

The Car Accident Survivor's Guide

What you should know before and after
a serious car accident



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One Call, That's All

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Introduction - It's not a question of if, but a question of when

If you've never been involved in a car accident in your life, either you're extremely lucky or a teenager fresh out of driver's education class.

According to the National Highway Traffic Safety Administration, in 2009 the United States had over 206 million licensed drivers, accounting for a mind-boggling 2.9 trillion miles traveled! In 2008, the Bureau of Transit Statistics reported 349 million passenger vehicles, commercial trucks and motorcycles registered in the United States. Each year, even more drivers and cars are added to the nation's highways – no wonder our city streets, rural roads and freeways are more crowded than ever.



One unfortunate result of our highly mobile society is the increased likelihood of an accident involving a car, truck, motorcycle, bicycle, public transportation, or pedestrian. The 2010 census reported that 10.8 million drivers were involved in some type of vehicular accident in 2009. In that same time period, 33,000 people lost their lives to vehicular accidents – that's equivalent to a small city being wiped out each year!

What are the odds of you being in an accident this year? Try 1 in 20, or 5 percent. Now, imagine playing these odds some 60 to 70 years of driving over your lifetime. As we are prone to say, "It's not a matter of if, but when."

Still think it won't happen to you? After all you're a safe, law-abiding driver, right? Well, think again. Other drivers often drive distracted or impaired. They break laws by speeding and running red lights. And often times, other drivers just make poor driving decisions or can even experience a medical problem.

Plus factor in other intangibles: road rage, poor weather conditions, road construction, road debris, etc. Oftentimes, being law-abiding and driving defensively is just not enough to keep you and your passengers safe.

Just remember: You probably will be in an accident one day. That means you should be prepared to deal with the aftermath, which may include:

- Dealing with the police.
- Emergency treatment if you or your passengers are severely injured.
- Follow-up medical care, physical therapy, surgeries, or long-term health issues.
- Possible physical, mental or emotional issues.
- Insurance matters, including reporting, compensation and legal issues.
- Legal matters if you're found liable for the accident, or if someone else is responsible for causing the accident.
- Property damage issues regarding the repair of your vehicle (or other's vehicles if you're responsible for the accident).

This guide is intended to give you a general overview of what you should know about each of these critical areas. Please be mindful that the information presented in this guide is for general information purposes only and is not intended as specific legal advice for your particular



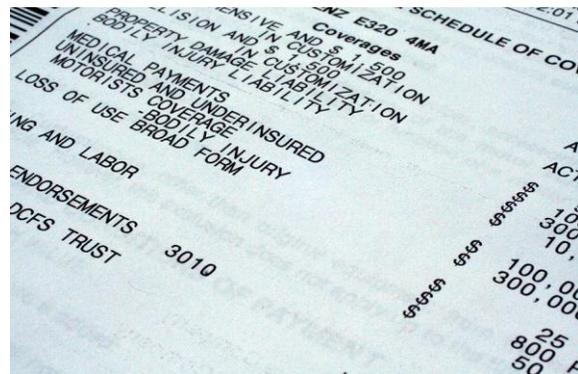
situation. Because each state's laws vary, it is always best to seek legal opinions from attorneys in that state. Craig Swapp & Associates practices auto accident law in Utah, Washington and Idaho, and our attorneys and legal staff would be happy to answer any specific questions for accidents occurring in those states. Please contact us at info@craigswapp.com or by calling toll-free at 1-800-404-9000.

Insurance coverage – don't leave home without it

Having adequate insurance is critically important to surviving the financial pitfalls of an accident – whether you're responsible for the accident or not.

The first and only rule of insurance coverage is: Never, ever drive without adequate insurance coverage!

