be compensated for their losses, including medical bills, lost wages, and hardship that their injuries have caused to them and their families. If the previous sentence describes your situation, then our firm is here—ready, willing, and able—to aggressively fight the unfair tactics of the insurance companies on your behalf.

Another important thing to consider is that valid injury claims do not discriminate. Injuries know no color, socio-economic status, gender, or creed. Contrary to what some may believe, pursuing an injury claim isn't something limited to those who are "less fortunate". My firm has had the opportunity to represent injured victims from all walks of life, from a wide variety of financial backgrounds; from the very poor to the very wealthy; democrats and republicans alike. The one thing all of our clients have in common is that they were injured in an accident which was not their fault—and for that, they wish to be treated, compensated, and returned to the same level of physical and financial function they enjoyed prior to the accident. Simply put, all types of people bring injury claims, the vast majority of which only want to be compensated fairly for the losses they have suffered.

Important Note: Don't Wait Until It's Too Late!

If I could only give one piece of advice to every person injured in an accident it would be this: Don't wait too long to pursue your claim!

I have noticed many people are confused by something called

the “Statute of Limitations”. The statute of limitations is the amount of time allowed by law in which to bring a particular type of claim. Generally speaking, in Texas the statute of limitations for most injury claims is two years from the date of the accident. Sometimes injured victims believe they can wait for a while to pursue their claim because they have two years to do so. However, practically speaking, waiting so long to bring a claim can be very detrimental to your claim, and in some cases, waiting to bring your claim can totally destroy any claim you may have had.

If you have been injured in an accident, you should not wait to pursue your claim, simply because you have two years before it’s too late. In fact, most cases need some type of investigation performed soon after the accident, including interviewing witnesses, photographing damages, obtaining police reports, and arranging for proper medical treatment. The longer you wait to pursue your claim, the weaker your case becomes. Conversely, the faster you decide to pursue your claim, the sooner important facts, details, and evidence can be obtained and preserved. For example, in a recent motorcycle accident involving the death of a young man, we felt that the disrepair of the roadway was a major factor in causing the accident. As such, our investigators went to the scene of the accident and fully documented, with photos and videos, the poor condition of the roadway and where the accident had occurred. Within two weeks of the accident, the roadway was completely repaired. Had our client not acted quickly to hire us, and had we not fully documented the condition of the roadway, that evidence would have likely been lost forever.

I understand most people want a chance to ponder before making important decisions, and that is perfectly fine. However,

I would advise for you to at least seek a consultation with an experienced injury attorney because he or she can bring important things to your attention that you may have otherwise overlooked.



If you have suffered an injury because of another person's negligence, I feel that you owe it to yourself and your loved ones to at least consider making an injury claim. While filing a claim may not be right for everyone, you should at least weigh the benefits and drawbacks of filing a claim so you can make an informed decision. If you feel you need more information to enable you to make this personal, yet important decision, then I invite you to read this book, which I hope will provide many of the answers you need to make your decision. Additionally, if are unsure whether you have a claim or need additional information, our firm offers a FREE case evaluation without any obligation. One of our Texas injury lawyers can answer important questions for you. We invite you to call and talk to one of our attorneys about your case FREE of charge.



CHAPTER SEVEN

SO WHAT'S MY CASE WORTH?

Determining the Value of Your Claim

By far, the one question almost every injury client asks me up front is “how much is my case worth”? While this is one of the most important aspects of a personal injury lawyer’s job, it’s also one of the most difficult questions to answer, especially at the start of a case. In fact, an experienced and reputable injury attorney won’t be able to settle your case until he has determined the value of the case. After all, without knowing the value of a case the attorney can’t know whether the case should be settled or whether a lawsuit should be filed.

One of the most difficult things to explain to clients is that determining the value of their takes time and cannot be done at the start of the claim. Why? Because there are many factors that go into placing a value on an injury claim, many of which are not known and cannot be known until long after the injury claim as been initiated. In this chapter, I try to explain some of the most important aspects of case valuation and how each affects the value of your claim.

The Case Valuation Process

To determine the value of a case, there are several factors involved. These factors include:

1. State laws regarding recoverable damages
2. How a jury in your area feel about alleged damages

Texas Law – What Damages Are Recoverable in Texas

◆ Past Medical Bills

In Texas, an injured party is entitled to recover for past medical bills, provided the medical treatment is BOTH reasonable and necessary. To recover for medical expenses, however, there are three criteria that must be met. Medical treatment must be:

1. Necessary – Under Texas law, in order for you to be entitled to compensation for medical treatment, the medical treatment must be “necessary”. For example, a full body CT Scan is probably not “necessary” if the person only sustained an injury to his or her knee. In fact, this is one area insurance companies will often focus on, claiming that some of the treatment or tests undergone were not needed, and therefore, should not be compensated. Sometimes a jury will agree with the defense, which can limit the value of your case.
2. Reasonable – The reasonableness of treatment generally focuses on the amount medical providers charge for a particular service, test, or treatment. For example, if a chiropractor charges you \$300 per visit, but most of the chiropractors in a particular area only charge \$100 per visit, the \$300 charge is probably not “reasonable”. This is another area insurance defense lawyers will hone in on in order to reduce the value of your claim. They will argue

that the prices charged were not reasonable or the charges are inflated. Often times, juries will agree with the defense lawyers, especially in regard to hospital bills because hospitals often inflate the prices of their services, especially for people who do not have private health insurance.

3. Directly Related to the Accident – Lastly, the treatment you receive must be directly related to the accident. In legal terms, this is called *Proximate Cause*. For example, assume you were riding your bicycle on Monday, and you accidentally fell and broke your arm. Then, on Tuesday you hurt your neck when a negligent driver rear-ended you at a stoplight. If you filed a claim against the driver who rear-ended you, you would only be entitled to claim the medical expenses related to the treatment of your neck injury because the broken arm was not related to the rear-end collision.

