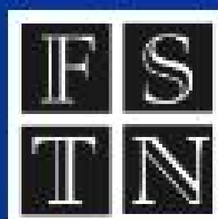
YOU HAVE QUESTIONS,

WE HAVE ANSWERS:

Answers to Your Personal Injury Questions to Take Your Claim from Start to Finish



Fleschner, Stark, Tanoos & Newlin

PERSONAL INJURY LAWYERS

Reasons You Are Reading Our Book

I have dreamed about writing a book about personal injury law for years. In the past year, I have thought about the project often. Clearly, I am a procrastinator. I finally had to take a vacation by myself in Idaho to force myself to finish the project. OK, I didn't spend 100% of the time working on the book; I took some breaks to relax, hike, boat and marvel at the great outdoors. Thankfully, I also finished a rough draft of the book. It was a great vacation.

I have been told that the first question you have to ask yourself when you are writing a book is, "Who will be interested in reading it?" I assume you are in one of the following categories:

1. You (or a loved one) have been seriously injured in a vehicular crash, and you are educating yourself about your options.
2. You were in a serious wreck and feel lost--Do you give a statement to the insurance company? How do you get the best medical treatment? What is your claim worth? Do you even have a claim?
3. You have been in a crash but NOT injured, and you want to learn how to resolve your property damage claim.
4. You are one of the young lawyers at our firm, and you are afraid I might ask you a question about the book, so you're not taking any chances. (Just kidding)
5. You want information, but you don't want to spend hours looking for it. We realize our society is fast-paced. Everyone wants information quickly. That is why the book is in a question/answer format. You should be able to quickly find the answers to your questions. I know I am no Ernest Hemingway, and this book won't win a Pulitzer Prize.

My goal is to provide enough information that you feel enabled to make the right decisions about the handling and resolution of any injury or property damage claim you have. I believe in education-based marketing. This book provides information in a manner that is helpful to you. You then can decide if you need our firm to help you. If you do, that is great; if you don't, that is fine also. We have helped you make a decision that is right for you.

Why Am I (Steve) Still Working On Personal Injury Claims After All These Years?

I have been a lawyer more than 40 years. I consider being a personal injury attorney a calling and not a job. I believe it is an honor to be asked by an injured person to stand up and fight for that person when he or she isn't able to fight alone. We are often an injured person's best last hope for justice. I look at this as a sacred duty. Getting justice has always been important to me. That is why I became a lawyer. My first realization about the importance of having a good lawyer was after my dad was seriously injured in a coal mining accident. Without his income, even for a relatively short time, our family was in a real financial pinch. My dad was reluctant to get an attorney to fight for him (and us). I was only twelve years old, but I remember thinking if I were his lawyer I would make sure he was treated fairly. That is why I continue to feel fulfilled helping our injured clients. Whether they realize it or not, accident victims are underdogs in the fight for a fair resolution of their claims. They are simply claim numbers to a multi-billion-dollar casualty insurance company. No matter what the industry says, insurance adjusters are just a small piece of the corporate apparatus that is designed to focus on profits instead of injured victims. My purpose as a lawyer is to make sure the accident victim isn't just a claim number. It makes me feel good to know I'm doing my best to make sure our clients are being treated fairly and are being justly compensated for what has been wrongly taken away from them.

