## TEXAS Car Accident & Injury Guide





#### VOICES HEARD. LIVES REPRESENTED.









We are a team of legal professionals designed to help Texans recover more. We hope this guide helps answer some of your questions and provides you insight into what happens in an injury claim. We encourage you to contact us with any other questions you may have. There is never a consultation fee.

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## What to do after a car accident?

#### Key things to do, consider and remember...

Being involved in an accident is stressful enough, but insurance companies get things out of context all the time. Below are a few things to consider.

#### Take Pictures of...

- The Drivers License of the other driver. This helps identify the driver in case there are any "questions" later by the insurance company.
- 2. The insurance Card of the other driver. This helps avoid any mistakes when writing down any long policy numbers or trying to get all the information down.
- 3. Each Persons Car Property
  Damage. Take pictures or video of
  the cars (including license plate),
  the accident scene and any other
  damages you have.
- 4. Any Bodily Injuries. Taking pictures of any bruises, cuts, etc. It's very important.

#### Things to do...

- 1. Call the police.
- 2. Move the vehicles (after taking pictures) off the main roadway ONLY if safe.
- 3. Look for any potential witnesses
- 4. If you're injured Get checked out by a doctor, EMS or ER.

#### **INJURED?**

Injuries affect everyone differently. MOST injuries start with soft-tissue symptoms. These are aches, pains, soreness or discomfort. These pains usually increase as time continues. It's important to see a doctor about these injuries as soon as possible to recover quickly. Be sure to document in detail your complaints or injuries.

Some injuries manifest themselves as fatigue, inability to sleep or focus, sensitivity to light, blurred vision, nausea, vomiting, anxiety, headaches, or short term memory loss. These are symptoms of a concussion and should be evaluated by a professional immediately.

Always remember that the burden to prove any injury or claim for pain and suffering is ours to meet.



## **Insurance Benefits & Coverage - Explained**

Understanding the policies or coverages that make compensation available are key components to a case. This is why we simplified the concepts and the steps needed to properly initiate each coverage.

#### **Liability Coverage**

This part of the policy covers fault or wrongdoing by the Policy Holder. That could be a mistake you made or a mistake another driver made causing the collision. Liability coverage is required in Texas and has minimum policy limits of \$30,000.00 per person and \$60,000.00 per accident.

In order for Liability Coverage to be activated, the insurance company must feel that their "insured" is at fault for the accident. This will require an investigation and a collection of evidence which can include police reports, witness statements, 911 transcripts, accident reconstructionists and more. Some Insurance Companies move quickly in their investigations. Some do not. And some find reasons to "share" fault called contributory negligence.

### PIP (Personal Injury Protection)

Personal Injury Protection or PIP is part of your own insurance policy . The policy provides you compensation for medical bills and up to 80% of your lost wages. PIP limits are pretty standardized amounts in increments of \$2500, \$5000 or \$10,000.



There are a few things to remember about PIP.

- 1. Texas requires that you sign a waiver explicitly stating you deny such coverages. If your insurance company can not provide a copy of the signed waiver, they are forced to provide you with those coverages.
- 2. To file for PIP you must have incurred medical expenses or lost wages resulting from an accident involving a motor vehicle.
- 3. PIP is considered a no-fault insurance benefit.

#### Uninsured / Underinsured Motorist

Uninsured Motorist is considered a dual coverage because it provides protection for the following:

- 1. If you are hit by an individual who does not carry insurance.
- 2. If you are hit by someone who doesn't carry ENOUGH insurance.

To activate this coverage, you must prove that the person who hit you did not have insurance or did not have enough. In both situations, the carrier will take the position of the responsible party and requires proof of liability and damages.

## Property Damage - What to do about getting your car fixed...



Getting your car fixed so you can get back on the road again is something everyone wants. However, there is a process to getting it done. Sometimes, that process can take longer than we like.

Before the responisible person's insurance agrees to pay for your car's damages, it must accept fault. But even if they do agree to accept responsibility there are still pitfalls that can get you stuck with paying for the bill. Here are a few key things to watch for:

#### **Storage Fees**

If your car was towed to a storage yard, the insurance company will issue a letter explaining that you must mitigate your damages. This means that just because your car is damaged, you can't leave it there incurring storage fees day after day. Typically, an insurance carrier will pay for about 7 days of storage. Anytime after that time period they consider you reasonable. If you have collision coverage under your own policy, its a good idea to use it if reviewing the evidence to determine fault appears to be taking longer than expected. And don't worry, whatever your insurance pays, the other insurance company will pay back through the subrogation process

#### **Total Loss v. Repairable**

If your car is repairable, that is that the cost to repair your car does not exceed 80% of its value, the insurance company will pay to repair your car and you can use any body shop you choose. If the cost is more than 80%, your car will be deemed a total loss and the market value of the car will be offered. If your car is deemed a total loss, but you want to keep the car, you can instead receive the market value for the car minus the salvage value.

