

WHAT SHOULD I DO WHEN I HAVE BEEN INVOLVED IN AN AUTO ACCIDENT?



The first thing you should do no matter how

insignificant the automobile accident may be is contact the police. It is critically important that a police report is created. Thus, call 911. It is also advisable, if possible, for you to take pictures at the accident scene as well. Everyone these days has a cell phone and most cell phones have the capability of taking photographs and video as well. I suggest pictures so that you can verify where the cars are after the collision has

occurred. You can also obtain pictures of the individuals involved in the accident as well as the other cars that may have stopped and specifically the other cars, license plates and pictures of the drivers. Unfortunately, the police departments do not undertake any great effort to investigate automobile accidents unless there is a death as a result of the collision. Only at that point in time will the police undertake the full investigation, conduct a reconstruction and obtain any electronic control module data that may have been created by the collision.

The ECM is commonly known as the black box. It is most commonly referred to in airplane crash situations. Though, these days almost all automobiles have this system. The electronic control module system is connected to the computer which explodes the air bag upon impact. This system monitors the rpm speed of the engine, can identify if someone is wearing a seatbelt or not wearing a seatbelt, can provide information as to whether a person's foot is on the brake or gas and also documents the deceleration and G-forces of the vehicles as they collide and come to a stop. This information is of critical importance when there is a death case. However, it can also be equally as important in almost any other automobile accident case. Thus it is important to make sure the information be preserved and that you contact an attorney to assist you in obtaining the computer download before it is destroyed when the vehicle goes in for repairs. This data can be lost when it is unplugged by the auto body repair company.

If you are unable to take pictures because of your injuries then obviously that is not an option. If you are able to communicate though with someone else at the scene, please ask them if they would take pictures and document the accident scene.

It is also important that if you feel like you are injured even the slightest bit, to go to the hospital to be evaluated. This initial evaluation is important as it documents what your injuries may be.

It is generally common knowledge that when people are involved in automobile accidents that though at the accident scene itself they don't feel like they are seriously injured, later in the day or the next day they are sore in multiple places. This is a common story because of the adrenaline and nervousness that occurs when a person is

involved on an accident. I strongly encourage you though, even if you don't feel like you are hurt, to at least go to the emergency room and share with the emergency room physicians what complaints you may have, if any. If your neck feels tight, if you have a headache, if your shoulder hurts or your knees hurt, back hurts or your foot or ankle hurt then you need to get this documented and treated at the hospital. It is also important that, from a practical standpoint, going to the hospital confirms and documents for the insurance company that you have in fact suffered an injury. I have frequently been confronted with the issue where a person did not go to the hospital or seek medical treatment for a week or sometimes two weeks after an accident and the insurance company concludes the person is not hurt because of the delay. When this occurs, two things happen. First, the insurance company denies the claim because it is their opinion that if you are hurt in a collision then you would have sought treatment immediately and if not, immediately at the very least the next day.

Though from a practical standpoint, many people particularly young people believe that even though they feel like they are slightly injured that they believe the injuries will go away and they can tough it out. This is frequently not the case. Thus, **please do go to the hospital.**

The other thing that is important about going to the hospital is that in Kentucky there is what is called a "\$1,000.00 dollar threshold." What this means is that when this is adopted, the Kentucky Basic Reparation Benefit Act also know as No Fault, they stated in the Act that if you have not incurred medical expenses in excess of \$1,000.00 or suffered a permanent injury or fracture to a weight bearing bone, then in that event you have lost your right to bring a lawsuit. In exchange for giving up your right to bring a lawsuit, the insurance company's built in a health insurance plan called Basic Reparation Benefits, a/k/a Personal Injury Protection Benefits (PIP). The \$10,000.00 in PIP is what no fault really means. In reality, what exists is \$10,000.00 of health insurance built into your policy. Thus if you are injured and seek medical treatment, your auto insurance will pay you for your treatment. This is very important. The reason that this is the "no fault" provision of your policy is that you can be negligent in operating your vehicle and run into a tree and cause yourself serious physical injury and have no one else involved in the accident and your insurance company will still pay for your medical bills and lost wages

up to \$200.00 per week for lost wages with the combination of medical expenses and lost wages a total not to exceed \$10,000.00.