I. KEYS TO UNDERSTANDING CAR/TRUCK INSURANCE

1. What is Bodily Injury Liability Insurance Coverage?

Bodily Injury Liability Coverage is the portion of an insurance policy that pays for damages and costs arising out of injuries or death caused by the insured policy holder's fault. Most states, including Indiana and Illinois, have mandatory laws requiring liability coverage. The minimum amount of coverage in both Indiana and Illinois is $25,000 per person and $50,000 per accident. That means that if the at-fault insured policyholder has a policy with minimum coverage, no matter how great the injuries, no one person will receive more than $25,000 from the wrongdoer's liability insurance. Even if there are more than two people injured or killed, the total insurance amount paid will not exceed $50,000. If you want to protect yourself and your assets, you should carry at least $100,000 (actually $250,000 is better). The additional coverage is inexpensive and is worth your peace of mind. Quite frankly, we suggest you purchase the highest limits you can afford. If you check, you will find out the first $25,000 coverage is the most expensive. If you do a price check with five or six of the major car insurance companies, you will discover increasing your liability coverage from $50,000 to $500,000 usually only costs $100-$500 per year. My hope is you will realize you are sorely mistaken if you think changing your liability coverage from $50,000 to $500,000 will increase your premium tenfold. That simply isn't so. In fact, if you do your homework, you will probably be able to increase your liability coverage from $25,000/$50,000 to $250,000/$500,000 for as little as $10 per month. The at-fault driver and the injured party benefit when the at-fault driver has high bodily injury liability coverage.

Key Point: Finding out Policy Limits is important. Some insurance companies refuse to tell their insureds their liability policy limits. Furthermore, even when the insurance company states the amount of the liability limits, you can't always trust what you are told. We recently had a claim where the adjuster for the at-fault driver told us policy limits were $25,000. The adjuster offered the $25,000. We rejected, insisting he send us a copy of the applicable policy, declarations page, or affidavit of coverage setting forth policy limits. He ignored our requests. We filed suit. A new litigation adjuster later assigned to the case provided documentation of policy limits: they were $100,000. Case was settled for $100,000. The point is to never settle a policy-limits case without proper verification of the amount of limits.

Link to Video

2. I was recently in an accident. It wasn't my fault. I have just been told the other driver had no insurance. What can I do?

The chance of collecting personally from someone who was uninsured is slim at best. Most of the time, if a driver doesn't have car insurance, it is because coverage was dropped (or cancelled) because of nonpayment of the premium. Almost all uninsured drivers have no money and minimal assets. I have found the old saying, "You can't squeeze blood out of a turnip," is true when it comes to uninsured motorists. The chance of getting a significant recovery from an uninsured driver is nonexistent. Unfortunately, there are a lot of uninsured motorists. According to a study by the Insurance Information Institute, 12.6 percent of American drivers had no liability car insurance in 2012. According to www.carinsurance.com, in 2015, Indiana ranked eighth on the uninsured list, with 16.7 percent of our drivers being uninsured. So if you are in a wreck in Indiana, chances are almost one in six that the other driver is uninsured. Although it is unfortunate that not every motorist in the United State has car/liability insurance coverage, it is worse in most other countries. For example, in England 30 percent of drivers do not have insurance.

Key Point: You can't rely upon other drivers to have liability insurance. Better to be safe than sorry. Make sure your car insurance has Uninsured/Underinsured Coverage--the more the better.

Link to Video

3. Should I use my Uninsured Motorist (UM) coverage if the other driver has no car insurance? I'm afraid my premium will increase.

We get this question all the time, but before I answer, let's discuss what Uninsured Motorist (UM) coverage is. The purpose of Uninsured Motorist coverage is to protect you and cover the damages you receive if you are injured by an uninsured at-fault driver. Many people are reluctant to bring a claim against their own insurance company for damages caused by an uninsured driver. They think it isn't fair to their own company and that their own insurance company will increase their car insurance premiums. We explain to clients that they paid premiums for this exact type of coverage and that their insurance company wrote the policy insuring them for this contingency, knowing it (your insurance company) has the legal obligation to pay for damages if the other driver was uninsured. Most people then understand this isn't unfair, since their insurance company has been receiving premiums for the Uninsured Motorist protection.

Key Point: I have had to tell many clients that since the other driver had no coverage and the client had a low amount of uninsured/underinsurance coverage, there simply wasn't enough insurance to cover their damages. The reason to get high limits of uninsured coverage is to protect yourself. If you only purchase $25,000 uninsured coverage, that is all you will be paid if the other driver is uninsured. The cost of uninsured/underinsured coverage is relatively inexpensive. If you check rates for uninsured/underinsured coverage, you will find that it is much cheaper than typical bodily liability and property damage insurance. For a cost of less than $200 per year, you can usually increase your insured/underinsured coverage from $25,000 to $100,000 and sometimes to $250,000 to $500,000.

