

Collision Care: WV Auto Injury Guide



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Collision Care

WV Auto Injury Guide

The purpose of this guide is to educate you on the basic facts that you must know in order to achieve the best result possible regarding your injury claim. You may not have been able to avoid the collision that caused your injuries, but you can avoid the unnecessary pitfalls of dealing with the insurance adjusters who are motivated and trained to devalue your claim, if not destroy it altogether.

by Jeff Robinette

About The Author



Jeffery Robinette is a personal injury lawyer with decades of litigation and trial experience in personal injury and wrongful death claims. Prior to representing injured individuals exclusively, Mr. Robinette was a partner in a major West Virginia law firm where he focused on *defending* serious personal injury and wrongful death claims and lawsuits stemming from auto and truck collisions. He has also represented the nation's largest and most powerful insurance companies at all levels of litigation including jury trials and appeals in state and federal courts in West Virginia.

Mr. Robinette taught insurance companies and their adjusters how to follow insurance laws and regulations, including how to adjust insurance claims in good faith. He was a frequent speaker at insurance conferences on West Virginia insurance law. Mr. Robinette now devotes his *entire* practice to representing injured people, utilizing his wealth of insurance knowledge and litigation and trial experience to the *exclusive* benefit of his personal injury clients.

Jeff Robinette is also an U.S. Army veteran, serving as an artillery, intelligence, and psychological operations officer, and was a paratrooper in the 82nd Airborne Division. He is a former editor and contributing author of the West Virginia Law Review, and Adjunct Instructor on Appellate Advocacy at West Virginia University School of Law. He is a current member of the American Association for Justice, West Virginia Association for Justice, Multi-Million Dollar Advocates Forum, and Silver Member of the **Elite Lawyers of America**, whose membership is limited to lawyers who have attained *multiple, multi-million dollar recoveries* for clients. He is the founding member of Robinette Legal Group, PLLC, which is devoted to advocating the rights of injured people throughout West Virginia.

Introduction

"I will prepare and someday my chance will come."

- Abraham Lincoln

When you are suddenly involved in an auto collision causing you serious injuries, you will likely have plenty of questions about how the insurance claims process and court system work. In essence, you want to be informed so that you can be fairly compensated for your injuries. *Collision Care* will answer your important questions about how to enforce your legal rights against the persons responsible for causing your injuries; how to navigate through the complexities of the insurance claim process and legal court system; and how to avoid being taken advantage of by insurance adjusters and their team of defense lawyers who are determined to **minimize** your recovery for your auto injury claim. This guide is plainly written for you in mind, without "legalese" or lawyer talk because you need practical answers to your important questions, and I trust you will not only *find* the information you need, but ensure you *understand* the information as well.

A word of caution: while this reference will provide significant insight into the insurance claim process and civil court system, it is *no substitute* for sound legal advice from a qualified personal injury lawyer about the unique particulars of your auto injury claim. Thus, I strongly recommend that every person who has

sustained a serious personal injury from an auto collision consult with a qualified lawyer about the particulars of their own auto injury claim. ***Accordingly, no client-lawyer relationship is created by this guide.*** To obtain such a client-lawyer relationship, you must consult with and retain your own qualified personal injury lawyer. Throughout this guide I will explain how you can accomplish this process.

Jeff Robinette

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Chapter One

"What many of those who oppose the use of juries in civil trials seem to ignore is that the founders of our

Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary."

- Chief Justice William Rehnquist, U.S. Supreme Court

Know Your Legal Rights!

Take a moment to reflect back on what happened at the instant of the collision, while your mind and body were still in the process of reacting to the traumatic event. Your *initial* thoughts most likely turned to immediate needs like assessing your own physical condition and, if possible, deciding whether to stay in the vehicle or get out of it. You may have called 911 to report the collision and requested emergency medical support. You may have even been able to check on the physical condition of the other persons involved in the collision. If you were coherent and realized some unsafe condition still existed, like your vehicle being in a dangerous position on the road, or you smelled gasoline, you may have felt that you needed to take additional steps to protect yourself and others from further injury. Little consideration, if any, was probably given to how you thought others would view your immediate reactions to the collision and the actions you took immediately following the collision.

As will be discussed throughout this guide, all your actions or omissions (your failure to act) will have an effect on your ability to pursue your legal rights for full and fair compensation for your injuries.

What Are My Rights?

West Virginia law provides that you have **two years** from the date of the auto collision to take legal action (i.e., file a lawsuit) against responsible individuals and companies, including insurance companies, to seek compensation for the damages (i.e., your injuries and losses) you sustained in the auto collision. If your child is injured in a collision, your child will have two years from the date of adulthood to file such claim. Waiting until your child is an adult, however, creates a significant loss of evidence you will need to prove your child's claim. For adults, if you do not file a lawsuit within the two-year statute of limitations period, your claim will be forever time barred.

Two years may sound like a long time from now, but believe me, it is not when considering all the things that must be done to secure your legal rights against the responsible parties. Every day that you wait to seek legal counsel equates to a loss of opportunity to obtain full compensation for your injuries. In reality, it is the first 60 to 90 days following your auto collision that will make or break your case. It is within this shorter time period that necessary evidence and testimony must be secured, treatment rendered and medical opinions obtained. If you wait until after this time period has passed, and you have not developed your claim

properly, it will make the job of even a good lawyer very hard to obtain a full recovery for you. Worse yet, if you wait until close to the two-year statute of limitations period to consult with a lawyer, it is almost guaranteed that your claim will be compromised. It is somewhat like getting cancer diagnosed early -- your chances of improvement are greater the earlier the diagnosis is made. So, don't wait to get your legal claim diagnosed by a qualified lawyer.

What Is Legal Liability?

Not every auto collision is clear-cut as far as determining who has legal liability for causing the collision. As will be discussed further, it is your responsibility to prove who caused your injuries and the amount of your damages. The law refers to this requirement as the *burden of proof*. Thus, you have the burden to first prove that the other driver caused the collision. Unless you can prove that the other driver caused the collision, you will have no right of recovery against the other driver.

Police officers are great public servants and are not appreciated enough in our society, but most of them are not very well-trained in accident reconstruction or witness examination. They are not qualified medical attendants and cannot diagnose your injuries. Indeed, their initial objective in investigating auto collisions is not to judge who has legal liability for causing the collision, but rather to contain the collision site by directing traffic and ensure that medical support is notified if injuries are reported. They next determine if anyone violated

highway safety laws and issue citations for such conduct. This determination is accomplished by having the parties fill out witness statements (often just blank sheets of paper stating what happened) and evaluating the *contributing circumstances* they believe caused or contributed to the collision. Because the investigating officer can only devote a few minutes to talking with each witness, versus the hours that lawyers spend examining these witnesses, the officer routinely doesn't know or report all the important or relevant facts. So, you cannot always rely on just what the investigating police officer reports about the collision to correctly determine legal liability.

Because police officers are not trained to determine legal liability in a court of law, and they do not have access to all the relevant facts, innocent parties may be blamed for causing or contributing to an auto collision. For instance, several years ago police officers investigated a tragic automobile and bicyclist collision. Because the police officers had only interviewed a few witnesses, who only saw the impact between the bicyclist and a minivan, my client was wrongfully accused of causing the collision. The police officers did not know that other eye witnesses were present who saw what happened before the collision, as well as the collision itself, and these witnesses testified in court to my client's innocence. Thankfully, things worked out for my client in the long run, but the police officers' mistake caused *four years of litigation* and it took courtroom drama for the truth to come out. Our life experiences have taught us that it is pretty rare that people

admit they are wrong, especially in public. Perhaps you can appreciate how much effort it took to get two police officers to admit they were wrong in front of a jury! Even though jurors know that the police can be wrong -- such as when **they** get pulled over for speeding -- they still give the investigating police officer's opinions a lot of weight when it comes to **your** injury claim.

If the police officer determines that you caused or contributed to your auto collision, then your recovery rights may be limited to only pursuing medical benefits coverage from your own insurance company. This is a very good reason why legal representation should be obtained soon after the collision, so that *all the evidence* can be preserved to reverse the adverse findings of the police investigation. Of course, the police are not wrong all the time, and most of the time they are right. But remember, you have an adversary that has resources to defeat your claim, and may even pay the cost of a defense lawyer to get the at-fault driver's citation reversed so that your favorable evidence will be excluded. Unless you have your own lawyer looking out for your interests, you will not be able to prevent the insurance company from taking adverse action against your claim.

What Is Comparative Fault?

In order for you to pursue a liability claim against the at-fault driver, the auto collision must be *predominately caused by their conduct, not yours*. If your driving merely contributed in some small way to the auto collision (e.g., you were traveling 60 mph in a 55mph speed zone), you will not be foreclosed from pursuing

your injury claim against the other at-fault driver. But, *the percentage of your own fault* (called “comparative fault”) will reduce your compensation by the same percentage of fault you contributed to causing the auto collision. For instance, if you are found to have been 20% at fault in causing the collision, your compensation will be reduced by 20% of the total verdict. Insurance adjusters are notorious for exaggerating the negative effect of your conduct (like going 5 mph over the speed limit caused the collision), as a basis to substantially reduce the value of your claim.