◆ Future Medical Bills

Similarly, if your injury will require ongoing medical care in the future, you may be able to receive compensation for this future medical treatment, provided the three criteria outlined above are met (reasonable, necessary, and directly related to the accident). However, in addition to these three criteria, in order to receive compensation for future medical care you must also have an expert (a doctor) testify under oath that the future medical expenses claimed will “in reasonable medical probability occur”. This means, if you “might” need future care, you are not entitled to compensation for future medical treatment. There must be greater than a 50% chance you will need the future medical treatment in order to be entitled to compensation for future medical

care under Texas law. Therefore, the medical expert must testify that you will *probably* need the future medical care. Texas law thus distinguishes between the *possibility* of needing future medical care, from the *probability* of needing such care. If the claimant will possibly need future medical treatment, he or she is not entitled to recover for these expenses. If the claimant will probably need future medical treatment, he or she may be able recover for the future medical treatment that he or she will probably require.

◆ Lost Wages

In general, accident victims are able to recover compensation for the wages they lose as a result of the accident. This is true for individuals that are self-employed, as well as those employed by a business. However, lost wages are very difficult to prove for those who are self-employed. This is true because self-employed individuals generally don't have sufficient documentation, such as time cards and pay stubs, to document their lost wages. As such, self-employed individuals must generally rely upon tax-returns, and must generally demonstrate that the time they missed from work actually caused them to lose wages, or pay someone else to perform their duties.

◆ Pain & Suffering

In most injury cases, this is the most important part of the injury claim. It's also the most difficult type of damages to get insurance companies to agree too, and often difficult for juries to understand and agree to. While medical records and expenses will help demonstrate the types of injuries sustained, along with the level of pain experienced by the injured person, the best evidence to substantiate a claim for pain and suffering is the testimony of

those close to the injured person. Friends and family members are usually able to provide detailed evidence and descriptions regarding how pain affected the injured person's everyday life, and how this pain caused the victim to suffer.

◆ Loss of Earning Capacity

Loss of earning capacity refers to your ability to earn money in the future. Generally, this damage claim covers wages you will probably lose in the future as a result of your injuries. In most cases, an experienced injury lawyer will have to hire an expert economist to testify regarding loss of future earning capacity, including adjustments for inflation. Additionally, there may be future lost benefits as well, for which the expert economist would need to testify.

◆ Impairment

In serious injury cases, injuries will sometimes prevent a person from doing things they once enjoyed doing. This is referred to as "impairment", because your life or ability to perform certain activities have been impaired. For example, if you once enjoyed golf, or bowling, but can no longer do those activities because of a back injury, you may have an impairment claim.

◆ Disfigurement

Disfigurement generally refers to scars and other imperfections caused by an injury. If you have a visible scar, it's likely that you will have this scar for the rest of your life. These scars act as a reminder of the accident and injuries sustained. In my opinion,

these physical changes in appearance can be one of the most valuable parts of an injury claim, depending on the severity and location of the scars. For example, in a recent dog bite case we handled, a young college student was attacked and bitten by a vicious dog, which left scars on her leg and thigh. These scars were very visible, especially when our client wore a dress or swimming suit, which made her very self-conscious and embarrassed to wear a dress or skirt in public. The worse the scars are, and weather or not they are generally visible, the greater the value of a potential disfigurement claim.

◆ Loss of Consortium

Loss of consortium generally, but not always, refers to the inability to engage in intimate relationships with a spouse due to injuries sustained in an accident.

◆ Loss of Services

A claim for loss of services is separate and distinct from loss of consortium damages referenced above. Texas law defines household services as those that a husband or wife performs around the home and in caring for the family. Each spouse has a claim for the household services of the other, both past and future. For example, if a homemaker sustains serious injuries in an accident and is prevented from doing the normal household services she generally performs, including caring for the kids, her spouse may be entitled to recover for the value of these lost services. Generally, your attorney will need to have an expert, such as an economist, testify about the amount and value of the services that were lost.

How Soon Can You Calculate the Value of a Case?

You've probably heard the saying "patience is a virtue". This is especially true when it comes to placing a value on an injury claim. It's nearly impossible for your attorney to estimate the value of your case until you have completed medical treatment. Generally, medical treatment will be ongoing until the injured party has either completed treatment and is 100% better or has reached their "maximum medical recovery". The term "maximum medical recovery" means they are not 100% healed, but they are as healed as they are going to get. Once a person has completed treatment, the medical expenses can be compiled to determine past medical expenses.

Many times, an injury client will want the insurance company to pay them for the medical expenses before they have completed treatment. However, insurance companies will NEVER do this. They don't pay medical expenses or any other damages until the very end, either in a settlement or as a result of a jury verdict. Once the case is settled, the injured person will be required to sign a release, giving up any and all future claims related to the accident. Therefore, in a personal injury claim, once a case settles you cannot force the insurance company to pay for anything in the future. This is why patience is crucial. You must make sure all of your damages are fully discovered before you settle your claim, otherwise you forever lose your right to recover for those damages.

Consider the following example:

Not too long ago, I received a call from a potential client who had been injured in a car accident. The injured person had hired a general practice

lawyer to handle his car accident claim. The client went to a few chiropractor appointments, but his back still hurt. Nevertheless, believing the injuries were not very severe, the attorney pressured the injured party to accept a low-ball settlement offer. The client needed the money and agreed to the settlement, releasing any future claims related to the accident. Several months later, the injured party was still in a lot of pain, and it was later discovered that he had suffered from several herniated discs in his back. The injured party wanted to know if we could do anything to help him undo the settlement so he could receive compensation for the surgery his doctor had recommended. Unfortunately, there was nothing we could do to help this person because he had signed a release when he settled.

The moral of the story above is twofold and very clear:

1. Don't hire a "jack of all trades" lawyer who doesn't specialize in injury cases; and
2. Be Patient! Don't try to settle your claim before your damages are fully known.

As I stated earlier, injury settlements are permanent and cannot be reversed, which is why patience is crucial.

10 Factors Involved in the Valuation of a Texas Injury Claim

1. Liability – Who Was At Fault?

Sometimes determining liability is simple, other times it is fuzzy at best. However, in some cases, a party (including the injured party) can be found to be partially at fault. Texas follows a legal principle referred to as comparative

negligence, which means that as long as the injured person is not more than 50% at fault, he or she can still recover compensation for his or her injuries. However, the jury award could be reduced by the percentage the injured party was at fault for. For example, if you were found 20% at fault and would have received an award of \$100,000, it will be reduced by \$20,000, which would leave you with an award of \$80,000.

