

AFTER YOUR ACCIDENT

SOME DO'S AND DON'TS

DO NOT SAY YOU WERE AT FAULT.

Be truthful, of course, whether you are being questioned by a police officer or a store manager. But the question of “fault” involves the rendering of a legal opinion. In legal terminology, it is not a “fact” but a conclusion. It is a question for a lawyer, or perhaps ultimately for a jury, to determine. You are not required (or even qualified) to render such an opinion. Don’t give one.

TAKE PHOTOS AS SOON AS POSSIBLE.

In this age of cell phones, taking photographs is usually a simple matter. Get pictures of the damage to your car, and the other car too. Also a picture of the other driver. It is not unheard of for a driver who has been in an accident to say, “I was nowhere near that location that day!” Particularly when the other driver was clearly at fault.

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TAKE PICTURES OF THE BROADER AREA TOO.

They will be invaluable in explaining the scene, and how the accident occurred. Much better than relying on your hands to illustrate the position of the vehicles and the configuration of traffic lanes. Photograph anything else that appears relevant. Skid marks, for example, or gouges in the pavement, or pieces of wreckage.

NOT ALL INJURY CLAIMS STEM FROM AUTOMOBILE ACCIDENTS.

They may arise from negligently-maintained premises, or from the workplace, for example. Say a badly placed downspout causes water to spill across a sidewalk, which turns into a sheet of ice. The ice may well be gone tomorrow, and the downspout may be relocated. Get photos of the condition and preserve the evidence.

SOCIAL MEDIA.

Avoid talking about your accident too much; be especially careful on social media. What is often said in TV police dramas has some application to accident cases: Anything you say may be used against you.

MEMORIALIZE.

Prepare a memo as soon as possible, chronicling everything--the more detail the better. Weather, things you notice about the scene (whether or not they seem relevant at the time). Write down the name of the other driver and any passengers in her car, license numbers, names of witnesses and investigators. Most important, how did you feel: detail any pain or injury, and describe what happened to your body upon impact. Write down what anyone else may have said to you, as close to verbatim as possible. Give this to your lawyer at your first meeting. He will find it helpful.

GET TREATMENT.

Most important: get immediate treatment for your injuries. Do not try to be a hero or a martyr. Any failure to seek immediate treatment will be viewed as evidence that you were not really injured. In addition to an emergency room visit, be sure to follow up with your

primary care physician as soon as you are able. This is important for several reasons. First, it demonstrates that you really were injured. But further, some injuries—even some fractures—may have been missed by ER staff. And some injuries—such as shoulder injuries caused by seat belts—may not even show up until some time has passed. It is just a fact of the personal injury field: while getting treatment is deemed to be proof that you were injured, not getting treatment is deemed to be proof that you were not.

PAPERS.

Keep copies of everything: police reports, medical records, medical bills, prescriptions, expenses due to the accident (such as lost wages or car rental).

CONTACT A LAWYER AS SOON AS POSSIBLE.

If you have been injured, do not try to deal with the other party's insurance company by yourself. The worse your injury is, the more important this advice is. You will be dealing with an expert in negotiating claims. Certainly the position of claims adjuster is an honorable one, but remember: the claims adjuster's job is to emphasize your own fault for the accident, and to minimize the fault of his own insured.

He will also try to minimize the degree to which you have been injured, and try to pay you as little as he can get away with to resolve your claim. From the adjuster's point of view, we live in a dishonest world. Many people make dishonest claims, and a reasonable adjuster will assume most claims are just that, including yours. He's seen it before; unfortunately that is the way of the world.

RETAINING A LAWYER WILL LIKELY COST YOU LITTLE OR NOTHING.

Most injury lawyers work on a contingent fee basis—that is, they receive a percentage of what they recover on your case. (You may be required to reimburse you lawyer for some of the costs incurred.) Your lawyer is an expert at evaluating and negotiating claims; leave the work to him or her.

BE PATIENT: INJURY CLAIMS TAKE TIME.

Your attorney will likely try to resolve your case with the other driver's insurance company before going to the expense and trouble of a lawsuit. Be aware that, either way, it takes time. True, some insurance companies have the reputation of dragging their feet to avoid settling, but these "sub-standard" companies are in the minority. Actually most insurance companies, like most people, are concerned with "clearing their desk." Yes, it is the claims adjuster's job to preserve the company's money; but more so, he views his job (as does his boss) as disposing of a volume of claims as quickly and efficiently as possible.

Nevertheless, settling with an insurance carrier always seems to take longer than it should. If your claim seems to be taking too long (and it likely will seem that way), know that your lawyer wants your case settled too. He is doing his best.

If a suit must be filed, that process is usually a slow one, too. It is in the nature of every court system that things move at glacial speed. But your lawyer will do all he can to move your case along.