Your insurance policy should include sufficient 'liability' coverage to protect other drivers (or the general public) from your actions that may cause damage or injuries. Obviously you can't predict the future and know how serious a future accident may be, so you should have enough liability



insurance to protect you from liability if you cause an accident. We recommend liability limits no less than \$100,000 per person/\$300,000 per accident (commonly referred to as 100/300 coverage) but even higher limits is preferable. Anything less than these amounts may not cover your liability after you cause a serious accident. The obvious benefit of having insurance is that the insurance company will represent you for any claims made against you if you are found liable for an accident. Without insurance or inadequate insurance you may be held personally liable for all or part of the costs associated with the accident you caused. This could mean the loss of your savings, possessions and even your home.

In addition to liability coverage, you should have 'uninsured motorist' coverage (commonly referred to UM) and 'under-insured motorist' coverage (UIM). UM protects you and your passengers from irresponsible drivers who have no insurance. UIM protects you and your passengers from drivers who don't have enough insurance. In 2011, the Insurance Research Council (as reported in USA Today, September 9, 2011) stated that 1 in 7 cars on the road are not

covered by insurance. Sometimes, cash-strapped drivers look to lower their insurance costs by waiving UM and UIM coverage. If you make this decision, realize that if you are hit or injured by an uninsured or underinsured motorist, you could be stuck with your own medical and repair costs, which could run into thousands of dollars or more. Because you chose not to carry UM and UIM coverage, your insurance company is under no legal obligation to help you with these costs. Your only recourse is to file a civil lawsuit against the other driver. However, it's obvious that fiscally irresponsible people who don't carry insurance are not likely to have adequate assets to draw from should the court find in your favor.

Many states may require you to have "Personal Injury Protection" (commonly referred to as PIP). Sometimes called "no fault" insurance, PIP pays for medical costs, lost income and essential services regardless of who is at fault. There is usually a cost cap placed on PIP coverage, meaning your insurance company will pay PIP benefits up to the maximum amount of your PIP coverage. We recommend you discuss these issues fully with your insurance agent, and purchase those optional coverages in sufficient amounts to protect you and your family.

Accident scene do's and don'ts

So the odds catch up with you and you find yourself involved in an accident. Hopefully, the accident will be minor, and not serious. But regardless of the severity, there are a number of things you should do to protect yourself.

First, if you are not severely injured, use a cell phone to call the police or emergency services. If injuries have occurred, make sure you give the dispatcher the location of the accident and answer any questions from the dispatcher



to the best of your ability. Usually the dispatcher will send police to a minor ‘fender bender’ accident, but if there are injuries or a multi-car accident reported the dispatcher will also send emergency medical technicians and maybe even firefighters.

Second, if you are not injured or only injured slightly, you should check on the condition of other drivers/passengers. Severely injured victims should not be moved unless there is an emergency situation (for example, the car has caught fire). The police dispatcher may ask you questions about the injuries or offer verbal instruction if someone needs immediate assistance prior to the arrival of the EMTs or police.

Third, if you believe you are injured, it’s always important to tell the police or EMTs of your injuries or pain. As a precaution, you may be transported to a local emergency room to be examined and treated, if necessary. If there is a possibility of injury and you opt not to go to the emergency room, you should immediately see a medical professional at an instant care clinic or your personal physician. Remember, if you don’t seek medical care following an accident and have it documented, there is no evidence that you were ever injured.

Fourth, present your driver license, vehicle registration and insurance information to the investigating police officer. The police officer will use it to complete an exchange-of-information form for you and other drivers involved in the accident. That information will also be included later when the police officer writes a police report. In some jurisdictions, as a cost saving measure, dispatchers will not send police unless the accident involves injuries. If this is the case, you should make sure you write down all vital information and information from the other drivers, including:

- Full name
- Address
- Phone numbers(s)
- Insurance company

- Insurance policy number (and agent's name if listed)
- Registration information (name on registration, license number, make and model)
- Exact location of the accident
- Time of the accident

Fifth, document the accident scene by shooting video or photographs, using your cell phone or other camera.

Not only shoot photos of your damaged vehicle, but also all damage to the other vehicles involved in the accident. Also, photograph/videotape the entire accident scene. Be sure to exercise proper caution when doing this



to avoid injury to yourself or other motorists. In some states, if possible, you are required to move your vehicle to the side of the road or off a freeway to a nearby exit. If this is the case, you can use your camera phone to quickly shoot a photo of the accident scene before moving the vehicles. Remember, any photo is better than no photo.