Generally speaking, a police crash report is the best evidence of liability for the accident. However, because insurance companies are in the business of making money by denying claims, they will often try to assign a portion of liability to an injured person, even when a police report may indicate that their insured driver is 100% at fault. I have experienced situations where the police report placed 100% of liability on the other driver, which included the police issuing the other driver a citation, yet the driver's insurance company continued to maintain that the injured party was 30% liable for the accident. It wasn't until our firm was hired to combat the insurance company that they accepted full liability for the accident. This is one reason why it is wise to have an experienced injury attorney on your side.

2. Medical Treatment – Did You Seek Treatment Promptly?

Delaying going to the doctor after an injury is one of the worst things you can do and is also one of the fastest ways to ruin your injury claim. Any delays in seeking medical treatment give the insurance company lawyers a basis to argue that you were not injured, or that if you were injured, your injuries were not as severe as you are now claiming.

While there may be many reasons a person may have delayed medical treatment promptly following an accident, both insurance companies and juries believe that someone who is truly injured will seek prompt medical attention. Delaying by more than a couple of days can severely harm your case in front of a jury. Insurance companies and their representatives know this, and they will latch onto this delay in an attempt to reduce or deny compensation.

Following an accident, many people try to “tough it out”, and choose to deal with their pain using home remedies or over the counter medication, believing that their aches and pains will eventually disappear. While this may be true in some cases, it is ALWAYS a good idea to go get checked out by a doctor following an accident. If you don’t have insurance, we recommend visiting your local emergency room, just to ensure that you get evaluated and that your injuries are well documented. Your attorney can usually work with the hospital to reduce your bill and delay collection of the bill until after your case is settled.

3. Injuries – How Serious Were Your Injuries?

The gravity of your injuries is arguably the single most important factor in the valuation of your injury claim (assuming you weren’t liable for the accident). Obviously, the more serious your injuries, the more medical expenses will have accrued, the more time you will have missed from work, etc. Some cases involve “soft-tissue” injuries, which are difficult to diagnose and detect without an MRI or CT Scan, but will take weeks or months of treatment before pain subsides. These types of injuries are hard to value until

diagnostic testing takes place because they range from very minimal to very serious. More objective injuries, such as broken bones, cuts, etc. are more easily diagnosed, and can add to the value of a case.

The most catastrophic injuries involve death or permanent disability, which will require ongoing future medical treatment for the rest of the injured person's life. Some of the most common catastrophic injuries include brain injuries, paralysis, blindness, or loss of limbs.

4. Pre-Existing Medical Conditions

Many times people who are injured in an accident will have a pre-existing condition that gets re-injured or aggravated during an accident. For example, if you hurt your back in college, and your back is hurt again ten years later as a result of a car accident, the insurance company lawyers will use your prior back injury to claim that the accident did not cause your injury. The insurance company lawyers will make sure a jury knows about your prior injury, and they will try to persuade the jury you were already hurt and that your injury wasn't caused by the accident.

While having a pre-existing injury doesn't mean you cannot recover compensation for your injuries, it does mean you will have to FIGHT tooth and nail against the unfair tactics the insurance company will employ against you. This is where having an aggressive and experienced injury lawyer on your side is invaluable to preserving your claim and receiving fair compensation for your injuries.

5. Did You Follow Treating Physician's Advice

Juries and insurance company lawyers alike expect an injured person will follow their doctor's advice in regard to the prescribed treatment. Missing doctor appointments and having unexpected gaps in your treatment are one way injury victims often harm their ability to recover for their injuries. If you need to miss a doctor's appointment, it's best to call and reschedule it as soon as possible so that it doesn't go into your medical record as a "no show".

6. Will You Require Future Medical Treatment?

In cases where you will require future medical treatment, your medical records should indicate this. Additionally, the value of these future treatments should be included in your medical records as well. If your doctor or surgeon believes you will require treatment in the future, it should be noted in your records, along with the estimated costs of such treatment.

However, this is one area where inexperienced attorneys, including "general practice" attorneys, often make mistakes which ruin the value of an injury claim. Most doctors don't automatically include this information in your records. An experienced injury attorney knows how to request the appropriate documentation in order to account for any future medical expenses you will likely incur, which can then be added to the value of your claim.

7. Ongoing Pain, Permanent Disabilities, or Disfigurement?

Another important consideration in valuing an injury claim is the extent to which the injured person has healed. Where possible, before settling an injury claim, the injured person should be completely recovered from their injuries. However, in some cases this is not possible. A person may have reached their “maximum medical recovery”, meaning they are as healed as they are going to be but will never be the same. In these cases, a person generally has a permanent disability, which will require compensation for future damages. Likewise, disfigurement injuries, such as scars or alterations in body or bone composition, should also be accounted for in the valuation of an injury claim.

8. Lost Wages – Did You Miss Work Because of Your Injuries?

If you have missed work as a result of your injuries or because of treatment in connection with these injuries, you are entitled to compensation for your lost wages. However, your claim for lost wages must be accompanied by supporting documents from your employer that demonstrate the amount of work you missed, your rate of pay, and that the missing time was related to your injuries or treatment.

For individuals who are self-employed, tax returns are generally the best way to demonstrate the extent of lost wages.

Additionally, in most cases, a lost wage claim will require support from your treating doctors regarding your inability to return to work. It's imperative that you keep detailed records regarding lost time from work and documentation your medical care providers give you in regard to your ability to return to work.

9. Medical Bills – How Much Are the Total Medical Bills?

Generally speaking, the higher your medical expenses, the more your injury claim will be worth. Your medical bills are calculated according to what has either been paid or the amount of actual outstanding bills (bills you still owe). This is because Texas passed a horrible law referred to as “Paid vs. Incurred”, which limits the amount of medical bills you can claim to the actual amount paid (usually by your health insurance company) or the amount of outstanding medical bills (bills you still owe).

The effect of this is that juries will often use the amount of medical bills as a test for assessing the severity of your injuries. However, if you have health insurance, your health insurance company has contract deals with hospitals that reduce their payments, often by 50% or more. The practical effect of this is that a \$20,000 medical bill will be paid at \$10,000. This means, a jury is using the \$10,000 amount as a measuring stick for the severity of your injuries, which likely sends the message to the jury that your injuries were half as bad as they actually were. This law prevents your attorney from informing the jury of the true value of the medical bills, often causing the jury to be misled in regard to the seriousness of your injuries.

This is just another example of laws passed in Texas that are designed to prevent injured victims from obtaining fair compensation for their injuries.