Link to Video

4. Why is Underinsured Motorist (UIM) coverage often the most important car insurance you can purchase?

You already know in Indiana more than 16 percent of people driving have no insurance. That doesn't take into account that, of all the drivers who are insured, about 20 percent of those drivers just have the minimum $25,000 coverage. That means if you are an accident victim, at least 36 percent of the time the at-fault driver will have no insurance or minimum coverage. That's the reason you need underinsured coverage. An underinsured policy provides coverage for damages caused by a driver who has a policy that is not large enough to cover all of your damages. In essence, your UIM coverage will pay for damages on top of the coverage provided by the other driver. For example, let's say you are an accident victim, and the other driver only has $25,000 coverage. If you have damages valued at $250,000 and you have underinsured coverage of $250,000, you should be paid the full value of your claim. You would receive $25,000 from the liability coverage of the at-fault driver and $225,000 from your underinsurance coverage, for a total amount of $250,000.

Key Point: I recently worked on a case for more than a year trying to get a client's bills and Medicare lien reduced and to get him some money in his pocket. He had just retired. He was looking forward to time with grandkids and playing a lot of golf. On his way home, another driver crossed the center line. My client suffered multiple broken bones and required several surgeries totaling nearly $200,000. The case had value well over $1,000,000, but the other driver only had $50,000 coverage, and my client only had $50,000 underinsured coverage. There was no way the client would be compensated fairly for his injuries. The best we could do was to get some of his bills and liens waived or reduced. Clearly, it would have been an entirely different ending if the at-fault driver would have had high limits, or our client would have had high underinsured coverage.

5. If I'm injured in a wreck and the other driver is at fault, should I use my health insurance or med-pay coverage to pay for my medical bills? Why won't the at-fault driver's insurance company pay my medical bills while I am being treated?

Typically, neither the at-fault driver nor his or her insurance company is required to pay your medical bills on an ongoing basis. Unfortunately, if you're injured in a wreck, you are going to be stuck paying your medical bills as they are incurred. However, the law does require the at-fault driver (actually his or her insurance company) to pay for all of your damages, including medical bills, when your claim is resolved. Many accident victims are justifiably upset the at-fault driver's insurance company does not have to pay medical bills when they become due. (NOTE: There is an exception in no-fault states. Indiana and Illinois are not no-fault states, so the exception won't be discussed here).

Since Indiana and Illinois don't have no-fault insurance, other sources need to be used to pay medical bills. Often, the first choice to pay your medical bills is the "Med-pay" coverage you have as part of your own car insurance policy. You can choose the amount of med-pay coverage you have. We see med pay with limits as low as $1,000 and as high as $100,000. As a practical matter, with medical treatment costing as much as it currently does, $1,000 is like having no coverage at all. We suggest higher limits. Higher limits usually don't cost much. Once your med-pay coverage is exhausted, normally we suggest your bills be submitted to your health insurance, Medicare, or Medicaid. For our clients, if there is not adequate insurance to pay bills as they arise, we will contact the medical providers and work out arrangements to pay bills out of settlement proceeds. It should be pointed out that if your med-pay insurance carrier, health insurer, Medicare, or Medicaid pays medical bills on your behalf, they will usually seek reimbursement once the claim is resolved. This is called repayment of a subrogation lien. For our clients, we negotiate with lien holders, requesting substantial lien reductions.

Key Point: Since many young people out on their own have a difficult time getting good health insurance, it is wise for them to get as much med-pay coverage as they can. Most young people are healthier than the rest of us, so if they are going to need health care services, it is often from an accident--often a car accident. Having high limits helps them pay for treatment they otherwise might not be able to afford. I was recently told by a 28-year-old male that he increased his med-pay coverage from ______ to ________, and his cost is still only _______

ONE FINAL SUGGESTION ABOUT INSURANCE COVERAGE

Call your agent. Review the "Declarations Page" of your policy. Check limits of coverage and what you pay for it. If you need help doing this, call our office.