Sixth, if bystanders witnessed the accident, it is critically important that you gather their information, such as name, phone numbers, address, and a brief synopsis of what they witnessed.

Seventh, contact your insurance company as soon as possible to notify a claims adjustor about the accident. It is usually not a good idea to contact or give a recorded statement to the adverse insurance company until you have received legal counsel from a personal injury attorney. It is not uncommon that the adverse insurance company will use a verbal mistake or misstatement to harm or deny any future accident claim. If your accident does involve some type of injury and/or medical costs, such as a trip to the emergency room, your initial costs may be covered by your own insurance. For example, in some

states you are required to have Personal Injury Protection (PIP) or similar coverage. These types of coverage pay for any out-of-pocket expenses (medical, lost wages and essential services) up to a maximum amount allowed under that coverage.

If you were injured and not at fault for the accident (or if you were a passenger in an accident caused by your driver) you may have a case for financial compensation, including the cost of medical treatment and lost income you endured as part of your recovery. You may also have a claim for general damages for your pain and suffering, as well as future medical care and lingering injuries. Remember that you have the right to competent, aggressive legal representation to help you deal with the insurance company and to receive a fair settlement. Do not wait to seek legal help. Often, insurance adjusters will push you to make statements or sign documents that will prejudice your claim. It is always smart to contact an experienced personal injury attorney as soon as possible following an accident so that your case will be as strong as possible and to prevent inadvertent mistakes.

When to seek medical help



A question we often hear is “I wasn’t hurt enough to need an ambulance trip to the emergency room, but I do have a few aches and pains. Isn’t it better to wait a few days to see if I get better?” The answer is simple: No! Following your accident, if you have any discomfort, it is smart to be checked out by your doctor or a medical clinic. This is especially true if you have a number of soft tissue injuries – such as back pain, whiplash or headaches – which are very common in car accidents. As a general rule, soft tissue pain can get progressively worse and become chronic if left untreated. If you are unsure who to see, your attorney may be able to recommend a nearby qualified medical professional who is experienced in treating auto accident injuries.

The components of a good claim for compensation

As an injured victim, you may feel that you will be automatically helped by the at-fault driver's insurance company or even your own insurance company. Remember, the insurance company is in business to make a profit, not necessarily to compensate you for your injuries. The insurance adjustor's job is to weaken your case so that in the end you will take less or even no money.

So what makes for a good case? If you and your attorney are building a strong case for a financial settlement, here are the most important elements:

1. **Fault** – The accident was not your fault and the cause of the accident can be attributed to another person, entity or driver.
2. **Verifiable injuries** – You were injured and there is supporting documentation (such as medical records, photographs, etc.) to prove you were injured.
3. **Insurance coverage** – The at-fault driver or the vehicle's owner had insurance coverage at the time of the accident. If the at-fault driver/vehicle was un-insured, you will need to apply for the benefits associated with your uninsured motorist coverage. If you were a passenger in the car of an at-fault driver, you will most likely make a claim against the insurance company representing the driver.
4. **Vehicle damage** – Insurance companies will often point to a small dent or scuff on a bumper as 'proof' the accident was not violent enough to cause a significant injury. Oftentimes, the at-fault vehicle may have more damage, but the insurance company will not bring that up in negotiations, unless you have photos of that damage at the time of the accident. Usually damage repair estimates from a competent body shop can be used to help assess the nature of the impact.