10. The Venue in Which Your Case Will Be Tried

Where your case will be tried (if it proceeds to trial) is another important factor to consider in the valuation of an injury claim. This is because some Texas counties are much more friendly and sympathetic to injured victims than others.

This matters because the insurance company lawyers will know whether or not the county in which your case will be tried is friendly to injury victims or not. If it is a county that is not friendly to injury victims, you will likely receive a lower settlement offer than if you were in a county that was friendly to injured parties because a jury would likely award you less if the case were to go to trial.

While it is easy to list some of the general factors that go into the valuation of an injury claim, each claim is different, and thus it is impossible for any reputable injury lawyer to tell you the value of your case at the onset of your claim. You should be very cautious and weary of any attorney who tells you your claims value at the onset, because it is doubtful that he or she has much experience handling injury claims.

Additionally, friends or family members often have told clients their case should be worth a certain amount because they know someone in a similar accident who got such an

amount. Because no two claims are the same, and the factors that go into case valuation differ greatly, you should resist the inclination to compare your case to another person's. Hiring an experienced injury attorney is the best way for you to ensure you're receiving fair compensation for your injuries.



CHAPTER EIGHT

WHAT THE RIGHT LAWYER CAN DO FOR YOU & HOW TO CHOOSE THE RIGHT LAWYER FOR YOUR CASE.

Being injured in an accident can be a traumatic experience for most people. Sadly, I have seen this traumatic experience compounded when people hire the wrong kind of lawyer for their case. That is why I wanted to discuss how to choose the right lawyer for your case and how hiring the right type of lawyer can help make your experience less traumatic.

Hiring the Right Kind of Lawyer

Over the years that I've practiced injury law, I have witnessed my clients' troubles following serious accidents, and I have seen firsthand the stress and anxiety injuries have caused them and their families. Often times, they are in wheelchairs or crutches, and have not been able to work to provide for their families. The medical bills pile up, often on top of their regular monthly bills, especially if their accident has caused them to miss work. In addition to all of the financial stress comes the added strain of trying to focus on recovering from their injuries. Many of my clients wonder if they will ever recover, both physically and financial, from the effects of their injuries.

To make matters worse, I frequently hear from people who have only had their stress multiplied by hiring the wrong kind of lawyer for their case. I know you've heard me say this over and over again in this book, but having the *right kind* of lawyer can significantly reduce your level of stress. Here's why.

An experienced injury lawyer will know how to work with medical providers and will know the tools available to help alleviate financial strains to the farthest extent possible, during your recovery process. Likewise, an experienced injury attorney will know how to move your case forward in the fastest and smartest manner, without compromising your claim. I cannot tell you how many times I see people who have hired an attorney that practices all sorts of different kinds of law to handle their serious injury case, only to discover later that the attorney really wasn't qualified for their particular type of case. Do you need that added stress? I didn't think so. You can save yourself a lot of stress, agony, and time by selecting the *right type* of lawyer for your case. You need a lawyer who specializes in handling injury cases. Here are some tips to help you out.

Tip No. 1: Visit the Attorney's Website.

Visit the attorney's website and look for the following clues as to whether or not they specialize in injury cases:

- Under their practice areas, do they also take divorce, criminal, business, or other types of cases that aren't related to the injury of a person? If so . . . RUN! These types of attorneys are "general practitioners". My good friend calls them "doorway lawyers" because they take any case that walks through the doorway. Save yourself a lot of stress,

and ensure the best results possible by hiring a lawyer that handles only injury claims.

- Is the attorney's website up to date, modern-looking, and mobile friendly? If so, chances are they are on top of their game. Or, does their website look like it's stuck in the 90's? An outdated website, or NO WEBSITE at all, is a prime indicator of an attorney who may be stuck in the past. Unfortunately, the good old days of simply making a demand and having insurance companies pay a fair settlement are LONG GONE! Thanks to the powerful insurance company lobbyists, and Texas Tort Reform, insurance companies have no incentive to offer fair settlements. In today's legal climate in Texas, your injury attorney MUST be on top of his game, otherwise you will not be treated fairly. I believe that an attorney whose website is stuck in decade's past is likely not on top of his or her game, and if that's true, your case could be significantly damaged by hiring such an attorney.

Tip No. 2: Set Up a Free In Person Consultation

Nearly all injury lawyers in Texas offer free initial consultations for injury cases. Request a free consultation, and do it in person rather than by phone, if possible. In the consultation, make sure to ask the following questions:

- Do you handle any other cases besides injury cases? If so, ask them what other types of cases. If they say family law or criminal cases, they are a "doorway lawyer", and I would keep looking.

- Will I get to meet with the attorney handling my case? Often times, in a volume law firm (a firm that focuses on quantity rather than quality), you will NEVER even get to meet with an attorney. Instead, paralegals and case managers will handle your case. In most instances, the goal of these firms is to settle cases fast and cheap! Is that how you want your case handled? Firms like this are called “Personal Injury Mills”.

Tip No. 3: Beware of Hiring a “Personal Injury Mill”

Sadly, many accident victims fall into the trap of hiring an attorney without finding out if he’s right for their case. They assume that because they see the attorney on TV all of the time, thumping his chest, claiming he’s the top trial attorney, promising to hammer the insurance company or that he will have your back. However, in many cases, the attorneys you see on TV frequently operate something many people refer to as “personal injury mills”, meaning they rely on the sheer volume of cases in order to make a profit and pay for those expensive television ads. A friend of mine used to work for a prominent injury attorney in San Antonio, one of the ones you see on TV and the side of buses everywhere you go. My friend told me that their motto was “stack ‘em deep & settle ‘em cheap”. Meaning, bring in as many cases as possible (anything that walks through the door) and settle it quickly (often well below the actual value of the case).

Why would they settle a case for far below its value? After all, don’t they make more money if they settle it for more? Here’s why: Getting the most value out of a case takes a lot of hard work. Insurance companies don’t just roll over and pay fair value. Their initial offers are almost always far below the actual value of the

case, and they fight tooth and nail to pay as little as possible on a claim. Sadly, because these “injury mill” law firms have to settle a certain volume of cases every month to keep the lights on and pay for those expensive TV ads, they often settle cases far below what they are worth. Again, is this how you want your case handled? Or would you prefer a law firm that doesn’t take every case, but gives 100% to every case they take? We are very selective of the cases we accept, which allows us to dedicate the time and resources needed to obtain the very best results for our clients.