Ask your agent for an upgrade. For example, what would it cost to upgrade your liability coverage to $500,000 and UM/UIM to $500,000? Also, get similar quotes for $100,000, $250,000 and $300,000. You might even get a quote for $1,000,000. After you have heard the pricing, make your choice or shop around for similar coverage at four or five other companies.

II. REPAIRING YOUR CAR OR TRUCK

1. I'm mad. My car needs to be repaired. The other person caused the accident, and I can't get his insurance company to fix my car. They aren't being fair. What are my options?

You don't have to deal with the other driver's insurance company to fix your car. If you have collision coverage, you might be better off dealing with your own insurance company. Your insurance is required to deal with you fairly and in good faith. Your collision coverage is often the fastest way to get your car repaired. You can try to work with the other driver's insurance company, but if it is unreasonable or unresponsive, use your own insurance. Unfortunately, you may find out the at-fault driver's insurance company is trying to save money on your property damage claim at your expense.

Key Point: If you use your insurance company for payment of property damage, you will have to pay your deductible, but your insurance company will go after the at-fault driver's insurance company to recover what it paid, along with your deductible. Your company will then reimburse you for the deductible you paid. An added benefit to you is that you won't have to deal with an adjuster or a company that doesn't care about you.

2. Do I need to wait until my personal injury claim is resolved to settle my property damage claim?

No, typically any property damage claim should be settled within a few weeks. Your personal injury and property damage claims are handled separately. Even though your personal injury claim may take months before it is ready to settle, you can normally resolve your vehicular property damage claim in a week or so.

3. How does the deductible come into play, and will my property damage insurance go up if I use it?

The deductible is the amount your policy requires you to pay toward the cost of any repairs. Usually, the higher the deductible, the lower your premium is for collision coverage. People often worry needlessly about their premiums being increased if they make a claim in an accident that wasn't their fault. Your rates should not increase if you were not at fault. This is logical, since another driver running into you in no way demonstrates you are an unsafe driver.

Key Point: It would be horrible practice (and poor marketing) for your insurance company to increase your insurance premium for an accident you didn't cause. They know they have a lot of competition for business, and they will lose a lot of insureds to other companies if they increase rates unfairly.

4. Can I choose where my car/truck will be repaired?

Often the at-fault driver's insurance company will try to steer you to a body shop they "approve." However, you have the right to select the body shop you want to repair your vehicle. It is your car and your decision where, how, and when it will be repaired. Just make sure the shop is reputable and agrees to the estimate made or approved by the insurance company.

5. The other driver's insurance company told me my truck was "totaled". What does that mean?

If the insurance company thinks your vehicle is damaged beyond repair, the company will tell you it is "totaled." This does not mean the vehicle cannot be repaired. It simply means the insurance company is taking the position the vehicle is worth less than it will cost to repair it. In this situation, the insurance company will choose to pay you the fair-market value of your vehicle instead of the repair costs. Insurance companies will do this to save money. Unfortunately, it will cost you money if you have a good, dependable used car that is useful and valuable to you but has a low fair-market value. When the company does this, you will have a hard time buying a similar car that is as dependable as your car that was wrecked.

Key Point: Insurance companies take into consideration various factors in deciding whether to "total" a vehicle. They may consider how the vehicle's market value compares to the expense of repairing visible damage, the likelihood of hidden damage, and the cost of paying for a rental car while your vehicle is being repaired. Many insurance companies will determine the vehicle "totaled" when the repair estimate is approximately 80 percent of the actual cash value of your vehicle. The insurance company has decided this is cheaper than having to deal with the uncertainty of unexpected expenses that may exceed the cash value of the vehicle.