While the law permits your own comparative fault to be as high as 49%, the closer your own fault gets to this maximum percentage, *the less you will be compensated*, and you run the risk that you will be completely foreclosed from recovering anything at all. If your fault equates to 50% and the other driver’s fault is 50%, then neither of you will be able to pursue claims against each other. The law takes a dim view of drivers whose conduct significantly contributed to their own injuries. Be aware that insurance adjusters try to craft reasons why your alleged negligent conduct equaled or exceeded that of their own insured, which has the end result of you receiving little to nothing in settlement of your claim.

How Do I Prove My Claim?

In order to prove your case in court, there are two different standards that apply to your claim: the *preponderance of the evidence standard* (which standard applies to proving liability and past damages) and the *reasonable degree of certainty standard* (which standard applies to proving future damages like lost wages and

future medical treatments). Preponderance of the evidence simply means that if your evidence was placed on one side of a scale, and the other driver's evidence was placed on the other side of the scale, in order for you to prevail in court, your evidence must outweigh the other driver's evidence. If your evidence is even slightly more convincing, you have proven your case by a preponderance of the evidence. Reasonable degree of certainty simply means that some types of damages (like future wage claims and future medical treatments) must be supported by an expert medical doctor or economist who believe your permanent injuries will *more likely than not* require future medical treatment and will cause future lost wages.

Do not be misled by the insurance adjuster who makes it sound easy to handle your own claim. Proving your case in court is no easy matter. The insurance company has almost unlimited resources to hire seasoned insurance defense lawyers to help their adjusters defeat your legitimate injury claim. I should know; I spent decades working for the insurance industry. It is my seasoned advice that without experienced legal counsel on your side, the insurance adjuster and their support network of defense lawyers will use your inexperience and lack of representation to their advantage to minimize and even defeat your legitimate auto injury claim.

For What Damages May I Receive Compensation?

In a typical auto injury case, the injured person is entitled to pursue compensation for their past and future pain and suffering, past and future medical bills, past and future lost wages, and their loss of enjoyment of life.

If the injuries are very serious and diminish the relationship with a married spouse, loss of consortium (physical and emotional intimacy and services) damages may be awarded to the spouse for those losses they have sustained stemming from your injuries. Finally, if the at-fault driver was intoxicated or was guilty of grossly negligent behavior, punitive damages may also be awarded in a court of law.

With each category of damages, however, there are complex laws and trial court procedures that must be strictly followed in order to *prove* your injuries in a court of law. If you are *unrepresented*, there will be no one to advise you on the law and to ensure that you have met all your legal obligations -- any failure on your part to follow these strict rules will have an adverse impact on your auto injury claim. Remember, only those damages that can be proven in a court of law will be considered for compensation. There's no need for you to try to prove your own case, because there is help available from qualified personal injury lawyers who offer *free consultations* to discuss your auto collision claim.

Compensation Sources

In order to obtain a fair recovery, that is, to actually receive the just compensation you deserve, you must have a source for that payment. If your recovery is being sought from an individual or even a well-known company, there is a risk that you will receive less than you deserve. This result is all too common, and it occurs because auto injury damages (except punitive damages) may be discharged in bankruptcy. Ideally, all the parties involved in your auto collision will have adequate insurance coverage to compensate you for your injuries. In reality, however, this is seldom the case and that's why, in most cases, it pays to have a highly skilled lawyer with a lot of experience in *insurance coverage disputes* to handle serious auto injury claims.

If the recovery should be sought from an insurance company, you must be able to convince the insurance company that the insurance policy provides coverage for your damages. It takes a trained eye and experience to find insurance coverages, which the insurance companies hide with hundreds of exclusions. I should know -- I litigated hundreds of insurance coverage disputes for decades on behalf of the insurance companies, and with few exceptions was able to find an "exclusion" that would apply to the claim. Of course, now I use all my knowledge and experience to obtain insurance coverage for my clients.

So, just because you have a solid case against the other driver, that does not necessarily mean that you will ultimately collect a fair recovery. The other driver

may not have any assets, and unless you are well-versed in insurance coverage law, you may not collect a plug nickel from anybody.

Chapter Two

"Whatever you are, be a good one."

- Abraham Lincoln

Hire a Good Lawyer!

You may already feel somewhat overwhelmed by the thought of handling your own claim by yourself, but you are still a little uncomfortable with the idea of hiring a lawyer. Well, you are not alone in your thoughts; many injured people feel the same way you do. Perhaps you've never hired a lawyer before, and when you do so, you want to know what questions to ask so you feel like you are doing the right thing. So, you may be asking, "How do I find a good lawyer?" and "What will it cost?" This chapter will answer these and other questions you will have about hiring the best lawyer to handle your auto injury claim.

Lawyer Advertising

If you had a facial skin condition that needed some medical attention, you would naturally look for a licensed dermatologist and schedule an appointment. You wouldn't think of seeing a radiologist or cardiologist to look at your skin condition, because you know these doctors don't provide the services you need.

For that matter, neither do the radiologists or cardiologists advertise their services to include skin care.

But lawyer advertising has not evolved sufficiently for the public to be able to distinguish a qualified personal injury and trial lawyer from any other lawyer who advertises for auto injury cases. The West Virginia State Bar, which oversees the licensing of lawyers, does not permit lawyers to advertise that they are “specialized” or an “expert” in personal injury law. Thus, there is no *board certification or specialization* for a personal injury practice in West Virginia. So, any lawyer may advertise for personal injury cases, even if they only dabble in the “personal injury” practice of law. Unfortunately, the person needing a personal injury lawyer with trial experience cannot easily find such a lawyer because these qualified lawyers are not permitted to say they *specialize* in personal injury and trial law. So, not every lawyer who advertises for “car wreck cases” has the necessary experience to successfully handle such cases.

It takes *many years* of practice and the successful handling of hundreds of auto injury cases -- with proven trial experience -- to become a *highly qualified personal injury lawyer*. Be wary of lawyer advertisements that tout so-and-so lawyer as a “personal injury lawyer” or “trial lawyer,” especially if the lawyer’s picture looks like they may have just graduated from law school (i.e. too young to have gained the experience), or the lawyer lists columns of unrelated practice areas (i.e. no real focus on auto collision claims).

Focus On Auto Injury Cases

Even if a lawyer has been practicing many years, years of experience alone doesn't mean they will have a good understanding of personal injury and insurance law, or for that matter have any meaningful trial or appellate experience. Many "experienced" lawyers don't focus on auto injury claims, but dabble in many areas of law including: criminal law, bankruptcy, divorce and family law, taxation, black lung, workers compensation, social security benefits, elder law, real estate, administrative law, health law, titles and deeds, and estate planning. Of course, no one lawyer can focus on and excel in that many areas of law! You deserve, and should choose, a lawyer that focuses on *your needs*.

Trial and appellate experience is extremely important as well because the insurance companies pay attention to their opponent's qualifications. The insurance companies know that good trial lawyers do more and get more for their clients than inexperienced or dilatory lawyers, and thus the insurance companies pay more for claims that are handled by skilled lawyers. Being a good trial lawyer is a significant attribute of a highly skilled personal injury lawyer. Unfortunately, many lawyers who advertise they are a "trial lawyer" may have never even tried a personal injury case, much less argued an appeal before the West Virginia Supreme Court of Appeals. Even the Chief Justice of the West Virginia Supreme Court has commented, "Most lawyers who classify themselves as 'trial lawyers' or 'litigators' have no trial experience." *The West Virginia Lawyer*, Jan-Mar 2012 Ed.

Only choose an experienced personal injury lawyer with real trial and appellate experience in auto injury cases to handle your auto injury claim.

Do I Really Need A Lawyer?

In the mid-1970's, when I was a teenager, General Chuck Yeager visited my high school in southern West Virginia, and he spoke about his experience as a test pilot for the Air Force and NASA. He was, and is, an impressive man with many great accomplishments. A few years later, I noticed his face on commercials for AC Delco batteries and spark plugs. The “You can pay me now, or pay me later” slogan he coined is still repeated today, at least by those of us in our 50's (or above). Of course, the cost of buying a new spark plug or battery is a lot cheaper than the damage a bad one can cause, so the saying goes. The same is true about hiring a lawyer. A qualified, competent personal injury lawyer will do more for you than you can do for yourself.

But we live in a “handy-man” society, and there are lots of people who wire or plumb their own houses. At the time, the do-it yourself approach seemed to be a great cost savings, but when it is time to sell the house, that’s when the problems surface and regrets are borne! Perhaps you should give further consideration to obtaining a lawyer to look over your case *before* you take the “handy-man” approach to solving your own legal problems. Remember, the insurance adjusters have their own lawyers. Shouldn’t you?

Can I Afford A Lawyer?

A good lawyer will offer you a *contingency fee contract*, which means that you will not have to advance any money to the lawyer for fees or costs. The fees and costs are paid when the lawyer obtains a fair recovery for you. Good lawyers are worth the fees they charge, which are customarily about one-third of the recovery, unless you have to go to trial and additional costs are expended. *Contingency fee contracts* must be in writing under ethic rules, which provides both you and the lawyer with a record of what was agreed to for the representation. Be cautious, however, of lawyers who advertise for low fees; you get what you pay for.

Chapter Three

“Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.”

-John Adams, 1774.

How Much Insurance Is Needed?