Tip No. 4: Know Who Will ACTUALLY Handle Your Case

Another thing you need to know when choosing an attorney or law firm to handle your case is “who will actually be handling your case”. Sure, the attorney’s name might be on the sign out front, but will you actually get to meet with him or her? In many instances your case won’t be handled by an attorney at all, especially with the injury mill attorneys you see on TV all day. Instead, your case is handed off to a paralegal or “case manager”, with very little attorney involvement on your case at all. Don’t be afraid to ask who will be handling your case or when you get to meet with the attorney. If you don’t get a reliable answer to this question, you may want to look elsewhere.

2 Ways in Which Accident Victims Cheat Themselves

The bottom line is, you need to put some effort into finding the right attorney to handle your case, and failing to do so could cost you thousands off of your eventual settlement.

In the years I’ve been practicing injury law, I have noticed that there are two main areas in which accident victims tend to cheat

themselves out of a fair settlement:

1. Trying to handle their case by themselves; and
2. Hiring the wrong attorney for their case.

First, the main function of an injury attorney is to win cases for their clients and to maximize the amount of compensation their clients receive. Sometimes accident victims think this is something they can achieve on their own. However, contrary to what some accident victims may believe, in today's legal climate this is something you cannot achieve without the experience of a good injury attorney. Will you be able to talk to the insurance company on your own to resolve your case? Yes, you could, but the insurance company will give you peanuts for your case if you are handling it. I think victims cheat themselves by trying to handle their own injury case, especially considering that their time and efforts are best spent healing from their injuries and being there for their families during what is usually a very tough time.

However, you shouldn't hire just any attorney to handle your injury claim. You need an attorney who is best suited for your case and has your best interest at heart. A good injury attorney knows how to work up a case so that it is valued higher with insurance company adjusters. A good injury lawyer doesn't simply hand your case off to a case manager and forget about it. You owe it to yourself and your family to find the right attorney for your case.



CHAPTER NINE

CLIENT-CENTERED REPRESENTATION:

What We Do For Our Clients & Why They Love Us For It

I love what I do for a living, particularly the fact that I get to help people while earning a good living for my family. Unfortunately, not all attorneys can say the same. After all, how satisfied with his work can an insurance company lawyer be whose job it is to fight against paying fair compensation to injured people, including widows and orphans? I can't see how there would be much satisfaction in that.

I also take pride in the many things my staff and I do to put our clients in the best possible position to receive fair and adequate compensation following an accident. My goal is always to do those things that will help us maximize the value of a particular case, which takes a lot of work but benefits both our clients and our reputation as injury attorneys. I always strive to produce better results than other attorneys out there, and I believe my clients feel the sense of commitment and dedication my staff and I have to each of their cases.

This is why we have a fivefold mission that we strive to achieve with every client:

1. We treat every client with respect;
2. We give every case our best effort;
3. We strive to keep every client informed on his or her case;
4. We treat every client as an important part of our team; and
5. We will NEVER advise a client to settle their case unless we believe it is in their best interest to do so.

What We Do for Our Clients

While I cannot speak to how other law firms handle their cases, I can give you a glimpse into some of the things my firm does to help our clients achieve the best results possible. Our goal is always to provide superior legal service so we can maximize the value of each of our clients' cases. Here is a partial list of some of the things we do to meet our goals:

- Meet with every client to review the accident and injury facts, review the legal process, and explain what we will do to help them
- Open a claim with the insurance company and confirm what coverage exists for the incident
- Investigate every claim, which may include photographs, videos, visiting the accident scene, documenting injuries, photographing property damage, interviewing witnesses, and more

- Provide periodic statements to the insurance company, including periodically sending them medical bills, etc., which helps them set the proper reserves for the claim and helps facilitate better settlements.
- Assist client in obtaining proper medical care, especially for clients who may not have health insurance coverage
- Work with medical providers to ensure proper documentation of medical treatment, which helps protect the value of client's claim
- Hire experts to explain medical treatment and other facts that may be in dispute
- Review and analyze insurance policies for hidden or additional coverage that may be available
- Handle medical liens and reimbursement issues that might be claimed by hospitals, doctors, health insurance providers, or other entities (in many cases these providers may have a right to be reimbursed out of any recovery received from a third-party insurance settlement)
- Analyze liability, damages, and medical expenses to determine the probable value of each client's claim
- Determine whether or not case can be settled, or whether a lawsuit should be filed.
- Etc., Etc., Etc.

Obviously, the above list is not a complete listing of everything we do for our clients. In reality, we could keep going with pages and pages of all of the things we do to help our clients get the best possible results in their case. But, I will say that one of the most important jobs we do is take much of the burden and stress off of our clients' shoulders, keeping them informed about their case and helping them progress through the treatment process.

“What Our Clients Say About Us”



Posted by [Juliana M](#)
Trevino
December 18, 2015
● Hired attorney

Disability Claim Hearing

My lawyer represented me for a social security hearing. It took no more than 30 minutes of questions by the judge. My lawyer made some comments to the judge and an employment specialist was called, and I was deemed not able to work. Before the hearing my lawyer explained to me a very well thought out argument on behalf of my case



Posted by [Alyssa](#)
December 19, 2015
● Hired attorney

Awsome attorney

Mt. Barrus has represented me in a few cases in the past yet has not disappointed me with the outcome. I would refer Mr. Barrus to my friends and family if they were ever in a hopeless situation. Thank you Mr. Barrus for your time and endless work. You are greatly appreciated.



Posted by [Bernardo](#)
December 12, 2015
● Hired attorney

Communication and Dedication

If it wasn't for the Commitment and Dedication of your team to help us feel positive of my car accident after I felt hopelessness in my future, Stacey Barrus made it happen. I did not know where else to get help from. Thank you for your efforts.



Posted by [Alyssa](#)
December 14, 2015
● Hired attorney

Honest and Professional

I needed advice involving a debt collector and posted my question on Avvo. Stacey Barrus answered me right away and was very knowledgeable, kind and patient. He gave me some great information and was very professional and honest with me. If ever I am in need of a attorney again, or know anyone needing one, I would recommend Stacey Barrus in a heartbeat.



