

California Car Accident Legal Guide



A Comprehensive Guide to Understanding Your Car Accident Claim

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Introduction.....

Automobile accidents in California are one of the biggest causes of death and serious injury in all the state. The truth is that every time an individual steps into a vehicle, they run the risk of being involved in a serious car accident. According to the National Highway Traffic Safety Administration (NHTSA), a person in the United States deals with a car accident every 20 seconds. Fortunately, over the past few decades, car manufacturers have invested considerable efforts to creating a safer automobile, including better seat belts, air bags, reinforced frames and warning systems. However, even these "safety" mechanisms have been known to cause serious injuries of their own.

The fact remains that serious injuries resulting from car accidents are, and will remain for the foreseeable future a risk to human welfare. The period immediately following an accident is no doubt a very daunting time for many victims. In addition to coping with the many types injuries and health ailments on a day-to-day basis, victims must additionally cope with medical bills, mental anguish and suffering, as well as time away from work. Furthermore, harm caused by car accidents are not restricted to the victims alone, but also to their family, friends and significant others.

This manual aims to help individuals already suffering from major car accidents. It will educate victims in regards to fault, liability and state law. It will also provide an outline on things to do and not to do in regards to dealing with opposing parties, and the insurance companies. Lastly, it will help people in dealing with their attorneys, maximizing their damages, and helping them find the right attorney for their needs.



Chapter

1

Car Accidents and California Law

Liability or fault in car accidents is determined on the legal theory of negligence. Negligence is the failure to exercise the care that a reasonably prudent person would exercise in a similar situation. Unlike criminal acts, the harm caused in car accidents are negligent because it is not caused through an intentional act such as an assault or robbery, but rather through the carelessness of another person. In regards to car accidents, negligence can be shown by demonstrating that

- 1) The other driver was careless, which was the direct and proximate cause of the accident
- 2) The crash caused some sort of physical or property damage; and
- 3) The other driver was at fault for the damages

In many car accident cases, the case is won or lost based on fault. Insurance companies, as well as the courts will use several different variables to determine whether or not a party was negligent. Some of these variables include:

- Failure to abide by or disobeying traffic signals
- Failure to check before entering an adjacent lane, or failure to signal
- Driving while talking or texting on the phone
- Loss of concentration
- Disregarding weather or traffic conditions
- Driving with faulty or broken system

Furthermore, drivers can be at fault for reckless driving. A driver is reckless when he or she drives with clear disregard for human safety. The NHTSA characterizes reckless driving as a progression of unlawful driving actions, and can include:

- Speeding
- Driving under the influence of drugs or alcohol
- Tailgating
- Swerving

Contributory Negligence vs. Comparative Negligence

Not all car accidents have a clear black and white line when it comes to fault. In other words, sometimes both parties, or even several parties are at fault for an accident. In these situations, there are four schools of thought for establishing fault

Contributory Negligence: In states following contributory negligence, any party that has contributed to the accident is denied compensation. It does not matter what degree that party is at fault. Therefore, under contributory negligence, a party that is even 1% at fault for an accident is barred from recovering anything. Many states have determined a pure contributory negligence model to be unfair, and therefore very few follow it.

Comparative Negligence: In light of the strict nature of pure contributory negligence, many states now follow some sort of comparative negligence model. Comparative negligence can further be broken down into 3 separate categories:

1. **Pure Comparative Negligence:** In pure comparative negligence, each party is only responsible for their share of fault. A judge or jury will determine the percentage of fault for each party.
2. **Modified Comparative Negligence - 50% Bar Rule:** In states following this model, any party who is at fault at 50% or a higher degree, they cannot recover at all for their damages. If they are at fault at less than 50%, they can collect all of their damages. Eleven states currently follow this model.
3. **Modified Comparative Negligence - 51% Rule:** 22 states follow this form of modified comparative negligence which states that only parties that are less than 51% at fault may recover.

CALIFORNIA IS A PURE CONTRIBUTORY NEGLIGENCE STATE

California follows a pure contributory negligence system. Therefore, even if a party is 99% at fault for their automobile accident, they may still recover. This party can only recover for the proportion that they are at fault. Thus, in our example where the party is 99% at fault, if they have suffered \$1 million in damages, they may still be able to recover \$10,000 as compensation.