5. **Consistent and proper medical care** – If your injuries require short- or long-term medical care or physical therapy, it is important there are no significant gaps in medical treatment. A gap in treatment is used as an excuse by the insurance adjustor to pay less on a claim. The adjustor will argue your injuries are less severe than they are due to this gap in medical treatment.
6. **Recorded statement** – Oftentimes the insurance company of the at-fault driver will push you to make a recorded statement. Without legal oversight by an attorney, it's common for mistakes or misstatements that can damage or even kill a good case. If contacted by the adverse insurance adjustor for a recorded statement, decline and consult with an attorney.
7. **Issues involving other accidents** – Having two accidents close together makes it difficult to prove which accident caused which injuries. This gives the involved insurance companies the opportunity to point fingers of blame elsewhere and ultimately deny compensation. Competent medical providers can usually distinguish and apportion your injuries in this situation. In this particular situation, good legal help can make all the difference.
8. **Medical bills** – Some doctors, chiropractors or physical therapists over-treat the auto accident patient with an excessive number of treatments or office visits. Competent physicians and other medical providers will treat patients reasonably and provide the care that is medically necessary. Remember, excessively high medical bills are a “red flag” to the insurance company, and will invite close scrutiny and a possible reason for denial of benefits.
9. **Early attorney involvement** – In nearly every case, the earlier a good personal injury attorney is involved, the better likelihood of a full and fair settlement as the attorney



builds your case from day one. The worst decision an accident victim can make is to wait for an insurance “offer” and then ask an attorney to become involved after they have received a low-ball offer from the insurance company.

There are dozens of other small reasons that can sink your case. That’s why a good personal injury attorney, such as those at Craig Swapp & Associates, can monitor your case and medical recovery to ensure a stronger likelihood of a full and fair settlement. The involvement of an attorney levels the playing field against the trickery and traps set by the insurance company. He/she understands how state law (and maybe even Federal law) applies to your case. Plus, an attorney and his/her staff can take care of the day-to-day headaches and complexities of dealing with the insurance companies and their adjustors. If an insurance company refuses to accept liability for its at-fault driver, a good personal injury law firm should be willing to litigate your case through a mediation, arbitration, or (if necessary) a trial.

Premature offers to settle

As mentioned in the previous section, personal injury attorneys do not recommend you take an early or premature settlement offer. Often an insurance company will try to get a cheap and quick settlement by offering you a nominal amount up front before you realize the full scope of your injuries. Often these offers are made within days of the accident by an adjuster who shows up in your living room, waving a nominal check. These tactics are discouraged by many states and such offers can be overturned if done so quickly enough. In nearly every case, accident victims who take the “easy money” soon regret the quick settlement when their pain continues, medical bills pile up, days or weeks of work is lost, and you must pay someone to perform essential services.

When the insurance adjuster offers you a financial settlement, he or she will require you to sign a ‘Release of Claims.’ This document is a legally binding contract, saying you release the other driver from responsibility to pay for any

additional claims for compensation. Once that document is signed you cannot go back and ask for another financial settlement. If you did, your lawsuit would be dismissed immediately by the court.

A word to the wise: Don't be fooled by a caring attitude of a friendly insurance claims adjustor. The adjustor's real objective is to have you accept the smallest settlement possible and sign a Release of Claims. For this reason, the insurance adjustor will try to pressure you to accept a financial settlement in the early stages of your case – before you know the full extent of your injuries, length of recovery, and lost income.

Value of a case

One of the most common questions a personal injury attorney hears from a new client is “What is my case worth?” The answer is almost always: “We don't know...yet.” The value of any auto accident claim depends on a number of factors, including:

- The nature, extent and duration of your injuries.
- The total amount of your medical bills, lost wages, and essential services paid by you during your recovery.
- The ultimate outcome of the healing process, whether you get well or require compensation for future treatments or medical care.
- If the injuries are permanent, there should be compensation for disfigurement, impairment, scarring, or other disabilities.



As you can see from this list, unless your attorney is clairvoyant, he or she has no way of knowing the financial outcome until you have gone through the recovery process. Sometimes this may take months or even years, depending

on your personal situation and the facts of your case. At that point, the attorney can negotiate a fair and full settlement based on the factors listed above.

The claim process

The typical claims process involves a four-step process, which is overseen by your attorney:

Step 1: Case filing and initial investigation – All involved insurance companies are notified that you are being represented by a particular law firm or attorney. You may meet with your attorney or his investigator who will collect and examine any police documents (including accident reports), photographs, video, affidavits, insurance policies, and other official documents. Your attorney should also provide any assistance with your own insurance company, which could owe you immediate PIP and other benefits (prior to settlement). At Craig Swapp & Associates, we can also help you with your property damage claim for your vehicle and/or damaged personal property.