6. How can I negotiate what is the fair-market value of my "totaled" vehicle?

Most insurance companies use their own software to determine fair-market value. They say they check comparable sales of vehicles similar to yours. You can negotiate and argue that your car is worth more than the amount being offered. To get a better offer check (1) free online car valuation sites like Kelly Blue Book

(www.kbb.com); (2) get written estimates from a car dealer; (3) look for similar vehicle prices in auto trader type publications or classified ads in newspapers; and (4) get estimated values for similar vehicles from banks or credit unions who make vehicle loans. This information gives you ammunition to justify an increase in the "total" offer.

Key Point: In negotiations on "total" value, don't forget you are entitled to sales tax and registration fees in addition to actual cash value. When an older car is involved, it is difficult to recover the cost of recent repairs. A new engine, paint job, or new tires won't increase the value of the vehicle very much. However, if you have receipts for recent repairs, show them to the adjuster. This additional information may help get you a few extra dollars in your pocket.

If you are an Indiana or Illinois resident and need more information on handling and settling your property damage claim, give us a call. We will be happy to email and/or mail you our more extensive booklet on this subject.

III. BIG MEDICAL MISTAKES ACCIDENT VICTIMS MAKE AND HOW TO VALIDATE PAIN

- Not seeing their doctor when they are in pain.
- Not following their doctor's advice.
- Not keeping all doctor/physical therapist appointments.
- Not seeking specialist treatment when their condition doesn't improve.
- Giving up and deciding to live with pain when other medical options are available.

1. I quit going to my doctor. It takes a lot of time, and I am not getting better. Is this a mistake on my part?

Not seeing your doctor when you are having pain is a big problem. If you don't see your doctor, your doctor may assume you are getting better. It is vitally important that your doctor knows how you are feeling.

Key Point: Every time you go to the doctor and report your discomfort and the problems you are having, your doctor will make a note in your records. It is important your doctor has a chronology monitoring your condition. Also, if you are in pain and don't see a doctor, the insurance company will argue that you are not having pain, or you would have otherwise gone to the doctor. The insurance company is going to review your medical records

2. My family doctor told me I am going to have neck pain from the accident for the rest of my life, and I just need to learn to live with it. What should I do?

Your doctor may be correct; hHowever, why not seek an opinion from a specialist? Don't give up. Depending on the origin of the pain, it could be helpful for you to see an orthopedic specialist, a pain and rehabilitation specialist, a neurologist, a physical therapist, or a chiropractor.

Key Point: Most family doctors are great; however, many are overworked. They often don't have the time or necessary skills to help a patient who has chronic pain. We are concerned for our clients when they aren't getting better, and we will help them find the treatment that is best for them.

3. My appointments with my doctor are all the same. I am tired of the follow-up visits. I get tired of telling her my problems, so I usually just say I am doing okay. Will this hurt my personal injury case?

Your doctor needs to know your complaints to adequately treat you. If you don't tell her what you can do, what you can't do, and what activities give you discomfort when you try to do them, your doctor won't know what future treatment should be prescribed. Since doctors are rushed for time, we often suggest our clients make

notes in advance concerning their condition and the activities they have problems doing; and we recommend that they discuss these items with the doctor.

4. I had a spinal fusion. My doctor told me I need to stop smoking because it may delay my recovery. I don't want to quit. Will my personal injury claim be affected if I don't quit smoking?

The insurance company may reduce its settlement offer if medical records state your smoking is hindering your recovery. The law states you have a duty to mitigate your damages. That means you need to do what is necessary to get better. We suggest to our clients to seek treatment to help them quit or substantially reduce their smoking. Quitting is good for their health and preserves the value of their claim.

Key Point: Some orthopedic spine surgeons will tell patients who smoke that they have an increased risk of back pain. Some spine surgeons also believe that if a smoker requires surgery, he or she may have a higher rate of fusion and an increased infection rate. Most doctors will agree, however, that there are many factors (not just smoking) that may affect the outcome of surgery. Some of these factors are nutrition, osteoporosis, medications, and preexisting deformities. Since smoking is addictive, you may have problems stopping smoking. I strongly urge our clients to try to stop (or reduce) smoking, even if it is extremely difficult. Your body, your family, and your doctor will applaud your effort.

