

7 DEADLY SINS TO AVOID IN YOUR ACCIDENT CASE

1. *Providing Statements - at the scene of the accident or insurance adjusters soon after.*

You are under no obligation to make a statement to the police or to anybody else involved or present at the scene of an accident. Generally, the less said at the scene the better. A seemingly innocent remark can be given a sinister twist during settlement negotiations or cross-examination in court. At the very least, do *not* discuss anything with the other person's insurance company.

It is however helpful to give statements to the police if you are NOT at fault for causing the accident. Do not listen to the other driver who says, "Hey, we'll handle this ourselves, we don't need the police". Realize that the other driver making such a statement may tell a completely different story (*different from the one they tell you at the scene*) when the matter is discussed with the police and/or their own insurance company. Although good intentioned, any given person may tell exactly what they saw the first time, but tell it a completely different way every time thereafter. Even you may not tell it exactly the same way you remembered it the first time.

You should talk about the accident with your own insurance company. In fact, your policy says you must cooperate with your insurance company. Even so, your insurance company is going to look out for its own interests before it looks out for yours. That's why it's a good idea to talk to an attorney before you talk to anyone.

Even if your insurance company calls you and suggests they take your statement over the telephone, tell them you would prefer not to. Don't agree to dictate a verbal statement into a tape recorder over the phone, and certainly not when you're in the presence of an adjuster. Do not agree to sign a statement either if they show up at your door. Whatever the circumstance may be, advise whomever you're dealing with that you'll be more than willing to provide a signed statement, *after your claim has been settled*.

2. *Refusing medical treatment at the scene of the accident and later minimizing your injuries to your doctors.*

Many people, even while in pain, will refuse medical attention at the scene of an accident and go home. Then, after several hours of increasing pain and worry, they need help. When dealing with the typical Insurance Adjuster (who are quick to assume they're being conned by another fraudulent individual), you are told that the pain you allegedly felt had nothing to do with an injury related to the accident! That's why one who is injured in an accident should *immediately* demand an ambulance be called and they be brought to the closest Emergency Room.

One big mistake people make is that once they have started treating their injuries with doctors, they fail to thoroughly explain the extent of all their injuries and pain. Tell the doctor if anything hurts, even if it is mild pain. If you do not tell the doctors about everything, their records will reflect that you do not have pain, when, in fact, you may have pain. Also, do not let the doctor push you farther than you feel comfortable. If you endure discomfort in silence, their records will not be an accurate reflection of what you are experiencing.

3. *Not obtaining witness information at the accident scene.*

Most headed enough to take notes are seriously injured, it's

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understandable that you can't do anything but seek emergency medical treatment. But if you, or someone with you, are able, you should take minimal information. If you have a pad and pen it's *not* a good idea to ask, "Did you witness this"? More often than not that will turn them off! It's much better to ask, "What happened here?" If the person is willing to talk don't insist "Give me a written statement." That's too demanding. Hand them the pad and pen and say something like, "Please, while I take some photograph" (or whatever) "just write down what you saw." Then go about your business. When that person is finished, thank them profoundly and say something like, "I'll go over this later. In case I can't make something out, please, give me your name and a phone number where I can reach you if I have any questions."

4. *Signing documents or checks from an insurance company with release language printed on them.*

Accident victims should not sign or accept anything they do not fully understand. *Don't sign anything.* Don't overestimate the good will of an insurance adjuster. They are trained to investigate accident cases in such a way to make their insured look good. Many unsuspecting individuals fall prey to the adjuster who seeks to protect his company's pocketbook at the expense of a legitimate claimant.

5. *Settling your case too early and without an attorney.*

There are many pitfalls associated with handling your own claim without an attorney. Foremost is settling for an amount far under what it's worth. Many victims of accidents have tried to handle their own personal injury cases hoping the insurance company will settle fairly without the need for costly attorneys. Unfortunately, this belief is misplaced: according to The Insurance Research Council (1999 study), on average, injured people who retained an attorney received *three and a half times more* money than those who did not retain an attorney!

Other pitfalls include the possibility that a release of one type of claim may actually release or impact other types of claims, e.g., a premature release may forever bar a later claim for more significant losses caused by a worsening condition. Because of these pitfalls and others, you should almost always consult with an experienced attorney before attempting to settle a claim on your own.

One example may help you understand why consulting an attorney is advisable:

Joe, who has prudently purchased \$100,000 in Underinsured Motorist Benefits as a part of *his* automobile insurance, settles his claim, on his own, against a careless driver for the driver's policy limits of \$25,000. Joe feels he has done the right thing because the other driver's insurance company assures him that the other driver has no assets worth pursuing. Joe also feels good because he does not have to pay an attorney one-third of the settlement. Joe signs the release and cashes the \$25,000 settlement draft.

Only then, after consulting with an attorney, Joe realizes that he has lost his right to make a claim against *his own* Underinsured Motorist Coverage above the \$25,000 settlement. What Joe did not realize is that his insurance policy contained a provision requiring him not to sign the release until his insurance company got proper notice of the settlement against the other driver's policy and then either approved of the settlement or waited 30 days after his insurance company got such notice. If Joe had consulted an attorney, he would have obtained significantly more money to compensate for his injuries.