This same coverage also covers you if you are involved in an automobile accident and the other person is in fact not paying attention, violating the standard of care, running or disregarding a traffic light, following too closely or the other numerous things that can occur that cause automobile collisions. If you are injured in this circumstance, the \$10,000.00 in your own automobile insurance policy will still pay for your medical care and treatment and also cover lost wages up to \$200.00 a week. Thus the no fault term. It is also important to note that if you are in an accident and you use the \$10,000.00 of PIP in your own policy this will not work as a claim against your own insurance and will not cause your insurance premiums to increase. Thus, do not be afraid to use this \$10,000.00 of personal injury protection benefits, a/k/a health insurance that you pay for. As also mentioned previously, the \$1,000.00 threshold issue is usually no longer an issue if you go to the hospital on the day of the accident or shortly thereafter. Usually, the first examination at the hospital, the use of the hospital facility itself, the examination performed by the emergency room physician, the x-rays, CT scans, MRI's ordered on the day of the initial visit along with any prescriptions that may be provided, any braces, wheelchair, crutches, or other assistive devices prescribed generally results in the initial visit exceeding \$1,000.00. Thus, the so called threshold issue is no longer an issue.

It is also important that you do in fact, in an automobile accident that is not your fault, notify your own insurance carrier of the accident so they can begin their own investigation and so they can also send you the necessary forms such as the personal injury protection application to fill out to start the personal injury protection benefits application process.

When you are involved in an accident, if you are able at the accident scene, try to obtain names and phone numbers from witnesses as well as other people involved including passengers in any other person's cars. Please ask the police officer for a business card as well.

It is also important for you to understand that insurance companies are in the business of making money, they are not in the business of paying out money. Thus, when you receive a call from an insurance adjuster and they request an opportunity to

take your statement, please decide. Please make sure you talk with a lawyer prior to speaking with the insurance companies. It is a general misunderstanding by the general public that their insurance agent is their friend and works for them. The fact of the matter is the insurance agent who sells you your automobile insurance is an agent of the insurance company and works for the insurance company, not you. He may be a nice and friendly person, but when it comes time to presenting a claim he is not your friend. He will help prove the information contact with the insurance company and put you in touch with them, but that is about all he or she will do. Thus another reason why you should contact an attorney to assist you in presenting the claim to your own insurance company and to the insurance company for the person who caused the accident.

So bottom line is do not give recorded statements to the insurance adjuster that calls you regarding the accident. It is also important for you to understand that **“NO FAULT DOES NOT MEAN NO RESPONSIBILITY.”** Police officers at accident scenes commonly indicated to people involved in the accident that this is a no fault state, thus they will not be making a determination as to who caused the accident, nor will they issue a citation. This is different than many other states. Kentucky has statutes which state if a police officer does not witness a misdemeanor or traffic violation that they cannot issue a citation. There are a couple of exceptions like driving under the influence and shop lifting, but traffic violations are not in the exception. Thus, don't be surprised if the officers do not mean the person who caused the accident does not have any responsibility. In fact, it is just the opposite, they do have responsibility and thus the reason why having automobile insurance for your car is mandatory.

In fact, your own policy, you are required to have uninsured insurance. Your insurance agent is required to sell it to you. The Kentucky Statutes require that coverage is to be provided. What people don't understand and their agents don't tell them is that underinsured and uninsured insurance is insurance that you buy for yourself for your own protections. It is critically important that when you acquire your insurance policy that you buy additional personal injury protection benefits and you significantly increase your underinsured and uninsured benefits. The uninsured insurance pays you when a person runs into you who has no insurance. The problem that you have with your insurance agent is that he may only sell you the minimum \$25,000.00 policy that is required. This is generally bad for most people. If you are employed and you are

suddenly rendered unable to work as a result of the collision, then the insurance that may be available to you is only the \$25,000.00 from your own policy. Most people cannot live very long on \$25,000.00. Thus, the reason you should buy at least \$250,000/\$500,000 limits for uninsured insurance. You should also, likewise, buy the same minimum insurance for underinsured insurance. What underinsured insurance pays against is for your benefit. The persona who caused the accident may have insurance, but may only have the minimum \$25,000.00 policy that is required. That means all that you can recover from them is \$25,000.00 unless of course they have substantial assets which you can collect from. This is usually not the case for someone who has only minimum insurance coverage. If, on the other hand, you have purchased underinsured benefits then after you have collected the \$25,000.00 minimum policy limits, you can go to your own insurance company and seek payment for the underinsured or uninsured benefits that you purchase for yourself. The cost of increasing your coverage from the basic \$25,000.00 is minimal. I strongly encourage you to investigate the cost of acquiring more insurance. In addition to buying underinsured and uninsured insurance, you should also consider buying an umbrella policy for you. Umbrella policies are usually sold at one million dollar levels and can be used to cover your own residence as well as cover uninsured and underinsured accidents and provide just what it says an umbrella of security for you if you are ever involved in a serious automobile collision where you suffered serious injuries most people who are unable to work for a substantial period of time become unable to pay their bills. This coverage will also apply if you lose a spouse or child in the accident.

Thus, I do encourage everyone I meet in my office to buy this additional coverage if the conversation comes up.