#### Rental v. Loss of Use

If your car is repairable, you will be afforded a rental car. Its important to note that insurance companies are only required to put you in a car matching the number of seats, not cargo space. So if you had a mini-van that sat 5 people, they could put you in a sedan that also seats 5 people.

If your car is a total loss, you will be afforded loss of use. This simply means that you could potentially argue that you were without a car from 7 - 14 days and the insurance company should pay \$20-\$25 per day.

#### Items you can get Reimbursed For:

Child Car Seats - Texas Law REQUIRES that all child car seats, damaged or not be replaced after a collision.

**Rental Expenses** 

**Towing Fees** 

Personal Damaged Property - Example: Cell Phones, Laptops, Etc.

## What About My Medical Bills?

Medical Expenses in Texas use a format called Paid and Incurred. Simply put this means that you can only claim medical expenses that have been paid or that have an oustanding balance owed.

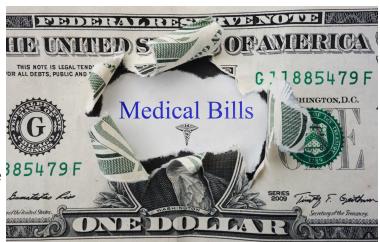
#### **Reasonable & Necessary**

The law requires that all medical expenses be reasonable and necessary for the injury being claimed. Treatment costs that exceed the normal standards are subject to be contested or denied.



#### Hospital & Emergency Related Cost

If you have health insurance covering emergency related expenses, you may owe co-pays considered patient responsibility. If you do not have health insurance, you may receive bills automatically from the providers. We encourage our clients to gather these bills and present them to us so we can begin gathering appropriate records and prevent bills from being placed into collections and ruining your credit.



#### **Out of Pocket Expenses**

If you paid money out of pocket, you should be reiumbursed as long as the money paid was for something considered reasonable or necessary. Check with your attorney before you commit to any large out of pocket expenses.

#### **Health Insurance**

If you have private health insurance or Government aid in the form of Medicare or Medicaid, you are required to pay the health insurance company back from the proceeds of your settlement. This process is called subrogation. It is important to remember that some healthcare insurance is backed by the Federal Government (ERISA). These liens are protected and usually very difficult to reduce.



#### How to Get the Most Out of Your Injury Claim

What does it take to get fair compensation for your injury or damages? First, you need to be familiar with the evaluation process.

#### What you will need...

You will need to medical records and bills including CPT Codes. The bills will be compared with a database that standardizes treatment and their charges to determine if the is reasonable.

If you have lost wages, you will need to present documents supporting the amount of time missed, the wage rate and any physician notes taking you off work. Please note that if you are self employed or a contractor, you will need to provide your income tax records for three years prior to the accident/injury.





#### How it Works...

The insurance company will make their evaluation based on what the medical records indicate. For these reasons, its important to:

- 1. Be consistent with your appointments.
- 2. Be honest about your injuries and follow the doctor's orders.

The insurance companies love to look for moments when you didn't follow the doctors orders, weren't consistent with your complaints or waited to long too seek treatment.

Insurance Companies look for the following:

Accident Severity / Impact

Did you go to the hospital?

Did you have any imaging?

Were you prescribed medication?

How many physical therapy sessions you received?

Are the injuries resolved?

Did you have any prior injuries?

Do you have any lost wages?

Did you lose consciousness?

Temporary or Permanent Impairment?

# Insurance Denials, and how to overcome them them

Insurance Companies have several reasons they love to use to deny claims. The reason they are their favorites is because MOST people won't exercise their rights. In fact, 55% of claims denied are never pursued. Here are a few of them and what to do if you're stuck in that situation.

#### **Contributory Negligence**

This is the most common. This argument asserts that you are partially to blame for the accident. The insurance company can use comments you made in a recorded statement to pivot this argument against you. It is very important that you do not give a recorded statement without a lawyer present. They will argue that fault is a ratio. For example, they place you 40% to blame for the accident and only accept 60%. Not only does this mean that they accept 60% of your property damage cost, but also only pay 60% of your bodily injury compensation too.

This argument usually hinges on what you should have seen or done to avoid the accident. To give you an example, the insurance company will ask you if you saw the other driver just before the crash. You might say that you didn't. The insurance company will then accuse you of not maintaining a proper lookout. Or if you say that you did see them, then they might assert that you could have avoided the accident by stopping.



Bottom line, things can get tricky. The best way to avert these situations is to think about your answer. If they ask, "did you see the other vehicle before the impact?" Your response should be, "I was looking at the cars ahead of me, they were coming to a stop". The statement is true. And it averts the argument of you not maintaining a proper lookout.

#### **Degenerative Issues**

This is probably the insurance companies, most used argument. They will review your medical records and claim that everything you suffered was because of degenerative issues and they aren't responsible for causing the pain, only aggravating it. There isn't a quick fix for this. The records need to be reviewed and a few key principles understood.