Step 2: Documentation of injuries and damages – The attorney or his/her paralegal should contact all involved hospitals, clinics or doctors to gather your medical reports, records and billing information. If personal income was lost due to the accident, the necessary wage information is gathered from your employer(s). When treatment for your injuries is completed, the attorney will prepare the final documentation of all records and evidence, and then present a “demand” to the insurance company.

Step 3: Negotiation or litigation – Once the insurance company receives the “demand,” your attorney will initiate negotiations in an attempt to achieve a fair financial settlement. While the insurance company will look for arguments to pay less than what is demanded, your attorney will dispute those arguments and make his/her own arguments to support and strengthen your position. As you can imagine, this process may take some



time as both sides review and evaluate the documentation, and make their arguments. In many cases, this give-and-take negotiation results in a fair and reasonable settlement. Sometimes, however, the insurance company may dispute negligence or the extent of the damages or injuries. If these differences cannot be settled by negotiation, your attorney will probably recommend filing a lawsuit, which can then lead to an arbitration, mediation hearing or trial. Because any case has the potential to go to court, it is always recommended to use a law firm like Craig Swapp & Associates, that has a history of trying cases. If your case is litigated and is successful, the mediator, arbitrator, or judge will award the damages.

Step 4: Final Distribution of the Settlement – After you have authorized your attorney to accept a settlement offer, the attorney obtains the funds from the insurance company. From the check, the attorney retains his/her fee for legal services and any hard costs associated with the case, makes final payment for any outstanding medical bills, and pays you the net settlement. When you accept your final settlement, you are required to sign a Release of Claims, giving up any further claim against the negligent party and his/her insurance company relating to that particular accident.

Time frame to settle a case

Many people wonder how long it takes to complete a personal injury claim and win a settlement. In most cases, it takes months or even a year or two. Remember, the settlement process does not begin until you have recovered from your injuries. If litigation is necessary, the process will be longer due to procedural rules and the inherent delays of the civil justice system.

Rights of injured passengers

A passenger riding in a vehicle that causes an accident has the same rights as any other accident victim. If your driver is at fault, as a passenger, you are still entitled to compensation for medical bills, lost income, and your pain and suffering.

Tempted to delay making your claim? Don't!

If you were injured in a car accident, there is rarely a good reason for you to delay making an insurance claim. Even if you're totally incapacitated by the accident, family members can step in and help. Immediately after an accident, you or family members should be exploring legal options. A delay of even several weeks may weaken key elements of your case. For example, accident witnesses may move, their memories may fade or become uncertain, or key evidence may be lost. Because a key element of a good case is prompt medical attention after an accident, a delay in treatment may hurt your physical recovery and weaken your case. Also, if your accident involves a government entity, certain deadlines may apply that can dramatically shorten your time to react.

One important factor to remember is that every state has statute of limitation laws that limit the time in which you have to file a claim. Statutes of limitations vary based on a multitude of factors, including the state in which the accident occurred, whether the claim involves a governmental entity, whether the injured party is a minor, and even whether the at-fault party is insured. To accurately determine the appropriate time limit you have to bring a claim, you must talk to a qualified, competent attorney that knows and understands personal injury law. Once a statute of limitation has expired, you have very few options left to pursue a financial settlement for your injuries.

Getting your car fixed – property damage rights and other issues

Most collision claims can be resolved by dealing directly with either your own insurance company or the adverse driver's insurance company. In terms of your rights, you should always remember the following:

1. **You have the right to have your car repaired** from the effects of the accident or, if the car is totaled, to be compensated for the fair market value of your vehicle, plus tax and title costs.