Posted by [Alyssa](#)
Cleary
December 17, 2015
● Hired attorney

Great Lawyer

He helped me through thick and thin, As I was looking for lawyers with my case, I went to my family lawyer instead and he specialized in injury cases. I was hit by a drunk driver and hospitalized. He was very honest with the best routes with my case and helped me get through my settlement as smoothly as possible. He is a great lawyer and I would recommend to anyone, anytime.



Posted by a client
December 18, 2015
● Hired attorney

Professional and reliable!

Stacey is your go to for car wreck cases. Not only is he extremely professional, he works hard to make sure you are completely taken care of. With all of the over the top car wreck attorneys out there, it's good to know there are still reliable attorneys who will take you and your injuries seriously. I would definitely use him again!



Lizette Taylor
a week ago

★★★★★ Efficient and competent. Made the whole process a lot easier. Would recommend.



Brooke Strangman
3 months ago

★★★★★ They were great with my case. I went through a lot with my injury and the loss of my car. But with patience and their determination, I received what I deserved. I would recommend them not just for injury, but for any legal matter I have. I am from San Antonio, but being military I am away from home and they still made it easy for me to get my lawsuit settled. I appreciate all they have done for me, and I would recommend them to anyone, anytime!



Whitney Pines
3 months ago

★★★★★ Awesome work. I would definitely return in the future. They handled my case and did an excellent job at that. The staff is friendly and explained everything step by step. I would definitely recommend them to friend's and family.

B

Beauvais Guzman
5 months ago -

★★★★★ Barrus Injury Lawyers do a great job in handling their injury and disability cases. I have first hand experience with Mr. Barrus, and I would highly recommend him to anyone who has been injured in an accident. He won't just settle your case cheap, but will fight for you, which many of the lawyers you see on television won't.



Stephanie Harrison
4 months ago

★★★★★ Loved my experience with Barrus Injury Lawyers. I love how they are very organized, and keep you informed of your case with monthly case update letters and emails. Also, I appreciate that they know how to deal with all of the insurance... More



Robert G.
3 months ago -

★★★★★ Great experience working with Stacey Barrus. Started a new company and needed an LLC, Stacey did an awesome job explaining everything to me and also helped me with some changes on an error I had on my other company's LLC that was done elsewhere. Totally recommend this place.

M

Mr. Gonzalez
10 months ago

★★★★★ Great Experience. Mr. Barrus and his staff went out of their way to educate me about the process with regard to my injury claim and helped me know what to expect. I never felt like just a number (like I did with another attorney a few ... More

A

Wade Justice
4 months ago

★★★★★ Mr. Barrus was a pleasure to work with. He was very professional and knowledgeable. He kept me informed and made sure to expedite everything. I highly recommend Mr. Barrus to anyone who needs an excellent lawyer.



CHAPTER TEN

INSURANCE COVERAGE 101: What You Need to Know About Insurance Coverage in Texas

Insurance coverage is one area of an injury claim that tends to be a little confusing to folks, including some attorneys who don't specialize in injury claims. However, there are two main reasons that a basic understanding of Texas insurance coverage is important:

1. To help you purchase the right type of insurance coverage **BEFORE** an accident occurs
2. To help you understand how available insurance coverage affects your injury claim **AFTER** an accident has occurred

While I could write a whole book on nothing but insurance coverage, that is not my goal with this chapter. Instead, in this chapter I provide what I feel are the most important elements of the insurance policies accident victims will most likely deal with. In my experience, the following types of insurance coverage are most commonly triggered in cases involving personal injury:

- Automobile Insurance
- Homeowner's Insurance

- General Liability Insurance
- Umbrella Insurance

Automobile Insurance

Automobile insurance is by far the type of insurance coverage the majority of people are familiar with. However, in my experience when people consider buying automobile insurance, their primary focus is “how much is it going to cost me each month”? While the monthly premium is important, there are a lot of other concerns every Texan should be aware of when choosing to purchase automobile insurance. Unfortunately, many of my clients have had to learn this lesson the hard way following an accident.

My goal is to help you understand how to choose your own auto insurance, and how the automobile insurance of the at-fault driver affects your case.

Automobile Liability Insurance

In most states, including Texas, drivers are required by law to carry liability insurance on their vehicles. Liability insurance pays for damage caused to someone else or their property if the damage was caused the negligence of their insured driver. Presently, Texas law requires the following minimum coverage limits:

Minimum for each injured person	\$30,000.00
Minimum per incident bodily injury limit	\$60,000.00
Minimum property damage coverage	\$25,000.00

If you are involved in an accident where another driver is at fault, and that driver has only the state required “minimum limits”, the most you can recover is \$25,000 for your property damage (vehicle and contents) and \$30,000 for your bodily injury claim. Let’s consider the following example:

Fred Flintstone buys a new car at Dino’s Motors. He pays \$32,000 for it and finances 100% of the purchase price. While on his way home, Barney Rubble runs a stop sign and hits Fred on the driver’s side. Fred’s new car is total loss (“totaled”). Fred is hospitalized for nearly a month, racking up medical bills of nearly \$100,000. Barney, who was found to be negligent, has only minimum limits on his liability policy. In this scenario, assuming Fred didn’t have any additional coverage of his own, the damage for Fred’s injuries and property damage would be distributed like this:

Damage	Liability Insurance	Unpaid Balance
Fred’s Car	\$25,000.00	\$7,000.00
Fred’s Medical Expenses	\$30,000.00	\$70,000.00
Total Unpaid Balance Fred Must Pay:		\$77,000.00

Notice how Barney’s minimum limits insurance policy is insufficient to cover all of Fred’s damages. Fred has two choices: (1) he can pay the \$77,000 shortage himself or (2) he can file a lawsuit against Barney for the unpaid balance. However, as a practical matter, option 2 is rarely a viable option. Simply put, most people who carry minimum

liability coverage don't have enough assets to satisfy a judgment, and therefore Fred will most likely end up owing \$77,000 for an accident that was not his fault. Does that seem fair? Of course not, but that is the law in Texas. However, there are things you can do to protect yourself BEFORE you are involved in an accident (keep reading).

So, how could Fred have protected himself in this scenario? He could have done two things. First, he could add Uninsured & Underinsured Motorist and Personal Injury Protection coverage to his own auto insurance policy (explained below). Second, he could obtain Gap Insurance (explained below).