- 1. Everyone suffers from a degenerative condition over the age of 45.
- 2. However you don't age in just one spot. Degenerative findings need to be universally applied. For example, if you have a herniation and the insurance company says it exist only because your old, then all the disc in the spine should show similar symptoms. Nobody ages in only one spot.
- 3. Good records can document the onset of pain. Past records from your primary care doctor can document complaints in the past. Don't let their opinion determine the course of your settlement.

#### **Common Denials - Continued**

#### **Unnecessary/Unreasonable**

Insurance Companies love to use the word "unnecessary". They will throw the word around about your treatment and expenses the law.

into any proceedings as long as they're attached to an affidavit. To assert that the doctor should not have done this or that or charges too much for this or that, being made by someone who isn't a doctor and who has never examined you is a stretch. This argument can only be defeated with an expert review and possible litigation.

This is typically a long and sometimes drawn out process.

Usually when you receive a denial, filing suit becomes interchangeably. Remember their opinion isn't the next step. They don't believe you will litigate the case which is why hiring the proper counsel who can The law will allow the medical records and bills strategically leverage the evidence of your case is valuable.

> Its important to remember that you have two years from the time of the accident to file lawsuit in Texas.

> > Have a question? Call us 713.333.333 or Toll Free 866.333.3333. We're here to help.





#### **UBER & LYFT ACCIDENTS**

Companies like Lyft and Uber provide convenient and affordable ride-sharing services across the country.

In these situations the proper immediately following the accident can make a huge difference to the outcome.

If you've just been involved in an accident, take a deep breath, ensure you're in a safe place, and take the steps outlined below.

## What should I do if I'm involved in an accident with my Uber driver?

#### **Step 1: Contact the Police**

Not only is this important in contested cases, but you could potentially save future accidents from happening with the same driver. At-fault accidents from the Uber or Lyft driver affect the company's decision to continue to allow that driver to work for them, and having a police report to rule out any misinformation is key. If your driver becomes uneasy or asks you not to call the police, take this as a red flag and try to get as much information from them as possible.



Step 2: Record as Many Details as Possible

Try to get the name, address and phone number of your driver and anyone else involved in the incident. If there are witnesses present, ask for their details so they can be contacted later. If necessary, use the video or voice recorder on your phone to record their name and address.

#### Step 3: Take Pictures/Video of the Scene

If its safe, take pictures and videos of the scene and any relevant damage. Photos taken on a mobile phone will have a timestamp, making it easier to prove the date and time if it becomes an issue. Be aware that some people may react irrationally when faced with the possibility of footage being taken, so try to do so discreetly.

#### Step 4: Check If You're Okay

Listen to your body. After a traumatic incident, your body will release adrenaline which tells your body to hide your physical pain to focus on safety. In some cases, this adrenaline can last several hours, so seek medical treatment if you feel a sudden onset of discomfort or pain. This is especially important if you find yourself coming in and out of consciousness or feel dizziness, nausea, headaches, ringing in the ears, sensitivity to light, or confusion. Seek medical help.

Also be aware that your muscles don't often feel the effects of the crash until the adrenaline has worn off and you've sat or lay still for some time. It's always a good idea to seek the attention of a medical professional to get a check-up. It's unfortunately very common for neck or back issues to arise days, or weeks, after the accident.

#### **Step 5: Notify Uber/Lyft**

If you are a passenger, you'll be able to notify Uber/Lyft about the accident through the app. Remember, you can report the incident only from the users account from which the ride was called.

If you're a driver you can find information on your app.

#### **Step 6: Seek Legal Counsel**

Talk to an attorney soon after the accident and before you speak with the insurance company. Remember, the statute of limitations for road accident claims is two years. After two years, you won't be able to sue for any accident-related damages.

It's also worth noting that rideshare company lawyers can fight against your case and may try to prove that your injuries or vehicle's damage were not caused by this incident. Many insurance companies also try to delay such cases until the statute of limitations runs out, so it's a good idea to contact a Personal Injury Lawyer soon.

#### Understanding Road Accident Cases Involving Rideshare Drivers In Houston, Texas

When it comes to road accident lawsuits, Texas uses modified comparative negligence laws. In other words, the court assesses the level of fault for the accident. As a driver, it's possible to be found to be partially at fault and still receive an injury payout. The fault can not exceed 51%.

To win a case against an Uber or Lyft driver, you'll need to prove that they were negligent while driving, causing you injury.

You'll also need to prove that your injuries or vehicle damage were the result of the accident. In Texas, you're entitled to financial compensation related to vehicle repairs, diminished value, lost wages or earning capacity, and medical bills. You may also be entitled to non-economic damages, pain and suffering or loss of companionship.

Remember: You must prove the fault and damages within 2 years of the date of the accident. Now is the time to protect you and your family, call us today.



American Institute of Personal Injury Attorneys<sup>TM</sup>