Now that you have a better understanding of your rights against the *at-fault driver* for causing your injuries, you may ask these questions: “What if the at-fault driver doesn’t have enough insurance coverage to even pay my medical bills, or what if the at-fault driver has no insurance coverage at all? Who will pay my medical bills and lost wages?” In such cases, you must file an injury claim against your own insurance policy -- assuming that you have purchased such coverage -- to pay for these damages. You may be one of those individuals that was hit by a vehicle that looked like it was pulled out of a junk yard, and that makes you concerned about the financial responsibility of the at-fault driver.

You have every reason to be concerned about the financial responsibility of the at-fault driver, even when their vehicle was a newer model than your own. According to statistics, about one out of every six vehicles traveling on West Virginia roads has no insurance coverage. An even greater percentage of drivers

have only minimum liability limits, meaning that in many auto collision cases, the injuries will exceed the available insurance coverage of the at-fault driver.

Mandatory Automobile Insurance

You probably are already aware that the purchase of automobile insurance coverage is mandatory in West Virginia. When you have your vehicle inspected, the auto shop asks for proof of insurance coverage. State law requires insurance companies to offer automobile insurance coverage at minimum levels to every owner of automobiles so that *theoretically* every vehicle being operated on state highways has at least a minimum amount of liability coverage protection. But, as the statistics show, there is a high frequency of vehicles being operated without liability insurance coverage. As will be discussed later, every responsible driver should purchase enough uninsured and underinsured motorist coverage to protect themselves from all irresponsible drivers.

Minimum Liability Limits: 20/40/10

In West Virginia, the minimum level of liability coverage that can be sold by insurance companies is \$20,000 per person/\$40,000 per accident for personal injuries, and \$10,000 for property damage coverage. In the insurance industry, this coverage is referred to as “20/40/10” liability coverage. This minimum liability coverage *protects* the at-fault driver causing injury to another person from a collision. Of course, the owner may choose *greater* liability protection by

purchasing higher coverages, but at a minimum, the vehicle owner must have at least this coverage. It is best to have more liability coverage, and I recommend to some of my clients, who have paid for their homes and have other personal assets, to purchase at least \$500,000 in liability coverage protection. A good rule of thumb to use when buying liability insurance is for every dollar of assets you own, you should have the same amount of liability protection. Remember, one auto collision caused by you could wipe you out financially, too.

Minimum UM Limits: 20/40/10

West Virginia law also mandates that insurance companies must sell, at the same time liability coverage is purchased, *uninsured motorist coverage* in the same minimal amount as liability coverage. In the insurance industry, this coverage is referred to as “UM” coverage. UM coverage protects you when you are injured by an *uninsured* driver, meaning the driver has no insurance coverage. As with liability coverage, you may purchase higher UM coverage for greater protection, which I advise, since West Virginia has a high occurrence of *uninsured* drivers who cause collisions. Many *uninsured* drivers are financially unable to afford liability insurance coverage because of their bad driving record -- the “high-risk” premiums typically are triple or quadruple the cost of regular liability premium rates.

Optional UIM Coverage

Many auto collisions that cause serious personal injuries will involve an at-fault driver who has insurance coverage, but not enough to pay for all your

damages caused by the collision. Thus, the at-fault driver is considered *underinsured*. The insurance industry refers to underinsured motorist coverage as “UIM” coverage. UIM coverage provides coverage for you when the at-fault driver doesn’t have enough liability coverage to pay all of your damages. The purchase of UIM coverage is not mandatory, but it must be *offered* by the insurance company, and you must *waive* UIM coverage *in writing* if you don’t want to purchase it. You may purchase underinsured motorist coverage at any amount equal to or above the liability limits you choose. Because few drivers have enough liability coverage, you should purchase your own underinsured motorist coverage. I advise my clients to buy as much as they can afford: the more coverage you purchase, the more you are protected.

Optional Med-Pay Coverage

Most people don’t realize that some of the cheapest insurance coverage available is *medical payments coverage*, known in the insurance industry as “Med-Pay” coverage. Regardless of who is at fault for the auto collision, this coverage pays for the cost of your necessary medical treatment for the injuries you sustained from the auto collision. Because the cost of medical treatment for a serious injury can be in the hundreds of thousands of dollars, it is extremely important that you purchase the highest Med-Pay coverage offered by your insurance company.

Med-Pay coverage, however, has some notable limitations, and consequently, it is not a perfect solution to meet your immediate financial needs to pay emergency and follow-up medical treatment bills. One significant limitation of Med-Pay coverage is that many hospitals are reluctant to accept your Med-Pay coverage as a form of prepayment before rendering necessary treatment to you. These hospitals have experience with insurance adjusters “haggling” over the medical bills, so the hospital administration prefers not to deal with Med-Pay coverage. Thus, you may have to use your own health care plan or personally pay cash to obtain such treatments, and thereafter seek reimbursement for your “out of pocket” expenses from your Med-Pay coverage. Some injury victims have Medicare/Medicaid protection, which most hospitals accept (but don’t prefer), because the federal reimbursement rate under Medicare/Medicaid is lower than your individual or health care coverage rates. In essence, you are financially penalized for being a financially responsible person.

One way to overcome the problem of getting your own Med-Pay coverage accepted by the hospital is for your lawyer to write a letter of protection to the hospital so that you get the care you need and deserve. Your lawyer will ensure that when the case is resolved, the hospital will get paid a reduced amount out of the settlement in conjunction with your Med-Pay coverage.

Another limitation of Med-Pay coverage, which is akin to the previous limitation, is the manner in which the insurance adjuster has authority to reject part

of your treatment for payment under the auspices that the treatment was not necessary. So, you are on the hook to pay for these bills, even though you have medical payments coverage to pay for them. Again, legal counsel can normally get this problem favorably resolved, but the insurance adjuster will take advantage of unrepresented people, which can make life for such individuals more difficult.

Most Med-Pay coverage terms require the medical treatment to be concluded within two years from the date of the auto collision. Sometimes the injured person waits too long to get treatment or diagnostic tests, which otherwise should have been covered by Med-Pay coverage. When the coverage period lapses, the insurance adjuster terminates any further obligation to pay any more medical bills, even though the coverage has not been exhausted.

Finally, although your deadline for depleting your Med-Pay coverage is generally two years from the date of the collision, you may not realize the urgent need to obtain all the treatment you need now and not wait till near the end of this two-year time period. Most Med-Pay coverage adjusters take a dim view of your seeking medical attention near the end of the two-year period on that basis that you should have healed by that time, and any new treatment cannot be related to your auto collision. So, if you wait until near the end of the two-year statute of limitations to hire a lawyer, the Med-Pay adjuster may not accept the medical bills you incur later on. By the time your lawsuit is filed to preserve your claim, any portion of your Med-Pay coverage that has not been used will likely be terminated

by the adjuster. This means that you get stuck with paying all the medical bills you incurred, even though you paid for such medical payments coverage.

Chapter Four

"These capitalists generally act harmoniously and in concert,

to fleece the people"

- John Adams, 1774.

Look Out For Yourself!

When it comes to looking out for your legal rights, you need to have the attitude you would have if you were seriously ill -- get professional help. *It is your responsibility*, and no one else's, to look out for your legal rights and seek legal counsel. When serious medical conditions are ignored, they usually get worse, if not fatal. Similarly, legal "conditions" that are ignored often get worse. This is why injured people should seek legal advice early on in the claim process -- to prevent their legal rights from being lost or compromised.

Clients who get legal help early don't have to agonize over whether they are making good decisions about their injury claim; they rely on their lawyer for such advice. If you are fortunate, you may have a spouse or other family member who will look out after your medical needs, but who will look out after your legal needs? Be assured that the insurance company will provide no help for you in protecting your legal rights.

Your duty to preserve your legal rights is not fulfilled by merely giving the investigating police officer your statement at the scene of the collision. Rather,

you have a *continuing duty* to ensure you comply with statutory laws and court procedures so that none of your injury claims will be denied or minimized by the insurance adjuster or their hired defense lawyer in court.

Pre-Accident and Post-Accident Conduct

As stated previously, neither the insurance company, nor its defense lawyers, will provide any assistance to you in preserving evidence, seeking the right medical doctors, or getting expert opinions that support your claim. Their job is to ambush you, not help you. They will be evaluating the validity of your auto injury claim on your *pre-collision conduct* and *post-collision conduct*.

The reason that pre-collision and post-collision conduct is so vital to your auto injury claim is because complex laws and trial court procedures -- which insurance adjusters rely on to deny or minimize your claim -- require that both *liability* against the other driver and the type and amount of *damages* you sustained from the collision be proven under trial court standards.

Insurance Evaluations

Pre-collision conduct is a major factor in determining whether liability can be proven in a court of law against the at-fault driver, and both your and their conduct together will be the primary consideration in an insurance adjustor's *liability evaluation* of your injury claim. Likewise, post-collision conduct -- e.g., whether you timely sought medical treatment, whether you kept all your medical appointments, what you told the doctor, etc. -- is an equally significant factor in

determining whether your *damages* can be proven in a court of law. This information has a significant impact on the insurance adjuster's *damage evaluation* of the claim.

Remember though, that only an experienced trial lawyer, focusing on auto injury claims, knows how to preserve **all** your legal rights, not just some of them, against the attempts of the insurance adjuster to defeat your claim.