Uninsured Motorist (UM) & Underinsured Motorist (UIM) Coverage

Uninsured and Underinsured motorist coverage, referred to as UM or UIM, is additional insurance protection you purchase as part of your own automobile insurance policy. This coverage compensates you for damages caused by a negligent driver who is either (1) uninsured or (2) has insufficient coverage to fully compensate you for your damages. UM/UIM coverage also protects you from damage caused by hit-and-run drivers, provided that you report the accident promptly to the police.

UM/UIM coverage also provides coverage for not only you but also your family members, passengers, and anyone else driving your car with your permission. Likewise, your own UM/UIM coverage protects you if you're involved in an accident while driving someone else's car.

Under Texas law, insurance companies are required to offer you UM/UIM coverage. If you choose not to purchase UM/UIM coverage, you must reject this coverage in writing. However, in my opinion, you SHOULD NOT reject this coverage. I believe rejecting UM/UIM is one of the biggest mistakes drivers make, especially in Texas. It's been estimated that more than 30% of drivers on Texas roads are driving without any liability insurance. While these people are clearly breaking the law, that doesn't help you much after you've been injured by an uninsured driver. Similarly, it's estimated that another 30-40% of Texas drivers are driving with "minimum limits" policies. Therefore, if you're in a serious accident in Texas, there is a 60% chance the at-fault driver will not have enough insurance coverage to fully cover your damages. For this reason, I recommend every Texas driver purchase UM/UIM coverage as part of their auto insurance policy. It's not very expensive, and you will almost certainly need it at some point in time.

Personal Injury Protection (PIP)

Personal Injury Protection, referred to as PIP, is no-fault insurance you purchase as part of your own auto insurance policy. It provides reimbursement for medical expenses and up to you and any passengers of your vehicle, regardless of whether you or another driver was at fault for the accident. It also covers up to 80% of lost wages incurred as a result of an auto accident. However, PIP only covers the policyholder's vehicle and passengers. It does not provide coverage to the other driver or his/her passengers.

In Texas, your insurance company is required to offer you a minimum of \$2,500 in PIP coverage. However, you can, and

should, purchase more. As with UM/UIM coverage, if you don't want it, you must reject it in writing.

The great thing about PIP is that it covers your medical bills, even if they are already being paid by your health insurance. You can simply submit the same medical bills to your insurance carrier and receive the PIP payment yourself. Texas has very strict laws governing the payment of insurance benefits, which requires the insurance company pays PIP claims in a timely manner. If they fail to do so, they face stiff penalties by the Texas Department of Insurance and could be sued for bad faith insurance practices. The money from PIP is great for helping to alleviate the financial stress which often accompanies a serious car accident.

In my opinion, EVERY TEXAN should have PIP coverage. I encourage every client of mine that has PIP coverage to file a PIP claim. A common concern of clients is that they don't want to make a claim on their own policy because the accident was not their fault. The obvious fear is that their rates will be increased if they file a PIP claim. However, PIP is no-fault insurance, which means your rates will not increase for filing a PIP claim. Moreover, it's against the law in Texas for an insurance company to raise your rates or drop you from coverage for filing a PIP claim. I often explain to my clients that having PIP coverage and not using it is like purchasing a winning lottery ticket and then refusing to cash it in! Sounds crazy right? Well, likewise, it's crazy to have PIP coverage and not use it . . . after all, you've been paying extra for PIP coverage, so if you have it you should use it!

Medical Payments Coverage (Med-Pay)

Of the several optional coverage options available to Texas

drivers, Med-Pay is the only one I don't recommend. Med-Pay coverage is a complete waste of money, and I advise clients against purchasing it. Instead, I recommend they purchase PIP protection. I think PIP coverage is better for two reasons.

First, Med-Pay must be paid back if you are awarded damages from an injury claim. Your Med-Pay carrier has a lien against your injury claim. Essentially, you are paying Med-Pay premiums for nothing more than a loan. Because you pay these Med-Pay premiums month after month, year after year, this loan is far too expensive. However, if you are in a car accident with someone who has no insurance, then you are not required to repay the carrier for medical expenses.

Second, Med-Pay can only be used to pay medical bills and does not reimburse lost wages like PIP does. Because PIP covers both medical bills and lost wages, and does not have to be paid back, if you receive a settlement your money is better off spent purchasing PIP coverage. Skip the Med-Pay, and double up on the PIP.

Collision Coverage

Collision coverage pays for damage to your vehicle following an accident. Collision insurance pays for vehicle damage or replacement, regardless of who was at fault for the collision. In the event that your car is a total loss, collision coverage will pay to replace it. However, in Texas, the collision carrier is only required to pay you fair market value for your car, minus your deductible. This means, if your totaled car has a market value of

\$15,000, but you owe \$20,000, the insurance carrier is only required to pay the \$15,000 market value. Because of this, I

recommend Gap Insurance for those who owe more on a vehicle than the current market value (usually those who have purchased brand new cars that are only a couple of years old). I discuss Gap Insurance more below.

Comprehensive Coverage

Comprehensive coverage is a type of insurance which covers the cost of repairing or replacing damage to your vehicle by occurrences other than a collision. The most common comprehensive claims arise from theft, fire, hail, flood, vandalism, etc.

As with collision insurance, a total loss claim under comprehensive insurance coverage is limited to the actual market value of your car. If you owe more than your car is worth, or you have purchased a newer vehicle, you should consider purchasing Gap Insurance, which is discussed below.

Gap Insurance

Gap insurance is extra insurance you can purchase to protect you in case your car is totaled. It covers the difference between what you owe on the car and the fair market value of the car. As I mentioned before, under Texas law, if your car is deemed a total loss, an insurance company is only required to pay you fair market value—meaning the average sale price of similar vehicles in your geographic area.

In some cases, fair market value may not be enough to satisfy what you owe on the car. In this case, if you don't have Gap Insurance, you will end up owing the difference to your lender.

Consider this example:

Barney runs a stop sign, crashing into Wilma. Wilma's car heavily damaged. The insurance company deems the car to be a total loss. The market value of Wilma's car is \$10,000. However, Wilma still owes the bank \$14,500 on the car. Even though Wilma Owes \$14,500, the insurance company will only be required to pay \$10,000. Wilma will end up owing the bank a deficiency of \$4,500. If Wilma had Gap Insurance, it would step in to pay the \$4,500 deficiency.