INSURANCE GUIDELINES

The state of California institutes minimum requirements for every driver according to California Insurance Code 11580.1(b). These minimum requirements include:

- ✚ \$15,000 for bodily injury (including death) per person
- ✚ \$30,000 of total bodily damage coverage
- ✚ \$5,000 property damage

These are only the minimum insurance requirements and many policies may far exceed these limits.

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

It is calculated that over 25% of drivers in the state of California don't carry any insurance. Although victims of car accidents may still file a lawsuit against an uninsured party, the fact remains that many of these individuals simply do not have the resources to cover even a fraction of the damages suffered during an automobile crash.

Any uninsured motorist or underinsured motorist coverage is optional according to California law, but any party waiving its right to UM/UIM coverage must do so in writing. Failure by the insurance company to explicitly explain your rights and have you sign off on a written waiver of your rights may result in automatic coverage to the driver. Most lawyers will advise you against ever signing off on this written waiver.

The minimum amount of UM/UIM coverage is \$30,000 per person and \$60,000 total for bodily damage. Furthermore, it should cover the majority of damages after a car accident, including:

- Past and future medical expenses
- Past and future lost income
- Pain and suffering
- Mental suffering
- Loss of consortium

The difference between an uninsured motorist and underinsured motorist coverage is that an UIM covers losses that exceed the other parties policy limits. This is important because of the nature of damages suffered during a car accident, including traumatic brain injuries, broken bones, amputations, and even wrongful death. It is easy to see that a minimum \$15,000 policy will barely cover even a portion of these damages.

STATUTE OF LIMITATION

Statute of limitations refers to the amount of time a party has to file a lawsuit. The statute of limitations varies for different types of claims, as well as for different states. In the state of California, a party has 2 YEARS to file a lawsuit for damages following a car accident.

Certain exception exist, such as claims filed against government agencies, or those filed by a minor. It is best to contact a car accident attorney to elaborate your rights.

WHO CAN YOU SUE - SOURCES OF COMPENSATION FOR YOUR CAR ACCIDENT INJURIES

Another important aspect you will need to discuss with your personal injury attorney is which parties you may sue in your claim. Suing more than one party can increase your chances of maximizing your strategy, so it is important to initiate a good legal strategy before pursuing any claim.

- ✓ **Driver**
- ✓ **Owners** of the vehicle other than the driver. Instances where the vehicle was borrowed or loaned.
- ✓ **Employers** are responsible for the driver's actions during company hours.
- ✓ **Automobile manufacturers** in situations where a product or design defect was responsible for the accident.
- ✓ **Government Agencies** - examples include road defects or poorly constructed signs.
- ✓ **Mechanics**, in instances where faulty workmanship is to blame for the accident.
- ✓ **Your Own Insurance** as outlined above for uninsured motorist (UM) or underinsured motorist (UIM) claims.



Chapter

2

What Should You Do After a Car Accident

In addition to contacting a skilled law firm to handle your automobile accident case, it is imperative that you act accordingly after the accident has taken place. Time is also of the essence following your injuries, so it is crucial to follow these steps very carefully.

- **Safety first.** In any accident situation, the most important thing a victim can do is take care of the medical needs of everyone involved. This includes emergency medical care and being transported to the hospital. In many situations, the initial shock and scare of the accident may mask some of the potential injuries. Therefore, it is often necessary to seek medical care even when an injury is not immediately apparent.
- **Stay at the scene.** It is extremely important to stay at the scene unless you are seeking medical attention or the police tell you to leave. Leaving the scene can also result in sanctions against your driver's license or even criminal charges.
- **File a car accident report with the police.** You should do this even if the accident is minor. Filing the report will ensure that all facts are correctly documented. And remember to be truthful and thorough with the officer.
- **Get all the information.** The moments directly after your accident may be the only time to obtain valuable driver and accident information. This includes:
 - Driver's name, address, driver's license number
 - Insurance information
 - Police officer's business card, as well as the "incident number"
 - Location: This includes the time and place of the accident (including the intersection), the weather, road conditions, speed limits, lighting, or any other information that may seem pertinent.