Chapter Five

*"Concentrated power has always been
the enemy of liberty."*

- Ronald Regan

Use Caution with the Insurance Company

I explained in the previous chapters how your conduct -- from the time of the auto collision, to many months, and in some cases, years later -- will affect your legal rights against the responsible party. This chapter explains *why you should use caution in dealing with the insurance company regarding your injury claim.* West Virginia law requires that insurance companies act in *good faith* in adjusting your claim. That means they have to be *fair* to you. If you don't learn anything else from this chapter, please remember that if the insurance company's system of handling your claim was fair, we would not need laws, or civil courts and judges, or even lawyers for that matter. The fact that we do have courts, judges and lawyers is "Exhibit One" that the insurance system is *not fair* to injured persons seeking just compensation. And, may I add, a good trial lawyer does not mind the injustice that permeates the insurance system, since such a lawyer will have the requisite skills to get justice even when the insurance system fights against it.

Financial Motivation of The Insurance Company

For hundreds of years it has been a common practice of modern societies to spread the risk of certain losses out evenly to individuals with the same kind of risk. Insurance companies were formed to assess certain risks (like damages caused by auto collisions) and charge a premium to individuals that shared that same risk. The cost of the premium was based on the type of risk and the number of premiums sold. The more frequently injuries occurred, the more the insurance company charged for the premiums. And, the more policies that are sold, i.e., spreading out the risk of loss, the less the premiums *should be* to those purchasing the same coverage -- but who has had their insurance premiums lowered? The insurance companies do not lower their rates when they sell more premiums because they have to make more profit, not less, to satisfy stockholders and insurance executives.

The large insurance companies are now primarily funded by insurance premiums dollars and investors who buy company shares on the stock market. So, the insurance companies now make money, not just through the old means of selling premiums, but by selling stocks. This means that the insurance company must be profitable. Investors expect dividends to be paid. The more dividends that are paid to investors, the more investors the insurance company attracts. Of course, the insurance executives need big multi-million dollar salaries, too, for making all this happen. The salaries of the claims adjusters are impressive, too. Many adjusters make a lot more money than some lawyers. So, where does all this

extra money come from to pay the executives, claims adjusters and stockholders?

By reducing the amount of your compensation for your injuries.

Since insurance rates are *regulated* by the West Virginia Insurance Commissioner's Office, and insurance companies cannot raise rates without approval, the way insurance companies increase their revenues is to sell more insurance and pay less on injury claims. This approach also attracts more investors. Thus, enormous pressure is exerted from the top- down to sell more insurance (national television commercials) and keep more money in their coffers (stop paying fair claims). The cost of advertising nationally for insurance is staggering. Yet, every major insurer spends this money without reservation. While healthy competition does have the effect of lowering insurance premiums, it also means that the margin of profit is smaller for the company, so the amount that can be paid on claims must be lowered to make up for this loss. Certainly you would not expect that the insurance executives and the adjusters would take less salary just because sales are down. The money must be saved from the amount that is paid out on claims.

In order to carry out this financial scheme, the front-line decision maker, known as the *claims adjuster*, has been highly trained to find "legitimate" ways to minimize or deny your injury claim. So, the more money the insurance adjuster saves on paying legitimate claims, the more money there is for paying huge salaries to the executives and dividends to investors. Additionally, the claims adjuster gets

rewarded with promotions and raises for doing such a “good job” for the insurance company. I should also point out that because automobile liability insurance coverage is mandated by West Virginia law, and most people have various types of insurance coverage -- liability coverage, underinsured motorist coverage, uninsured motorist coverage, property damage coverage, and medical payments coverage -- the adjustment of your claim will likely involve more than one adjuster. Thus, you should expect to have to deal with several insurance adjusters regarding your injury claim.

Use Of Computer Technology

From the moments leading up to the auto collision, to the many following months while you are recovering from your injuries, an insurance adjuster will be monitoring a computer to meticulously scrutinize every facet of your private life to find “legitimate” ways to minimize, if not deny, compensation for your auto injury claim. Most of the large insurance companies use advanced computer technology -- bodily injury assessment software, like Colossus -- to assess your past medical history, as well as your current medical treatment and arbitrarily place a “value” on your claim. Because the computer assessment software is written for the benefit of insurance companies, there is a built-in bias *against* your claim, and it should be no surprise that the computer assessment of your claim is grossly inadequate to compensate you for your injuries.

Role of Claim Supervisors

The insurance company has built-in disincentives for claims adjusters to deviate from their purposed goals to reduce payments on all personal injury claims. One of the ways that insurance companies keep the front-line adjusters “in-check” is to have *claims supervisors* over them, monitoring their progress on minimizing payments on claims. I cannot count the hundreds of times, as a defense lawyer for the insurance companies, that I advised a claims adjuster the claim was legitimate and needed to be settled fairly. When I was able to persuade the adjuster to do the right thing, many times the claims supervisor, who has to report directly to the insurance executives, refused my advice to offer a fair settlement. Then, to make sure that any one claims adjuster doesn’t become too swayed by any one lawyer, the insurance company assigns adjusters hundreds of miles away to adjust the claim. What was the purpose behind this? It shows that it is not just the claims adjuster or the claims supervisor that you must convince about your claim, but the heart of the insurance company that has the stated goal of increasing revenues by decreasing payments on injury claims, just like yours.

What this means to you, and other unrepresented claimants, is that you get *less money* when you deal with the insurance adjuster alone. The insurance industry hates the jury system, and trial lawyers are a real threat to insurance companies’ bottom line on profits. The insurance industry has gone so far as to

label West Virginia as a “judicial hell-hole” because the citizens of this state, not the lawyers, judges or legislators, have determined a fair value for injured persons, which value greatly exceeds the insurance companies’ evaluation of claims. The Insurance Research Counsel, which is funded by the insurance industry, even recognized that represented individuals got better recoveries. But, that data was used against them, so they changed how they formatted their own studies to now say that unrepresented persons have lower medical costs than represented persons. What these studies really show is that unrepresented people get less money and less medical treatment than represented people. Thus, even the new studies by the insurance industry show that represented parties get more medical treatment for their injuries, and more money for their injuries. But the insurance adjuster does not want you to know this, and will not encourage you to seek legal counsel because it would mean the insurance company would be forced to compensate you more fairly.

Chapter Six

Use More Caution With The Insurance Adjuster

In the previous chapters, I explained why the insurance adjuster and claims supervisor are *financially motivated* to minimize or deny your auto injury claim. The insurance companies have enormous financial resources and teams of savvy defense lawyers to research new ways to exploit your privacy and deny your legal rights. In this chapter, I will reveal some of the ways in which insurance adjusters use their financial and legal advantages against you.

Anti-Fraud Unit

The bare truth about insurance adjusters is that they have been programmed by the insurance company to have a suspicious nature, and this includes a belief system that every person who makes an injury claim has a financial motivation to embellish, or even lie, about their injuries. Yes, some *criminals* will attempt to commit *insurance fraud*. And, there are a few others that will try to “milk the claim for all it’s worth.” However, I have learned through decades of insurance practice, and through the handling of hundreds of claims, dishonest claimants comprise a very small number of people compared to the multitudes of injured people who have legitimate claims.

So, when an insurance adjuster arbitrarily believes a claimant has misrepresented any part of their injury claim -- such as allegedly making up facts surrounding the collision -- the adjuster may report that claimant to their in-house, anti-fraud unit for investigation, where ex-police officers will be engaged in trying to pin an *insurance fraud* claim, which is a state and federal crime, on the claimant. This alone should be enough to encourage most claimants to immediately seek legal counsel. But the insurance adjusters justify their conduct by convincing themselves that they are doing a greater good to the company by weeding out fraudulent claims. So, don't take this personally -- the way they treat you is the way they treat everybody. They're just doing their job.

The Collision Was No "Accident"

One of the classic ways that insurance adjusters begin the process of defeating your claim, is to *desensitize* your belief system regarding the wrongful conduct of their own insured driver. They will "humanize" their insured driver and make the "collision" sound like just a little mistake, an "accident." While it is true that many minor collisions occur every day and cause no personal injuries to anyone, which is not to say that all collisions are "accidents." For this reason, and maybe you have noticed this by now, I have not referred to the conduct of the at-fault driver, who caused your serious injuries, as a mere mistake, or the auto collision as an "accident." If the collision was truly an "accident," then the law may not hold anyone responsible. The law requires that *legal liability* be established on the basis

of fault, referred to as *negligence*. When a significant auto collision occurs, causing serious personal injuries, it is self-evident that the person who caused the collision violated the motor vehicle safety laws and is thus guilty of careless, negligent conduct.

For many decades, law enforcement officers used the “Uniform Accident Report” form to annotate information about the auto collision. Notice the word “Accident” in the title of the form? Insurance companies and defense lawyers loved it! During trials, the defense lawyer, the police officer, and even the judge referred to the collision as an “accident.” So, what’s a jury to think about your claim if it was caused by an “accident?” Well, I can tell you by experience -- not much.