Also, the negotiation process itself is a mismatch since you are talking to a person who negotiates for

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a living. You may be a fine carpenter or school teacher, but it is unlikely that you have the negotiating skills to match a professional insurance adjuster. Adjustors use this mismatch to their advantage. You are repeatedly confronted with strategies that the adjustor has practiced for years. The result is likely to be a settlement that favors the insurance company by a huge amount.

The fact that you have an attorney can alone automatically increase your recovery. Once they know you have an attorney, it's wake-up call. There are three good reasons why insurance companies don't like to be involved with attorneys and in lawsuits: (1) the cost to the company immediately skyrockets the minute lawyers are hired and brought into the picture. (2) Adjusters often feel it's a black mark on their record to have a case taken from them and put into litigation because they were unable to handle the claim themselves. (3) Their insured (the person who caused your injury) won't be too happy to be involved in a lawsuit.

An attorney experienced in personal injury law has the ability to overcome your disadvantages in dealing with the adjustor and to properly prepare your side of the claim. With an attorney, a thorough investigation of the facts of the accident, a complete understanding of your injuries, and the full knowledge of all avenues of insurance coverage assures financial recovery beyond what appear obvious to the lay person.

6. Ignoring time limits for claim notices and other coverage issues.

There are many different deadlines for notices of claims to be given to your insurance carrier and the at fault party. You should read your policy carefully and understand what these notices mean and when and how you have to give notice. If you fail to give timely notice, insurance companies may legally deny your claim altogether.

7. Not having enough insurance – being underinsured

There are two aspects to being underinsured. First is not having enough liability coverage. This coverage comes into play if you are at fault and the other driver claims against your policy or sues you. If you have only the minimum limits (\$25,000 per person and \$50,000 per accident in New York), then the other driver can come after all your personal assets above that limit.

Second is not having enough SUM coverage (supplemental underinsured/uninsured motorist coverage). This kind of claim is against *your own policy* and the amount you can recover is determined by complex factors including:

- The severity of your injuries;
- The dollar limits of the “at fault” parties insurance policy;
- The dollar limits of your SUM policy;
- Whether you have properly and timely given notice of a SUM claim to your insurance company;

Underinsured terms are optional provisions with the policy covering the vehicle you ride in or within a policy covering a household vehicle. It may provide extra insurance over and beyond that of the offending vehicle. In other words, if the value of your injuries exceeds the limits of the offending vehicle policy limits, then a claim can be made against your own policy under the Supplemental Provision *to the extent your Supplemental Provision exceeds the total coverage of the offending vehicle*. See the above example of “Joe” to see how the numbers can work.

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You should think very seriously of obtaining sufficient SUM coverage since the minimum amount of coverage any other driver is required to carry is only \$25,000. Given the relative modest increase to your policy premium verses the chance of becoming seriously injured with inadequate or no other insurance to be found from the at-fault driver, this is among best advice we can give.

This is not a guarantee, representation or warranty of any outcome of any case. The forgoing paragraphs are but short introductions to this type of coverage and should never be construed to obviate the need to seek direct legal advice.

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WHAT MISTAKES TO AVOID IN THE FIRST WEEK AFTER YOUR ACCIDENT

- Mistake 1. Not seeking proper medical attention. Either at the scene or as soon as symptoms occur, you should seek the proper medical attention as soon as, and as often as, possible.
- Mistake 2. Not keeping detailed notes of all conversations with insurance company representatives. You should get names, phone numbers, and job titles of people you speak with, including their supervisor's name.
- Mistake 3. Failing to explore all areas of insurance coverage under all policies you may have. Many people overlook policies that might cover a claim. In particular, look at homeowner policies, "umbrella" policies, and materials that came with your credit cards.
- Mistake 4. Not properly documenting your injuries. You should take pictures, if possible, of damage to your vehicle, the accident scene, and all of your injuries from the time of the accident throughout your recovery.
- Mistake 5. Trying to outsmart your insurance adjuster. You should be honest and forthcoming with your own company. Even if it is embarrassing, it is better if your insurer knows all the facts. Failing to be candid with your insurer might invalidate your policy or cause a denial of coverage.
- Mistake 6. Talking to unnecessary parties. Don't talk to anyone about the accident except your doctors and attorneys. Even your best memories can fade and change. Although statements to others may appear to be harmless, a "favorable" inconsistent statement can do as much damage as an obvious harmful statement.
- Mistake 7. Not keeping all receipts of meals, lodging, and purchases made in connection with time spent pursuing your claim or recovering from your injuries from the time of the accident until final settlement. These can all be added up later to support your claim.
- Mistake 8. Failing to contact an attorney experienced in personal injury law. An attorney who regularly practices in this area is the best person to seek advice from. We deal in these issues every day and are experts in negotiating. We also have the ability to back up what we say by litigating in court any claim that falls short of what is really owed to you.

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