- Take pictures and take very thorough notes. Pictures of the scene will help bolster your case
- Get witness information. Sometimes, witnesses are your strongest bit of evidence when fault becomes an issue. Don't be shy. Obtain their number and contact info regardless of whether or not the other party admits fault. You never know when they might change their story

Other important things to consider:

- Never sign any documents except if it is furnished by the police
- Never admit guilt or fault. Even if you believe that you caused the accident, there might aspects of the accident you have not considered.
- Make a diary of the accident as well as injuries following the accident
- Get medical care and keep all your appointments

Chapter

3

How Much Is My Car Accident Case Worth

After the dust has settled on your car accident, the first thing you might be thinking is "how much is my case worth?" Nobody can accurately determine the true worth of your accident until all medicals and specials have been ascertained. In fact, it would be a disservice to value a case immediately following the accident because some things simply might not be apparent until months, or even years after the accident, including:

- The full extent of any future medical damages
- All types of injuries
- The emotional toll of the accident was greater than anticipated
- The accident affected the victims personal life to a greater degree than expected

It is best for you and your attorney to fully comprehend the gravity of your accident, as well as its physical, emotional and personal effects before accepting any settlement offers. Remember, once you agree to a settlement and sign the release, you are forever barred from procuring any more compensation.

What damages are you entitled to in your car accident case?

In a car accident case, as in any personal injury case, the goal of your lawyer should be to maximize the amount of damages you receive. Therefore, by identifying the types of damages you are entitled to, you begin to grasp how much you can recover. Below is a list of the types of compensatory damages you might receive in a car accident case.

Medical bills: This includes all past and future medical bills. You should be reimbursed for any medical treatment you have already received, as well as the cost of all future medical treatments. Medical bills should include treatment, medical devices, medicine and prescription drugs, and therapy.

Pain and suffering: Most insurance adjusters would have you believe that your pain and suffering following an automobile crash is not worth anything. However, a good attorney can argue on behalf your pain and suffering, which could afflict a victim for a lifetime.

Emotional Distress: Emotional distress relates to the psychological impact of the car accident. Emotional damages can include stress, anxiety, fear, depression, and loss of sleep.

Loss of Income: Victims of a car accident are entitled to receive money lost due to time missed at work such as salary or wages.

Loss of Earning Capacity: Loss of earning capacity is based on any future wages or salaries that have been compromised as a result of a car accident. Often times, a personal injury attorney will have to hire a vocational expert to determine the full loss of earning capacity based on past performance and industry standard.

Loss of Consortium: A person suffers from loss of consortium when the accident affects the relationship with the their spouse. Often times , a car accident diminishes a plaintiff's ability to enjoy their spouse's companionship, or sexual relationship. In these situations, the victim is entitled to compensation.

Can you receive Punitive Damages for a Automobile Accident?

Punitive damages are generally awarded to punish a plaintiff, and therefore are usually reserved to intentional crimes. Therefore, punitive damages do not generally apply to car accident cases where the defendant was being simply careless or even reckless.

However, there are certain circumstances where a drivers acts are so reckless or wanton, that courts may award punitive damages. These damages most often occur when the driver was driving drunk or under the influence of drugs. Punitive damages can often multiply the amount of compensation a car accident victim receives.

What other factor determine how much my claim is worth?

Insurance companies with factor in other variables in determining the worth of an accident. These include:

- Who was at fault and the degree of fault. This is discussed extensively in chapter 1.
- Age: Generally, very old or very young victims will receive higher settlements in front of a jury, and therefore insurance companies value them higher. Additionally, insurance companies will factor the diminished quality of life, as well as life expectancy lost as a result of the accident.

- Affect on the plaintiff: Certain injuries will affect certain individuals more than others. For example, insurance companies might value lifetime scarring higher for woman than they do men. A runner should expect higher compensation for a broken knee or foot amputation than a person who is usually dormant. One of the reasons a good attorney will have you document your daily activities is so that they can highlight the accident's impact on the plaintiff.
- Insurance: This topic has already been discussed, but it is important to note that all insurance companies will only cover the up to the amount of coverage. Any additional sums must be recovered by the defendant individually, or through their own UM/UIM coverage. Also, according to California law, a party can be punished for not carrying insurance, even if they are not at fault. California prop. 213 specifically stipulates that even if you are not at fault, if you do not have insurance at the time of the accident, you may only recover economic damages. This law, passed in 1996, means that a victim of a car accident may not receive for pain and suffering, emotional distress, or any future damages. The only exception to this rule is if the at-fault driver was under the influence of drugs or alcohol at the time of accident.

Is there a personal injury formula or calculator that computes the amount of money you get from a car accident settlement?