Recently, however, the use of a revised auto collision report form was mandated in West Virginia. The change was primarily brought about because a new form had to be created to be integrated with computer software. Irrespective of the reasons to get a new form in the system, every state, county and city police force must use the revised form: “State of West Virginia Uniform Traffic Crash Report.” Did you notice the word “Crash” in the title of the report? You can bet the insurance adjuster and defense lawyer noticed it! So now, even police officers must recognize that they are investigating car “crashes,” not mere “accidents.” But, old ways are hard to break, and it will take constant reminders to adjusters and even judges to refrain from referring to the police report as an “accident” report.

Quoting the Law

Insurance adjusters work with lawyers more than any other group of people on the globe. It should be no surprise that adjusters talk like lawyers, sometimes more so than lawyers talk like lawyers. Some even quote law and dictate court procedures to lawyers. In my former days as an insurance defense lawyer, I have had adjusters routinely tell *me* how to take depositions, hire experts, and even conduct trials and appeals. I have had several adjusters tell me how *we together* (i.e., the adjuster and I) were going to *try the case*. That's akin to me telling my auto mechanic that *we* will repair my car. He'll do the repair and I'll watch and pay the bill. Well, after working with hundreds of adjusters, I believe many of them have a fascination with being a lawyer themselves. So, when the discussion is just between *you and the adjuster*, who do you think will use the law and the insurance policy to bolster their position? That's right, the adjuster, not you.

Let's consider how this conversation will develop, using the debate over whether the auto collision was caused by an "accident" or the negligence of the other driver. The insurance adjuster, knowing full well the favorable implications of labeling the wreck as an "accident," will try to treat their own insured's conduct in causing the "crash" as an inevitable or unavoidable "accident." The insurance adjuster will first tell you that liability is not clear because their insured driver has a "legal" defense because the roads were icy or wet. Of course, as long as you are unrepresented, they will try to use this argument to dissuade you from pursuing full

compensation for your injuries. They may even quote a legal definition for “accident,” being “An unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct.” *Black’s Law Dictionary*, 7th Ed. 1999. Unless you have an experienced trial lawyer on your side (or just happen to have studied law yourself), you are not going to know how to respond to the constant negative pressure to give up on your claim.

Statements and Authorizations

Another important way the insurance adjuster will try to take advantage of you, if you are unrepresented, is to obtain from you a recorded statement and medical release authorization. As long as you remain unrepresented, the insurance adjuster is permitted to call you directly and talk to you about your claim. The adjuster then makes *claim file notes* regarding your conversations, so even if you don’t give in to pressure to give a full-blown recorded statement, the adjuster is taking the information obtained from you and putting it in the claim file notes in the language most favorable to the company. But many people do give in to this friendly voice and agree to provide a “recorded statement” over the telephone. You have no legal counsel present, no one to refer information to you that is relevant to your claim, and you “shoot from the hip” in answering questions about how the collision occurred, how you were injured, how you feel now, and whether you have had any prior medical conditions. The insurance adjuster will not, however, explain just how the insurance company and their hired defense lawyers will use this

statement against you in a court of law. So, you should be aware that every word you say will be scrutinized for truthfulness. It is a chief purpose of the “recorded statement” to make you look like a malingerer, or worse, a liar at trial.

Moreover, the *medical release authorization* you signed and mailed back to the insurance adjuster allows the insurance company to obtain *all* your medical records from the auto collision, *and the adjuster will list your name, social security number and type of injuries on a national data bank for insurance companies to share with each other.* Moreover, the insurance company will obtain all your previous medical records to allow them to profile you as someone who is trying to take advantage of this auto collision to get compensation for prior medical conditions. Your privacy concerns can be professionally managed through the use of your own experienced lawyer to provide only relevant information to the insurance adjuster, under the protection of a confidentiality agreement, which releases your information in language that advocates *your* interest, not theirs.

Social Media Traps

It is now common practice for insurance adjusters to use the Internet to secretly find out everything they can about you: your address, what kind of home and vehicles you own, your job, your family, and even your friends. If you have already disclosed anything about the auto collision or your injuries on Facebook, Twitter, or other social media, you should be aware that the insurance adjuster has been trained to locate this information and use it against you. If any other damaging

information is found in the public domain of the Internet, it will also be used against you when you pursue your legal rights against the responsible parties.

At a recent auto injury trial, the defense lawyer brought into court some statements my client unwittingly made on social media, which by the way were neither flattering nor supportive of her injury claims. They were just thoughtless comments that many young people make, and when taken out of context, they portrayed her in a negative light. Nonetheless, her comments affected the jury's view of my client, and the verdict (which was still in her favor) showed that the jury discounted the verdict precisely in the areas she disclosed private, but potentially negative, information on the Internet. And, may I add, what the insurance company and their defense lawyer did was within their legal rights to snoop my client's personal information. Why? Because my client decided to talk about her private, personal life on an open social media site. So, beware of discussing your injuries with other individuals, and certainly do not make your personal information public, to be read and used by the insurance adjuster against your injury claim.

Beware Of Surveillance

Insurance adjusters also may use surveillance to monitor your activities around your home, while you are at work, when you go grocery shopping, and even while you are driving to church meetings. Though the cost of hiring a detective to snoop on you is high, the rewards for finding adverse evidence about you are worth the cost to the insurance company. The goal of surveillance is to catch you on tape

doing not just “abnormal” things -- like doing back flips -- but “normal” things that the insurance adjuster and defense lawyer use to portray you as living a “normal” life after the auto collision. Several years ago, a teenage child was injured in an accident, but was caught on surveillance tape jumping on a trampoline. Of course even injured kids who have pain are going to try to have fun when they can, but the insurance company maximized the use of the surveillance tape to minimize the value of the child’s injury claim. This result could have been avoided with competent legal counsel to go over the risks of surveillance. Injured claimants are quite unaware that the friendly insurance adjuster to whom they just gave a recorded statement had, on the same day, ordered surveillance on them to “catch them in a lie” about their stated physical limitations and conditions.

Questionable Activities

What kind of activities should you refrain from if you are injured in an auto collision? While there are too many activities to list individually, categorically they resemble most of the daily things we all do, but with a “catch twenty-two” twist: no matter what normal conduct is involved, a negative inference will be attached to it and used against you. For instance, several years ago, a claimant testified that she injured her neck and back and could not lift her arms over her head. The insurance adjuster ordered surveillance and caught her at a football game screaming, and jumping up and down while waiving her arms in the air in excitement! Of course she was excited because her son was scoring a touchdown

and no amount of pain was going to deter from her excitement. An experienced personal injury lawyer knows how to educate each client on the risks of trying to do normal activities, despite the pain that they may cause, and can discourage surveillance through making demands for copies of all surveillance made or attempted by the insurance company on their clients. By the way, not all surveillance is unfavorable, and the insurance company will not tell you when they actually *confirmed* your injuries through surveillance. They will just try some other way to discredit your claim.

Spoliation of Evidence

Many people don't know that they have an obligation to preserve evidence that caused their personal injury claim. If you discard evidence (called "spoliation"), you may be prohibited from asserting part or even all of your injury claim. In auto injury claims, you have a duty to preserve the evidence that is under your control or ownership. So, you may need to keep a wrecked vehicle in the same condition if the vehicle malfunctioned in any way that may have caused a collision. You may otherwise want to keep the vehicle in its unrepaired state until you have consulted with legal counsel, because once the vehicle is repaired, you can't go back and inspect the damages. So, you should take lots of photos of your damaged vehicle at a minimum.

Meeting your duty to preserve evidence that you own or control can be confusing sometimes, even for lawyers. For instance, immediately following an

automobile collision on a state road, you decide to move your car off the road to avoid another possible collision. The police were not on the scene yet, so no one in authority told you to do this; you took it on yourself because you wanted to be safe. Although your actions were reasonable, the insurance adjuster may still wrongfully accuse you of removing unfavorable evidence before the police arrived. But if you decided to leave your car on the road, and were hit again, you would be blamed for causing another wreck or aggravating your own injuries! So, injured persons often face the criticism of the insurance adjuster and their defense lawyers no matter what they do.

Vehicle Salvage Problem

Another tactic the insurance adjuster will use is to persuade the injured person to discard or *salvage* their vehicle before adequate pictures or inspections can be taken of the damage, especially *undercarriage damage*, which may show that the “little scuff” on the back bumper was actually a huge dent in the metal bumper system behind the plastic bumper cover. If you allow the vehicle to be salvaged and crushed, then you are stuck with these limitations in presenting your injury claim. What then, can an injured person do to make sure that they don’t destroy key evidence for their injury claim? *Engage experienced legal counsel early in the process to safely navigate all the pitfalls the insurance companies are waiting for you to fall into.*

Chapter Seven

"There is no victory at bargain basement prices."

- Dwight D. Eisenhower

Claim Process Hazards

In previous chapters I described how your rights must be guarded and asserted by you in order for you to have an opportunity to receive fair compensation for your injuries. Because you have the *burden of proof* to substantiate your claim under legal evidentiary standards, the at-fault driver doesn't have to prove anything. If you can't prove the cause of the collision and your injuries, you collect nothing. This is one of the reasons the insurance adjusters don't want you to have legal counsel - they know that you will have trouble proving your claim without help. The insurance company has millions of dollars to pay for their legal advice whenever they want it, but they would begrudge you to seek that same help for yourself. This creates a disparity of knowledge and power and places a significant burden on victims of auto collisions to level the playing field without legal counsel.