Is gap insurance worth it? That really depends. For those who have purchased newer vehicles that tend to depreciate faster than the loans are paid down, then gap insurance may be a good idea. Additionally, gap insurance may also be beneficial for those who have rolled negative equity into another vehicle loan. Essentially, anyone who may owe more on their vehicle than it's worth should purchase gap insurance.

Homeowner's Insurance

Homeowner's insurance is basically what it sounds like—insurance that homeowners buy to cover the home. But, not only does homeowner's insurance cover the home itself, it generally also covers the contents of the home in case of fire, etc. Additionally, homeowner's insurance also provides liability protection against the homeowner's own negligence. The most frequent claims filed against homeowners are related to dog bites. However, trampoline, slip and fall, swimming pool, and other accidents are also common. Nevertheless, many people mistakenly believe that a property owner is automatically liable if an accident occurs on their property. Nothing could be further from

the truth, especially in Texas (the Texas legislature has been doing all it can to prevent injured people from holding insurance companies responsible). To hold a homeowner liable, the injured party must prove the homeowner was negligent in some manner. That is, they had a duty to protect the injured person, the duty was breached, and the breach of duty actually caused the harm suffered. And, slip and fall, or “premises liability” cases, are very difficult in Texas thanks to the Texas legislature, which is notorious for being in the pocket of the powerful insurance lobby.

General Liability Insurance

General liability insurance is similar to homeowner’s insurance, except it covers businesses against negligent acts that occur on their premises. Most claims against general liability policies involve either a dangerous condition on the premises itself or the negligence of an employee of the business.

Umbrella Coverage

Umbrella coverage is extra insurance a person can add to his or her auto and homeowners policies in order to provide an added layer of protection in the event he or she gets sued. Umbrella insurance is kind of like the gap insurance discussed above, except it covers a broad range of liability rather than just property damage in an automobile accident. But, in order to have an umbrella insurance policy, you must have the proper underlying policy or policies in place. To explain how umbrella insurance works, let's look at the following example:

Fred Flintstone has an automobile insurance policy that provides \$100,000 in liability insurance coverage. He also

has an umbrella policy of \$500,000. One day, Fred falls asleep while driving home from working a double shift at the quarry and crashes into Rock Rockson's \$200,000 Dinorari sports car, completely destroying it. In this scenario, Fred's automobile insurance policy would cover the first \$100,000 toward replacing Rock Rockson's car, and Fred's umbrella insurance would pay the remaining \$100,000.

The good thing about umbrella insurance coverage is that it isn't very expensive for the amount of coverage it provides. Generally speaking, these policies are most valuable for people who have assets they want to protect, and they can provide some peace of mind in knowing your assets are protected against a lawsuit.

Insurance Coverage I Recommend for Texas Drivers

I'm always surprised at how many drivers in Texas have automobile insurance policies that are simply inadequate. Month after month, I visit with people who have been injured in an accident where they were hit by an uninsured driver or by someone with bare-bones coverage (referred to as "minimum limits" coverage). These clients almost always ask me what kind of coverage they should have. The simple fact of the matter is: If you are driving on Texas roadways, it's not a matter of *if* you get hit by an uninsured or underinsured driver, but *when*!

Because many of my clients didn't understand what insurance they should have until after it was too late, I have put together the following recommendations:

The Bare Minimum - Every Texas driver should have at least:

1. **Liability Insurance** (this is required by law)
2. **Uninsured/Under Insured (UM/UIM) Motorist Coverage** – as much as you can afford, I recommend at least \$30,000 bodily injury per person and \$60,000 per incident.
3. **Personal Injury Protection (PIP)** – the minimum coverage amount in Texas is \$2,500. However, I recommend at least \$5,000, but if you can only afford the lowest amount, get it!

Note: If you currently have Med-Pay coverage, I highly recommend removing the Med-Pay and using that additional premium to increase your PIP coverage.

Remember, if you are in an accident and do not have sufficient insurance, it can have a devastating impact on your life and the financial future of your family. Most people are upset to find out how little the additional coverage would have cost them, and how valuable it would have been. Don't make this same mistake—get the right coverage sooner than later!



Before you assume that you can't afford the additional coverage recommended above, you should ask your insurance company what the additional coverage would cost. Most people are surprised when the additional coverage may cost as little as one Starbucks coffee per month!

Also, please understand that the amount of insurance you should carry will vary greatly depending upon the assets you have and your own financial situation. If you are curious as to the coverage you should have, most accountants and financial planners are well versed on the topic and can help protect your assets with the appropriate coverage recommendations. The above recommendations are not right for every situation, so if you have questions, seek out appropriate guidance.

- - -

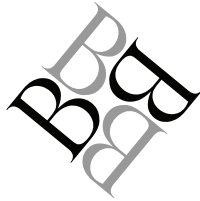
ABOUT THE AUTHOR

Stacey M. Barrus was born in Gresham, Oregon but raised in the Jackson Hole, Wyoming area. He graduated from Star Valley High School in Afton, Wyoming. After high school, he spent two years in the Philippine Islands on a service mission for his church. Upon returning home, he received his Bachelor of Science in Psychology from Brigham Young University. After graduation, Stacey worked as an internet marketing consultant and even had the opportunity to do some consulting in Austin, Texas. When considering where to attend law school, he and his wife decided they wanted to become “Texans”. He accepted a scholarship to St. Mary’s University School of Law in San Antonio, where he graduated Cum Laude (top 10% of his class).

While attending law school, Stacey worked as a student attorney at St. Mary’s School of Law Civil Justice Clinic wherein he was able to represent many people in San Antonio and the surrounding areas who had been harmed by the actions of others. His experience as a student attorney was one of the main factors that helped shape his decision to practice injury law.

After graduation Stacey set up the Barrus Law Group, where he is the founding partner. He, along with his staff and other “of counsel” attorneys, fight each day to ensure their clients are fairly compensated for damages suffered by the negligent actions of others.

Stacey is married to his wonderful wife Emma, and they have four beautiful, little girls. Ella and Nina are twins, followed by Jenna, and then Layla. Aside from spending time with his family, Stacey enjoys outdoor activities such as golf and fly-fishing.



B A R R U S

INJURY LAWYERS

Free Consultation - Call:

(210) 910-HELP

(210) 910-4357

www.BarrusInjuryLawyers.com