There is no clear calculation that anybody uses to determine the worth of your automobile accident claim. The fact of the matter is that there are so many variables that are taken into account that each case should be looked into on a case-by-case basis. Furthermore, the skill of your attorney will also dictate much of how much you will be receiving in any settlement. Also, some factors, such as future pain and suffering, loss of earning capacity, and future medical bills can often only be ascertained by the use of expert testimony, as each person will differ in these regards.



Chapter

4

California Car Accident Statistics

California is one of the nation's most populous states, and as such has some startling figures related to car accidents. For example, in 2009, there were 3,081 reported car accident fatalities according to the U.S. Census Bureau. Although the stats below offer a glimpse of the story, it is important to note that many car accident go unreported.

- ✚ Car crash deaths are on the decline. Overall, the U.S. experienced 33,808 fatalities in 2009, compared to 44,599 in 1990. Those numbers for California are 3,081 in 2009 and 5,192 in 1990. These stats would suggest that perhaps cars themselves have become safer over the years.
- ✚ The three biggest causes to accident fatalities in California are still speeding, drunk driving, and distracted driving. The invention of the cell phone has only exacerbated the ladders effect.
- ✚ In 2010, there were 10,228 alcohol related fatalities in the United States, an average of once every 50 minutes. Unsurprisingly, the 21-24 age demographic had the highest rate of alcohol related drunk driving deaths.
- ✚ The financial cost of automobile crashes in the United States tops out at nearly \$250 billion annually.
- ✚ The highest risk of car collisions remains with teenage drivers. Drivers age 16 experience 61.4 fatal or serious accidents per 1,000 drivers, a number that drops to 46.2 at 17, 45.4 at 18, and 37.8 at 19 years old. The overall number for drivers throughout the United States is 16.8.
- ✚ Rural accidents accounted for 55% of all fatalities, even though they account for only 19% of the total population.



Chapter

5

Common Car Accident Injuries

Traumatic Brain Injury: Brain Injuries from trauma sustained in Auto accidents can result in persistent lifelong health and mental health disabilities requiring persistence care and treatment. Brain damage can result in such symptoms as, paralysis, loss of memory, cognitive disabilities, chronic fatigue syndrome, temporary and permanent impairment of the brain functions, and nerve cranium displacement.

Brain Damage in Children: Child Brain injuries can lead particularly severe and permanent damage including, loss of motor skills and brain function, cerebral palsy and ergs palsy. To contact a Traumatic brain injury lawyer in Los Angeles to schedule a free consultation contacts us today.

There are several types of brain injury which can take place as a result of trauma sustained to the head in an auto accident. Some of the most common are as follows:

- ✚ Brain Hemorrhage
- ✚ Skull Fractures
- ✚ Post Traumatic Headache Disorder
- ✚ Post Traumatic Amnesia

Paralysis: Paralysis is the partial and or complete loss of muscle functions of a specific part of the body including arms, legs, digits of a finger and shoulders. In most cases paralysis leads to the complete loss of feelings and strength in a particular muscle, or a group of muscles. Paralysis can be cause by a Traumatic brain injury or Spinal Cord Injury sustained in a vehicular collision.

Spinal Cord Injuries: Symptoms of Spinal Cord Injury may vary based on the severity of eth injury, the particular vertebrae that were damaged in the auto accident and the general health of the victim. Some of the most common symptoms of spinal cord damage are as follows;

- ✚ Breathing Difficulty
- ✚ Numbness of the Exterminates
- ✚ General Loss of Motor Functions particularly to the limbs and extremities
- ✚ Loss of Bowel functions – Including Urination

- ✦ Pain or Weakness of the muscles
- ✦ Alteration of the Senses
- ✦ Internal Bleeding
- ✦ General Swelling

Spinal Cord Injuries can have a devastating financial impact on victims, their families and caretakers. According to 2012 estimates the lifetime cost of care for a victim of Paraplegia ranges between \$2.0 Million and \$3.5 Million dollars. While the financial cost of a person suffering from Quadriplegia can rise to tens of millions of dollars in life time care.

Lower back - Lumbar Injuries – Lower back Sprain: Lower Back and Lumbar injuries are frequently associated with car accidents. A muscle sprain in the lower back takes place when the fibers of the muscle in the lower back and abdomen are stretched or torn during an accident trauma. The lower back is particularly susceptible to injury in auto accidents and can result in unbearable physical pain. Such injuries are often difficult to diagnose and may require long term pain management and treatment.