Notice I used the word "victim" to describe people who are injured by the negligence of other drivers. But instead of being looked upon as a victim, you are viewed as a *claimant*, someone who is capable of misusing the court system to get something for nothing. Claims can be denied and defended against. Victims

must be compensated, and that is precisely why the insurance industry does not refer to you as a victim.

The Insurance Industry Is Against Liberty

The insurance industry has made significant progress in convincing society at large that the jury system in this country is unfair to business and they have an obligation to their policy holders to protect them from baseless claims and runaway verdicts. I agree that baseless claims can waste money and court time, but the very few baseless claims that are filed are hardly worth mentioning compared to the thousands of legitimate claims that are filed and unreasonably denied by insurance companies each year. As for so-called, “runaway verdicts,” one must ask who defines what is an unfair verdict? How about asking the jurors who reached the verdict? Or the victim whose life has been ruined because of the conduct of the wrongdoer? What would they say? What the insurance industry really wants is to poison society on the unfairness of the jury system and limit its role in our society. That is why there is so much “tort reform” advocated by the insurance industry - it would give them more money which means more power. This country was founded on the right to trial by jury and it is the cornerstone of liberty for all even today. “Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.” *John Adams, 1774.*

The Financial Motivation of the Insurance Industry

The financial motivation for keeping injured people characterized as *claimants*, rather than *victims* is huge. Consider a driver who speeds down the highway, under the influence of alcohol or drugs, and runs someone over, killing them. Compare that driver to a different driver who merely loses control of his vehicle while talking on a cell phone, and runs someone over, killing them. Although the first driver will be arrested, the second driver may not be arrested, and may only be given a citation. What is striking is that in neither case does the civil law or insurance law describe the person who is run over as a *victim*. When the victim files a claim for insurance compensation, they are a *claimant*.

As long as the insurance company can keep the injured person as the *claimant*, the adjuster and defense lawyer may portray the at-fault driver and the insurance company itself as victims of unjust claims for money, all caused by greedy trial lawyers and claimants. Thankfully, not everybody has been duped by the insurance industry's tactics. West Virginia has passed the Unfair Trade Practices Act, to keep insurance companies responsible to act in good faith. But, in 1995, the insurance industry finally persuaded a thin majority in the West Virginia legislature to repeal this law, as it applies to third-party claims. Now, the insurance company can act with impunity and unbridled bad faith in your case against the other driver.

As long as the insurance industry is making vast profits from this scheme, rewarding its own executives with million dollar salaries, there is no reason to pay

you fair compensation for your injuries. That is why people who are truly injured must be *claimants*, not *victims*, so that the insurance adjusters can justify their conduct in viewing you and your injuries with suspicion. That is you, the *victim*, need an advocate - to combat the wrong views of the insurance adjuster about your claim.

Influence on Public Opinion

Insurance companies have spent an enormous amount of money to persuade the public that there are too many lawsuits and frivolous claims. The insurance industry supports the labeling of West Virginia as a “judicial hell-hole.” They want to discredit our state judiciary by asserting that some of our judges allow trial lawyers to stir up jurors to get big verdicts. Numerous insurance and defense associations rant and rave about how bad West Virginia’s court systems are compared to other states. The truth is, all of their arguments are based on their own self-interest and greed. Instead of paying fair recoveries to needy injured people who deserve the compensation, the insurance companies put their own financial interest first, ahead of the interests of victims of auto collisions.

Unfortunately, many well-intended people have been persuaded to join and support these associations based on propaganda of fear -- that bad things will happen to them if damages are not capped or more tort reforms are not passed. As a consequence, many people hold a dim view of trial lawyers and injured people’s rights, that is, until *they* are injured and they realize their views were not sound.

Political and Judicial Activism

Insurance companies spend a lot of money shaping the political and judicial environments of this state. They hire expensive lawyers to meet with state politicians to get support for the laws they want passed. These laws are against your rights and interests. They also spend lots of money to hire defense lawyers to write legal briefs that support their position before the highest courts of law, and when they don't get their way, they attack whoever stands in their way.

Use of Defense Lawyers

As stated previously, the insurance adjusters are just fine with you remaining unrepresented. They have their own lawyers, whenever they need them, and you are at a huge disadvantage as long as you don't have one, too. The powerful defense lawyers also help train and advise insurance adjusters on how to "lawfully" find ways to defeat legitimate injury claims. I should know; I spent decades working for the insurance industry. It is my seasoned advice that without experienced legal counsel on your side, the insurance adjuster and their support network of defense lawyers will use your inexperience and lack of representation to their advantage to defeat your legitimate auto injury claim.

Minimizing Your Claim

The insurance adjuster has had lots of training -- and even testing -- on basic insurance laws, and they use this training to minimize and defeat your auto injury claim. *As previously pointed out, it's not just the insurance adjuster that is against your auto injury claim, but a multi-billion-dollar-a-year insurance industry which pays political groups a lot of money to advocate their interests to lawmakers and the public. They often pay defense lawyers more money to defend a claim -- as an example to that claimant and others not to file claims -- than pay the claimant a fair amount of money that fully compensates them for their injuries. Why? To discourage you and other legitimate claimants from pursuing full compensation for your injuries. You see, if the insurance company's insured drivers cause one thousand auto collisions in a given year, they know that if they can persuade even 10% of those claimants to drop their claim or accept a paltry recovery, which means hundreds of thousands of dollars to millions of dollars of savings per year. That is why they spend so much money on defeating your claim. They want to make an example out of you.*

Tag-Team Approach

Remember watching Saturday night wrestling and the tag-team matches? When one of the wrestlers got into trouble or just wanted help to finish off his opponent, he would reach out and "tag" the other wrestler who would jump off of the ropes and land on the other wrestler. The insurance company uses a similar

approach to defeat your claim. Here's an illustration of how this tag-team approach works in the insurance claim process. The at-fault driver phones his insurance company and tells them he has been involved in the collision. A claims adjuster will then be assigned to monitor your claim and will start searching for information on you and any prior claims and injuries you have sustained. The insurance company has sophisticated insurance networks, databases and investigators that are used to discredit people's injury claims. They will also look on social media and find out everything they can about you. If they find anything of interest, that is, in *their* interest, they will make a note of it. Then they may make a phone call to one of their insurance defense lawyers who is on perpetual stand-by for such calls. The defense lawyer then conducts legal research to find legal ways to argue against your case, and before the ink on the police report is hardly dry, the adjuster may have ammunition to defeat or minimize your claim. When the adjuster finds out that there may be a way to discredit your injuries, they make another "tag" by arranging for their own retained medical doctor to provide favorable medical opinions for the insurance company. So, the entire system of claims adjustment is rigged with booby traps against you, and you should ask yourself whether you are comfortable facing the adjuster and their tag-team of investigators, defense lawyers, and medical doctors, alone.

Chapter Eight

"Don't interfere with anything in the Constitution.

That must be maintained, for it's the only safeguard of our liberties."

- Abraham Lincoln

Real-Life Auto Injury Claim

Let's now consider how all these principles which we have previously discussed work out in a real case, involving a rear-end automobile collision.

Key Facts about the Collision

Suppose *you* are sitting in stopped traffic, and as you glance through your rear-view mirror, you notice a vehicle approaching your vehicle from behind. The approaching vehicle doesn't appear to be slowing down, and you raise your eyebrows in concern. You keep your eye on the vehicle, so you are unaware that the traffic suddenly has moved up a car length or so, and your foot is still on the brake pedal. When you hear the approaching vehicle's tires screeching on the road surface, in an instant you realize you're going to be hit and you stiffen up. CRASH! Your vehicle is impacted so hard that it is knocked forward several feet, even with your foot on the brake. You are also thrown backward and forward in a "whiplash" movement, causing you to immediately feel "numb" all over. You pause for a moment, trying to process what just happened, and then you decide to quickly get out of the vehicle, concerned that there could be an explosion. You

then decide to call 911, because you have been told your whole life to call the police if you are in an accident. Your cell phone is in your purse, which was knocked over in the passenger-side floor board, and you have to get back in your vehicle and bend over the console to reach your purse. While you are bending over, someone comes up and asks, "Are you alright?" and you say, "I think so." The witness says she already called the police, so you abandon looking for your cell phone. Because the police were already in the vicinity, they arrive at the scene in just a few minutes. The first thing the police officer asks you is whether you are injured, and you tell him that you were shaken up a bit, but you think you're "okay." So, the police officer indicates in the police report that there were "no injuries reported," and proceeds to take a couple of written statements from the drivers before leaving the scene. He is at the scene a total of twenty minutes and only checked on your condition one time.