It is also important for you to keep track of any out of pocket expenses, co-pays, purchase of crutches, braces, car rental fees and similar expenses. It is important for you to understand that your case is to be appraised for all of the losses that you may suffer which can include the cost of your medical care, future medical care, the pain and suffering that you have endured so far, and future pain and suffering may endure and suffer in the future. In addition, you may be able to recover your lost wages and any impairment of your ability to earn an income into the future as well. These are important losses that you may recover if you are involved in an automobile accident.

In a wrongful death accident, it is possible in Kentucky to recover your full actual economic losses. This means, your actual earning capacity times your life expectancy. I generally use William Baldwin, an economist, who was previously associated with Transylvania University to provide at the calculations for a person's lost earnings when they are killed in an automobile collision. Mr. Baldwin is an economist. He can offer testimony to prove what the lost earnings are using generally accepted life expectancy tables, government census statistics and work histories based on accepted applications taking into consideration factors such as age, education, work history and the family's status.

It is also important for you to understand that when you are involved in an automobile collision even though you may have health insurance that health insurance does not dictate where you go for treatment.

When you have been involved in an automobile accident, you can use the personal injury protections benefits to go to any doctor of your own selection. You can seek out treatment from your family physician, but you can also seek out treatment through an orthopaedist, neurologist, chiropractor, neurosurgeon, or any other health care provider. You can seek out this treatment by calling and requesting an appointment. You don't have to have a referral from your family physician and your health insurance does not have to approve who you go to.

Thus, again, **it is critically important** that you go to a doctor as soon as possible. This is true even if there is no visible damage to your car, but you are experiencing some feelings of pain or tightness or tingling down your arms into your legs or have a severe headache. It is quite common for individuals to suffer brain injuries in car accidents. You are hearing a lot about brain injuries now as a result of the National Football League and colleges and high schools monitoring this type of injury. In an automobile collision, the same kind of impacts occur in the brain sometimes even much more severe than football related collisions. The injury to the brain can occur even though a person's head does not specifically strike any part of the automobile. The thrusting of the brain forward through a sudden acceleration and deceleration can result in the brain slapping against the skull causing serious injury to the brain. I have had many clients come into my office and complain that they have the worst headache that they have ever had and that they

are sensitive to light, cannot look at the screen of their cell phone or computer, cannot watch TV or use their laptop computer at home. They complain they suffer from nausea, dizziness and memory loss. Unfortunately, many people and some physicians do not recognize this as a brain injury related to the automobile accident. Closed head brain injuries in automobile collision are much more common than previously known, recorded, recognized or diagnosed. Sometimes, a visit to the ophthalmologist will reveal this type of injury. Swelling of the optic nerve is a common result of brain injuries and can be diagnosed by the ophthalmologist, who is able to look through your eye to see your brain as well as the optic nerve.

It is also important for you to understand that even you may have suffered prior injuries and have prior problems even in the same area that was injured in the accident, you are still entitled to recover and have those injuries appraised by a jury and/or the insurance carrier. Pre-existing conditions are common and the result of just living. It is not a problem for you to pursue aggravation of these injuries and make a claim for making them worse. Unfortunately, some issues that arrive in these cases especially with older adults is that they will have an x-ray taken and they will be told by the physician who reviews the x-ray or their family doctor that they have degenerative disc disease (DDD). This condition is frequently misunderstood by my clients. They think that they have something that is wrong with them that was not caused in the accident. The fact of the matter is everyone after we turn about 18 years old has the beginning stages of degenerative disc disease and desiccation of their disc. This only means that they are getting older and their bones are beginning to dry out and the disc between the bones are also starting to dry out. However, it is important to know and understand that even though you may have degenerative disc disease (DDD) and even though you may have had degenerative disc disease prior to the accident, an accident by causing the hyper-extension hyperflexion of your muscles, tendons and ligaments. The impact also injured these discs and can cause them to become pain producing, causing the disc between the vertebrae to rupture, herniate, or put pressure on the nerves as they exist the foramen.

It is also important to understand that hyper-extension and hyperflexion injuries of the neck caused in rear end automobile collisions cause injury to your connective tissues. It is frequently referred to by the doctors as the soft tissues. In reality, these tissues are

not soft tissue at all, but ligaments, tendons, and muscles. These connective tissues get stretched longer and in directions they are not intended to go or pulled apart are are subject to microscopic bleeding. Connective tissues can in fact cause pain and can become a permanent pain producing condition. Though, it is true many people do recover in six to eight weeks from these type of connective tissue injuries to their neck, mid back and low back but many do not. In fact, it is estimated that five percent of the population who have this type of injury, end up with chronic pain and never fully recover from this condition.

There is obviously more that will be discussed in a meeting with an attorney regarding an automobile collision. However, this should give you pretty a pretty good overview of what to do in case you are involved in an accident.

Sincerely,

Robert Blau

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