Amputations: Amputations are a frequent injury resulting from car accidents. An amputation included the loss of a body part including the cutting off of hands, fingers, arms, legs, and feet; but can also include the loss of a person's ears, nose, lips tongue and cheeks. Persons with amputation must face permanent disabilities and lifetime disfigurement which often results in deep senses of pain and suffering and mental health trauma.

Burns: Every year thousands of automobiles catch on fire as a result of roadway accidents with other motor vehicles. An estimated 500 deaths take place each year from burn injuries suffered in auto accidents. The incidence of Car fires is greatest during the summer months of July and August. The prevalence of Auto fires have seen a dramatic reduction over the past two decades. However auto accident fires still pose a significant threat to motorists on California roads and highways.

Neck Injuries including Whiplash: Neck and upper spinal cord injuries are some of the most prevalent auto accident injuries. Neck injuries from car accidents often lead to long lasting permanent pain and suffering leading to years of needed therapy and medical aid. **Whiplash** is one of the most common neck and upper back injuries due to a traffic accident. A Whiplash injury can be more serious than the initial diagnosis. A Whiplash injury may in fact be a more serious concussion, mild traumatic brain injury or spinal cord contusion.

Traumatic Eye Injury – Partial or Complete Blindness: Over the past three decades advances in auto manufacturing and design safety have greatly reduced the prevalence of traumatic eye injuries and blindness resulting from auto accidents. Eye Injuries have also been caused by defective airbag deployments during auto crashes. Such injuries still remain a persistence problem resulting in a lifetime need for care and treatment.

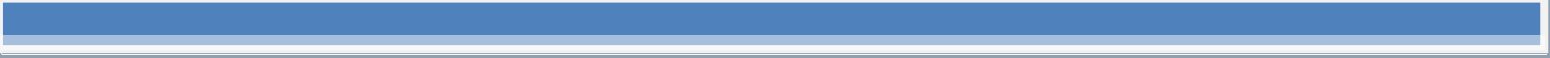
Internal Organ Damage: Automobile collisions can lead to severe internal injuries including, heart injuries, collapsed lungs, damage esophagus ruptures and tears, damage to the reproductive organs, kidney failure, stomach lacerations and gastro intestinal damage. Victims of catastrophic injuries oftentimes aren't aware that they don't have to incur expenses brought on by these injuries.

Injuries to the Face including permanent scarring: In a car accident injuries to the face are very common. Shattering of glass, projectile from your car or the other car or the hitting of the face on the dashboard can lead to cuts and bruises and in some instances permanent scarring. Common facial injuries include.

- + Broken Teeth
- + Ear, Lip Tongue and Cheek Amputation
- + Permanent Scarring
- + Disfigurement
- + Eye injuries

Broken Bones and Fractures – Knee and Ligament Damage: These injuries are some of the most common injuries of car accidents. In most instances broken bones and fractures from auto accidents are more serious than usual broken bones since the injury was caused by a high impact collision of multi-ton automobiles. Often these injuries lead to surgeries to remove bone fragments and in many cases insert artificial joints that have been crushed. Knees are specifically susceptible to car accidents, often requiring knee replacement surgery.

Pain and Suffering and Mental Anguish and Post Traumatic Stress Injuries: One of the most overlooked injuries from auto accidents is Pain and Suffering. Individuals must also suffer from the pain and suffering that accompanies massive traumatic injuries during an auto accident. A strong legal advocate should always be aware of the mental trauma that has been sustained by victims of car accidents.



No matter what insurance companies tell you, or what you hear in commercials, car insurance companies are in the business of making money. Their main objective in any claim is to settle a case for as little money as possible. More worrisome, many insurance companies will simply deny paying any or all of your medical bills, even if you are not at fault.

According to a recent study, insurance companies are pushing consumers to fight their car accident claims through the legal system. This strategy was implemented in the mid-1990's whereas insurance agents were instructed to follow a three pronged plan of attack. They are trained to (1) deny the claim (2) delay the settlement of the claim and (3) vigorously fight the claim in court.

Often times, smaller cases can be litigated in small claims court by the victim themselves. But even then victims are unlikely to receive their full compensation. Most times, an individual involved in a car accident case should acquire the services of a personal injury law firm in order to fully maximize their case.

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