5. I didn't go to the doctor for a week after the crash. I really didn't start hurting a lot until 3-4 days after the accident. Will this hurt my claim?

It shouldn't, but many insurance companies will try to use it against you. The law requires that you prove you were injured in the wreck. You may have thought you were not injured badly enough to go to the ER or to schedule an appointment. I am sure you thought you would get better on your own. In fairness, just because you didn't immediately go to the ER or see your doctor does not prove you were not injured in the accident, but the burden of proof is on you. In situations like this, I always try to schedule a conference with your treating physicians and discuss with them the history you provided doctors, when your symptoms started, and the probable mechanism of the injury. If your doctors testify based upon their training and expertise after considering all factors, and they believe it is probable you were injured as a result of the wreck, your claim should be viable and accepted.

Most doctors agree some injuries don't show up immediately after an accident. It may take hours, or even days, before the onset of symptoms becomes apparent for these types of injuries. Below are three of the most common injuries that have delayed onset of symptoms:

A. Concussions- Most people don't realize a concussion is a type of traumatic brain injury (TBI). Concussions often are caused by a bump, jolt, or blow to the head. Actually, just the sudden jerking back and forth during an accident can cause a concussion. The movement can cause the brain to twist or bounce inside the skull. Common delayed symptoms are headaches, mood swings, disorientation, irritability and sleep and eating disorders.

B. Back Injuries- Delayed symptoms may be the result of a herniated disc, nerve damage, or soft tissue injury. Common delayed symptoms are muscle spasms, stiffness, pain, tingling, and numbness.

C. Whiplash (Neck)- Delayed symptoms often result from sudden and extreme movement of the neck, causing the stretching of neck tissue to extend beyond the normal range of motion. Common delayed symptoms include ringing in the ears, dizziness, headaches, pain (neck, shoulders, upper back, and back of head), and blurred vision.

Key Point: We never suggest that accident victims should seek treatment if they are certain they were not injured. Doing so would be improper. We only represent real claims brought by honest people. That being said,

if you feel any pain and discomfort, see a doctor as soon as you can after the accident. It is always a good idea to be checked out by a doctor after an accident; he or she may see problems you aren't yet aware of.

6. I just realized that when I saw my doctor after the wreck, he asked if I had ever had a prior back injury. I said no. I forgot about the time I pulled a muscle in my back while moving office furniture 25 years ago. I saw a chiropractor a few times, got better, and haven't had back problems since. Could this hurt my injury claim?

This was an honest mistake on your part. You were probably scared and nervous, and everyone should understand how you could forget an incident that happened 25 years ago. I do suggest, however, that you tell the doctor about the incident the next time you see her. She will understand.

Key Point: Doctors use history to diagnose and treat your symptoms. Giving false information or hiding past treatment can be disastrous for your claim. We won't take claims where we discover a person has intentionally given false information to his or her doctor. Insurance companies look for evidence that decreases or destroys your credibility, such as not being truthful with you doctor. The way to prevent this is to make sure you are honest with your doctor about all aspects of your condition and your prior health.

7. As a result of the wreck, I'm having horrible headaches. I can't work. Should I tell my doctor?

Yes, you should tell your doctor. It is important that the fact you could not work is documented in your medical records.

Key Point: In personal injury claims, medical records are incredibly important. Your credibility is always an issue and can appear stronger if what you say is reflected in medical records.

8. My doctor prescribed medication to relieve pain and reduce inflammation. The medicine is making me loopy and nauseous. If I stop taking the medication, will it look like I wasn't really hurt?

Unfortunately, if a doctor prescribes medication and you don't take it, most insurance adjusters, and some jurors, will assume you must not have been hurt nearly as badly as you claim. Of course, that's not true, but it often is the perception. Since you have legitimate reasons for terminating the medication, we suggest you see your doctor and ask if there is another medication he can prescribe that won't cause negative side effects.

Key Point: Communicate with your doctor and her staff. The better the communication, the better the treatment you will receive, and the better the medical records will be for proving your injury and validating your claim.