2. **If the accident was caused by the other driver, you may have the right to a rental car** paid by the liability insurer while your vehicle is being repaired, or until you receive a check for the value of your totaled vehicle. If the



insurance company takes days or weeks accepting liability for the accident, and your car is not drivable, you should receive compensation from the insurance company for every day you are denied use of your vehicle. You should insist on a rental car equal in value to your car involved in the accident (don't be surprised if they offer to put you in a sub-compact car.) Usually, your own insurance should cover you while you are using the rental car and it's not necessary to buy expensive insurance from the rental company. We always recommend that you verify this coverage with your insurance agent. Also remember that most rental agreements only allow you to drive the rental car, unless you agree to pay extra for multiple drivers.

3. **You have the right to use a repair shop of your choosing** over the insurance company's 'authorized' repair shop.
4. **If your vehicle is totaled, you have the right to be reimbursed** for the fair market value of your car, plus the applicable sales tax (on the fair market value), cost of tag transfer and prorated annual tax and/or registration fees.
5. **You have the right to be compensated for any loss in value** due to the vehicle being in a collision.

You may wonder how the insurance company determines if a car is totaled. When the cost of the repair is more than the value of the vehicle, it may be

deemed a 'total loss' or 'totaled.' The insurance company is then expected to compensate you for the fair market value of the car. It usually has 30 days from when you make your claim to pay you for the totaled vehicle.

It's not uncommon for a claimant and the insurance company to disagree over the fair market value of the totaled vehicle. Factors that may determine the value of your vehicle include mileage, general condition before the accident, and options. If you believe your vehicle is worth more than the offer, check with a reputable used-vehicle resource such as the Kelly's Blue Book, or automax.com to determine the value of your vehicle, or check local classified ads for comparable vehicles and values. Then, send your documentation to the insurance adjustor. If you owe more money on your vehicle than the fair market value, the insurance company is under no obligation to pay that amount. In some cases, you may want to retain title to a car that has been declared totaled. Remember, the insurance company has the legal option to either repair your vehicle or declare your car a total loss (and compensate you for its fair market value). Some insurance companies will allow you to keep title to the car, but will deduct the 'salvage value' of the vehicle from the fair market value.

The insurance company for the at-fault driver is usually responsible for all towing and storage costs associated with the accident. However, if you cause delays or refuse to act, you could be stuck with unnecessary storage charges. Storage fees should be paid until the insurance company decides to repair or total the vehicle. At that time, the insurance carrier will move it to the repair shop, another storage area or a salvage yard (if totaled). You will be contacted before your car is moved from the storage area. If you do not allow the insurance company to move the vehicle, you are responsible for the storage costs from that time forward. If you want to keep the vehicle, you are responsible for towing it to the location of your choice. Be sure to remove your personal items from the vehicle prior to its relocation.

You should expect the insurance company to repair the car to its pre-accident condition. If your car is an older model, the repair shop may use reconditioned

or non-OEM (original equipment manufacturer) parts. However, you can insist on OEM parts with your repair, if they are available.

With an older model car or truck, you may find it difficult to recover the costs of recent repairs (for example, a new engine, transmission or tires). The insurance company assumes all such parts to be in good working condition at the time of accident. Usually new tires or a new transmission will only marginally increase the value of the vehicle. However, you may want to send copies of your receipts (which outline recent repairs) to the adjustor; they just may help with a reevaluation of your vehicle.

In a few situations, the insurance company may claim that your car or truck was damaged prior to the accident or it may contest that the body shop found a mechanical failure unrelated to the wreck. In this case, you may need to find an independent mechanic or body shop to evaluate the vehicle's damage or cause of the mechanical failure. Statements or documents supporting your position should be sent to the adjustor with a request for a reevaluation of your vehicle.

While many personal injury attorneys only concentrate on the injury portion of a claim, a few law firms can help with collision claims. For example, Craig Swapp & Associates is happy to help its injured clients with their property damage issues.

Questions?

If you had an accident in Utah, Idaho or Eastern Washington, Craig Swapp & Associates would be happy to help answer any questions you have. If you want to discuss a particular accident, we offer a free, no-obligation consultation. Call 1-800-404-9000 or go to www.craigswapp.com to chat with us online or submit details of your accident.

		
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