Post Collision Conduct

As you are driving home, your neck and back start tightening up and you start to feel a little nauseated, so when you enter your front door, the first thing you do is sit down and watch television for a while. You get up an hour later, still sore, and take some ibuprofen and then a soak in a hot bath, and you feel a little better. You go to bed that night, but you toss and turn and don't get restful sleep. You wake up exhausted, take some more pain medication and try to start your day. You next get showered and dressed, and the pain medicine has dulled the pain you

felt the night before. Then the phone rings, and can you believe it, it is the insurance adjuster calling to see if you are “still okay” (the adjuster has already talked to their insured and the witness). She also asks you some questions about the accident. Although the adjuster knows that she shouldn’t get a “recorded statement” from you this early (state law requires 20 days to pass), she nonetheless indicates that a statement would be nice, so she wouldn’t have to bother you anymore. So, you agree and give a recorded statement. In that recorded statement you tell the insurance adjuster how the accident happened, that you had a similar problem a few years ago, and that you thought you were doing a little better. As the next several days go by, however, the pain gets worse, but you still don’t seek medical care. You have been through this before a few years ago, stemming from whiplash injuries in another accident, and you really think you will get better. But you don’t, not this time. For the next several weeks you “self-treat” your symptoms without success. Finally, you have had enough of the pain and sleepless nights, so you go to an after-hours medical clinic and are diagnosed by a nurse with a muscle strain. No x-rays or MRI were ordered to see what was going on with your neck, and you still are not better. Now, let’s stop at this point and see how the insurance adjuster and defense lawyers will use this information against you to defeat your claim in court.

Insurance Adjuster Evaluation

Remember when you kept watching your rear-view mirror before the collision, and didn't notice that the traffic had moved forward? Well, the insurance adjuster will use this alleged "lack of attentiveness" on your part to assert that you were guilty of comparative fault, meaning that you partly caused the collision by not moving forward and allowing the at-fault driver the additional few feet to stop! The insurance adjuster doesn't have to be right in making these baseless accusations against your interests. By law, the insurance company is protected from third-party lawsuits of acting in bad faith. *Only an experienced trial lawyer, with significant experience in automobile crash cases, is suited to rebuff these baseless defenses and show that your conduct had nothing to do with the cause of the collision.*

Arguments over Money

But even if you are able to convince the insurance adjuster, without legal representation, that you were not to blame for causing the collision, a big battle still looms over the amount of money damages you are entitled to recover. The insurance adjuster is expertly trained to *minimize* your injuries, and thus, your recovery. When an offer of settlement is made, it is so small that even your medical bills may not be paid, much less compensate you for all your pain and suffering.

Admissions by You

Remember when you told the witness and the police officer that you thought you were “okay?” Well, this statement is treated as an *admission* that you were not injured in the accident. And, when you gave the recorded statement to the insurance adjuster and told her that you thought you were getting a little better, this is an admission as well. Additionally, when you told the adjuster that you had a previous “whiplash” injury, the insurance adjuster will relate your current condition to the prior condition and attempt to obtain all your medical records from years ago to show that you were really not injured at all in this collision. Every statement you make to the police, witnesses and insurance adjusters will be used against you in a court of law. *With the help of legal counsel, you can present your side of the case to show that neither the witness or police officer are trained medical care givers, and you are not educated in the delayed reactions of “whiplash” type injuries. An experienced personal injury lawyer will also explain that the acceleration flexion-extension of the neck known as “whiplash” can be caused by impacts as low as 15mph, and that symptoms often do not present until many hours later.*

Effects of Adrenaline

Although the type and severity of trauma injuries significantly vary, in most cases of trauma with injury, the body secretes a dose of *adrenaline*, a powerful hormone that temporarily masks symptoms of pain. So, immediately after an automobile collision occurs, the injured person will often tell the police officer they

are a little “shook up” but they think they are going to be “okay.” When making this statement, of course, the individual is unaware that the initial symptoms of whiplash injuries are often delayed and masked by a surge of adrenaline. When the adrenaline wears off, and swelling at the points of injury begin to affect nerves causing pain, the injured person may be accused of exaggerating, or worse, lying, because they initially told the police officer they thought they were “ok.” When the injured person tells the police officer that they *think* they are “ok,” the police officer doesn’t make any further inquiry about their injury condition. To the contrary, the police officer annotates that the person is *not injured* on the police report. The police report, then, is admitted into evidence to show that the person is exaggerating or lying about their alleged injuries. The insurance company adjuster is trained to take advantage of your weakened state to deny or minimize your injury claim.

Stigma of an Injury

There is something in our culture and upbringing that stigmatizes people who are injured, especially if they injured themselves. We have all had flashbacks of embarrassing moments like when we have slipped off a chair or bench, hit our buttocks hard on the concrete, and tried to minimize the embarrassment by denying the quite real aching pain you feel at the moment. Because of this reason, and previously stated reasons of masking of pain, many truly-injured persons are reluctant to tell the police officer they are injured. Many people are afraid to say

they are injured because the collision did not leave a trail of blood or debris, proving that they have a reason to feel injured. With the advent of super-safe bumper systems, cars moving at 20 mph can slam into another vehicle, move it forward several feet, but leave no real evidence of a hard impact. So, when the police officer shows up, and doesn't see any debris field or blood, the injury question -- "Nobody's injured here, right?" -- sounds more to you like a challenge than a caring inquiry. I know; I have interviewed hundreds of police officers, and they all have the same attitude, that low damage collisions should not cause any injuries. It causes more work for them! So, many people do not tell the officer that they are starting to hurt because they don't want any confrontation with an intimidating police officer.

But, by the time they realize their injuries are more serious than expected, damage to their case may have already occurred, and only aggressive lawyering can salvage certain rights of recovery back from the grips of the insurance companies. The *best advice* of a former insurance defense counsel is that anyone injured in an auto collision should promptly seek advice about their injuries from a reputable, experienced personal injury lawyer. Some injury claims are so small that they may not require legal representation, but you won't know for sure until you take the first step to schedule a free initial consultation.

Chapter Nine

"How many legs does a dog have if you call the tail a leg? Four.

Calling a tail a leg doesn't make it a leg."

- Abraham Lincoln

What If I Already Settled?

For some of you, if you have already settled your case, the information in this guidebook will only reinforce why you may feel so bad right now as you face all the problems that the insurance adjuster did not tell you about. The amount of money sounded good at first, but now that things have not worked out well for you, you have serious second thoughts about settling your case on your own. Let's take a look at what can be done to address some of your concerns.

Can I Get Out Of the Settlement?

The first question you probably are wondering is whether you can get out of the settlement. The answer is, possibly, but only if the settlement was agreed to within 20 days after the auto collision. West Virginia law allows you to void this settlement, but you must do so within 180 days from the date of the auto collision. If you reached a settlement more than 20 days after the collision, then the settlement is binding and enforceable unless you can prove that the insurance company defrauded you in some manner.

Who Pays My Medical Bills?

I bet you don't remember reading all that fine print on the *release* you had to sign to get that money offered by the insurance adjuster. You had better go get it and read it. It will say that you are responsible for paying all of your past and future medical bills, and that you have not only released the other driver, but the insurance company, too! Moreover, you agreed to *indemnify* them - i.e., pay their damages and attorney fees - for any actions or claims that are made against them if you don't pay all of those past bills you incurred from your injury.

So, what does all this mean? Let me illustrate a series of common problems that unrepresented individuals have regarding medical bill reimbursement. As stated previously, the medical bills you incurred are *yours* as far as the hospital is concerned. The hospital has no rights to send the at-fault driver your bills. Sometimes the insurance adjuster will agree to pay the hospital directly and give you a few hundred or thousand dollars. It may sound enticing, but what if all your bills were not accounted for? Who has to pay them? You do! And, may I add, out of the money the insurer gave you. What if you need more treatment following the settlement? Who pays then? You do! What if the medical bills are greater than the money offered, what do you do then? You had better get a lawyer, and fast.

Medicare/Medicaid Concerns

If you are Medicare/Medicaid qualified, meaning that you may receive medical treatments that will be paid by either of these two federal plans, you must adhere to strict guidelines that control reimbursements back to the government. For instance, if you received emergency room care and were an inpatient for a week, your bills would be paid by Medicare/Medicaid. When you receive a settlement from the insurance company, the company is supposed to ensure that Medicare/Medicaid is reimbursed for these costs, minus the percentage of your lawyer fees. Since you don't have a lawyer, who is skilled in getting your bills reduced, there is no reduction and the full payment must be made. Not only did you pay the full price of reimbursement, but you didn't get the best settlement amount either. So, you lost twice for not having a lawyer. Nonetheless, if you don't handle the Medicare/Medicaid reimbursement properly, you could jeopardize your future health care coverage under those plans.

Chapter Ten

"Self-interest is the enemy of all true affection."

- Franklin D. Roosevelt

10 Ways to Ruin Your Case:

1: Lie About Your Claim

The number one way to ruin your otherwise legitimate claim is to lie about anything that relates to your claim. The veracity, that is the truthfulness of your story of your injury, has to be ultimately believed by a jury, and if you lie about even a seemingly insignificant thing, you may not be believed about your injury. As a true illustration, a client lied to the police about who was driving the vehicle to shield blame from the actual driver who wasn't supposed to be driving. Irrespective of whether my client or her friend was the driver, it should not have mattered since the collision was caused by the driver of the other vehicle that ran a stop sign. The insurance company and defense lawyer used the lie to refute my client's injury claims, even though her injuries were legitimate, permanent, and painful. Ultimately, the jury did not fully believe the magnitude of the client's injuries because she had lied to the police. **Lesson One: Don't lie about the collision or your injuries.**

#2: Guess about Your Claim

From early childhood schooling, we have learned that not knowing a particular subject is looked down upon by teachers and peers. There is a lot of pressure in adult society to be “in the know” as well. When we are asked a question in an area that perhaps we should know the answer to, we will try our level best have some answer - right or wrong. When it comes to giving information that will be scrutinized by the insurance adjuster and defense lawyer, guessing about information is not a good idea. You will be characterized as someone who just “makes up” information to fit their financial motives, or worse, you will be considered a liar. You also stand a good chance of minimizing good testimony based on all the facts, when they are fully developed, because you guessed about things you were not sure about. This creates competing story lines and jurors become suspicious when you change your story. **Lesson Two: Don’t guess about the facts of the collision or your injuries.**

#3: Conceal Information

The previous two lessons - about lying and guessing - are closely associated with the third lesson: don’t conceal information. While lying is an act of *commission*, that is **what you do say** knowing it is untrue; concealing information is an act of *omission*, which is **what you didn’t say** knowing it to be true. Both are wrong and both will ruin your auto injury claim. Let’s consider an example of concealing information. Suppose the insurance adjuster asks if you ever have had

a neck injury before. You think a moment or two and then remember getting chiropractic treatment on your back and neck about ten years ago. The treatment was not specifically for an injury, and after several treatments the symptoms went away, and you have not had to go back since. So, you answer “no” to the insurance adjuster’s question. It later turns out that the insurance adjuster not only finds out about the chiropractic treatment, but asserts that you concealed this treatment. While there is a technical distinction between treatment for a neck injury and treatment for a neck condition, most jurors will think you tried to conceal information.

So, before you decide to discuss your case with the insurance adjuster you ought to give careful consideration to the difficulties you will face without legal counsel. It is easy to get confused and say the wrong thing when the insurance adjuster is firing questions at you and you feel the sense of urgency to answer each one, hoping your responses will satisfy the insurance adjuster. Take my word for it, the insurance adjuster is laying traps for you to fall into and will allow you to hang yourself if you are not very careful. **Lesson Three: Don’t conceal information about the collision or your injuries.**

#4: Exaggerate Symptoms

Suppose you are standing in line at the customer service counter at a large department store. The product you bought just didn’t work well, and you wanted to get a refund. The person in front of you is arguing with the management

on another return and you start to get anxious, that is more anxious than you already are. Even though the product you bought could have worked for someone else, it didn't work for you. But you have already taken the product out of the box, and after all efforts to put it back in the same way you bought it, it doesn't look like a new package anymore. So, you start thinking of *every reason* the product didn't work for you - just in case the management doesn't like your first reason for wanting to return the product.

Well, if you are the type of person that doesn't like this type of confrontation, you are going to feel a lot more nervous when the insurance adjuster calls to have a chat about your injury claim. Sure, you want to tell the truth, but you also want to receive just compensation, and the questions that are asked make you feel uncomfortable (if not intimidated). If you try to play the injuries down, like a lot of people do, you will not be taken seriously. And when your injuries don't get better, you will be accused of being a *malingerer* (a person who fakes their injuries). But, on the other hand, if you exaggerate at all the symptoms of your injuries at the outset, you will be labeled as a faker or money-grubber.

For instance, if you are losing quality sleep because of neck pain from the auto collision, you should not say that you haven't slept a wink for two nights. You should say you have tried to sleep, but could not get restful sleep because of the neck pain. Because your symptoms change, sometimes day to day, it is not advisable to speak with an insurance adjuster early on after your auto collision. Of course, it

is best to consult an attorney before you speak with an insurance adjuster.

Lesson Four: Don't exaggerate your injuries -- that is just another form of lying.

#5: Ignore Doctor's Orders

When you visit the emergency room or medical express clinic for your injuries you are routinely given a form that tells you what is expected of you in treating your injuries. If you are prescribed medications it is expected that you will promptly go to a pharmacy and fill the prescription and take the medicine. If you don't, you will not be taken seriously when you tell an adjuster or jury that you had pain. Likewise, if the physician instructs you to apply hot or cold compresses to your neck and stretch every day, and you don't, others will minimize your injuries. Many people work in pain, even with a lot of pain. I know many persons who have worked for years with chronic, constant pain. But early on in your assessment, if you attempt to do normal things in pain, you will be viewed as normal. Pain is invisible; nobody can see your pain. What they can see is how you respond to the pain. So if your conduct resembles that of a normal person, even though you are in pain, your injury will be minimized and so will your compensation. **Lesson number five: Follow the doctor's orders to the best of your ability.**

#6: Give a Recorded Statement

We have all watched the news programs that tell of the latest investigations or indictments for wrongdoing. Have you noticed how many times the newscaster stated that the accused or involved party was unavailable for comment, or they have no comment? Well, there's a good reason for this - they don't have all the information and they know that if they say something wrong, it will be used against them. I have previously explained the hidden dangers of giving a recorded statement to an insurance adjuster. There are times when giving a recorded statement to an adjuster may be in your best interest, but only an experienced lawyer will know when to do so. **Lesson Six: Don't give a recorded statement without counsel.**

#7: Sign a Medical Release

When you are injured in an auto collision, which was not your fault, you are viewed in the eyes of the law as a *victim*. You should be compensated as a victim. The insurance adjuster, however, doesn't view you as a victim, but a *claimant*, a money-grubber (someone who is motivated to get something they don't deserve). The more the insurance adjusters cheat you out of your recovery, the more applause and promotions they receive. When you are told that you won't get any recovery until you sign a medical release, you feel like you don't have any choice in the matter. But when you sign the medical release, an entire world of your personal information is given to the individual who looks on you as a

money-grubber, and your records will be used to prove it. I have seen this scenario work out hundreds of times. The motivation of the insurance company to get your records is to disprove or minimize your claim. Additionally, all your medical history will be recorded on national insurance indexes that the insurance industry uses to defeat claims. You have to ask yourself whether giving the insurance adjuster access to all your medical records is necessary and wise.

Lesson Seven: Don't sign a medical authorization without legal counsel's advice.

#8: Represent Yourself

There is a common saying in the practice of law, "Don't hire yourself to act as your own lawyer." The reason for this is that the client lacks objectivity. Objectivity means that you can analyze the law correctly and evaluate the facts of the case in a neutral way. That way you are not overlooking a key weakness in your case. I have known many ne'er-do-wellers who represented themselves, and even filed their own lawsuits, but in the end finally come around to the obvious need to have a professional oversee and handle their legal matters. If you had a common cold, you would likely go to the local grocery store and buy some cold medicine. But if you had a severe laceration on the leg, you wouldn't likely stitch your leg. Many people try to represent themselves because they think it will be like treating a common cold. By the time they realize that a professional is

needed, a lot of damage to their claim has already occurred. **Lesson Eight: Don't hire yourself as your own lawyer.**

#9: Hire a Bad Lawyer

By now you know that handling your own auto injury claim has significant challenges, and you decide to hire a lawyer. As I pointed out in chapter two, not every lawyer who takes personal injury cases has the necessary experience to provide excellent representation. There are plenty of average lawyers who are looking for quick answers to solve their client's complex problems, because they don't have the experience and knowledge to answer their own questions. Hiring an inexperienced, but well-intended lawyer, to handle your case will be no substitute for an experienced lawyer with a thorough knowledge of auto injury law, and trials and appeals. And, if you expect to collect any money from the insurance company, you had better hire a lawyer that knows insurance law, too. Without question, having no lawyer is a worse mistake than hiring an inexperienced lawyer. But since you are wisely choosing to hire a lawyer, hire a good one. **Lesson Nine: Hire a good lawyer.**

#10: Do Nothing

Last, but not least, the tenth way of ruining your claim is to be undecided. That's right. Just sit on the fence post in a perpetual state of indecision. This often resembles "doing nothing" about your claim. The problem is that "doing nothing" is actually "doing something" after all, but not the "something" that will help your

case. While you wait week after week, month after month, the clock is ticking on the statute of limitations on your claim, witnesses vital to your claim are not interviewed and move out of the area, evidence about the collision is destroyed, the police officer can't remember the collision anymore, the time period when you are expected to seek treatment has passed, and a whole host of other negative things happen to your claim while you are making no decisions.

So, as it turns out, waiting around for things to get better on their own actually worsens the situation. Many individuals, though, have difficulty taking the first step to meet with a lawyer. The insurance industry and big business have teamed up to advance a negative view of personal injury lawyers. Pejorative names like "sharks" and "ambulance chasers" are commonly used by insurance adjusters and the insurance industry. But when you have been helped by a good lawyer, your view about lawyers will change. A lot of people find out that lawyers do a lot to help their local communities, over and above providing legal services for individuals who have been injured. Take the step to make the phone call to schedule the free consultation with a competent auto injury lawyer. You'll be glad you did.

Lesson Ten: Do something constructive -- hire a good lawyer.

Conclusion

The purpose of this guide is to educate you on the basic facts that you must know in order to achieve the best result possible regarding your injury claim. You may not have been able to avoid the collision that caused your injuries, but you can avoid the unnecessary pitfalls of dealing with the insurance adjusters who are motivated and trained to devalue your claim, if not destroy it altogether.

If I can be of any further assistance to you, it would be my pleasure to speak with you personally about your injury claim. You may call my law office at 1-304-594-1800 or visit our website at <http://www.robinettelaw.com> and reach us by e-mail or live chat.