Men in particular are terrible about telling doctors about their symptoms and pain level. Medical records show women describe pain and symptoms much better. After reviewing medical records, I often will call our client and tell him/her (more likely a male) that the medical records show a serious injury, but when the doctor asked how he/she was feeling, the answer was almost always, "Doc, I'm doing pretty good." I will follow-up by asking, "Is that how you really felt?" and will often hear a sheepish "Well, not really."

This is another example of a client being his own worst enemy. He had a serious injury. His injuries had resulted in a lot being taken away from him. However, you would never know by looking at the medical records. Documentation in medical records makes symptoms come alive. Notes by the doctor, nurse practitioner, nurse, physical therapist, or any other medical provider documenting pain and how the injury has affected the injured person's life bolsters the credibility of the client and demonstrates the impact of the injury to the client. Having details about the pain and effects of the injury in the medical records undoubtedly will help the adjuster, or jury, be better able to understand the injury and evaluate the losses the victim has suffered.

Key Point: If you are nervous, or are intimidated by doctors, it is a good idea to write (type, if your writing is as bad as mine) about your pain and discomfort and how your condition is affecting what you can and can't do before your appointment. Don't be afraid to give examples. You can hand the doctor a copy of your notes, and hopefully it will be put in your file. The notes will probably be transcribed and made a part of the medical record. We want to emphasize: DO NOT EXAGGERATE. You don't need to. Your doctor will know if you are exaggerating. Exaggerating will harm your relationship with your doctor and diminish your credibility with a jury or insurance adjuster.

IV. HANDLING CASES THE INSURANCE COMPANIES HATE

Gaps in Treatment

1. I went to my doctor for months. Then my doctor told me I was as good as I'm going to get. So I stopped treatment for several months. Now I want to return and see if more physical therapy will help. The insurance company of the driver who caused accident told me it isn't responsible because of the gap in treatment. Is this fair?

No, it isn't fair, but insurance companies do this all the time. It is just another trick insurance companies use to minimize the value of your claim. If your medical records show you were still having problems when you last saw your doctor, and your doctor confirms your pain is related to the original injury, your new treatment should be considered as part of your claim. Unfortunately, many insurance companies take a hard line on cases with gaps in treatment. Insurance companies almost always offer less when they claim there is a significant gap in treatment. When this happens, we usually suggest to our clients that we file a lawsuit on their behalf. Sometimes filing a lawsuit is the only way to get justice.

Key Point: The insurance company is ignoring the reason for a gap in treatment. Most people are more than willing to continue medical treatment when they are told, and believe, there is still hope for a cure. However, once an injured party is told there is no more hope for a cure, he or she often decides it's time to move on with life and just live with the pain and discomfort. Most reasonable juries understand it is logical to get treatment when you have hope to get better and to stop treatment when there is no hope for improvement. Just because you have stopped getting treatment doesn't mean you aren't still in pain and suffering from your injuries. Juries get it- many insurance companies don't.

Slip & Fall Injuries

1. I was shopping at Kroger and fell. I was checking out the organic vegetables and slipped on water on the floor. I have a fractured right lower leg. The adjuster told me I'm at least 50 percent at fault. Is that true?

It is only true if you cave in to the nonsense the adjuster is telling you. I admit slip and fall cases can be difficult. I know many personal injury attorneys who refuse to accept slip & fall cases. It is not unusual for clients to tell us that before they called our firm, they talked to several other attorneys who turned down their cases. I understand the reasons. Many people (and virtually all adjusters) believe that if you fall down, it is your own fault. The argument is you wouldn't have fallen if you were paying attention to where you were going. This is the old open and obvious argument: you should have been observant and known of the dangerous condition. It has been our experience that insurance companies almost always claim there was comparative fault—the person falling was at least partially at fault for his or her own injury—regardless of what the evidence shows. This argument is made to reduce the amount of damages. In Indiana, if you are found to be 50 percent at fault, you are only entitled to a 50 percent recovery of your damages. If you are more than 50 percent at fault, you are barred from receiving any damages.

I think the above defenses usually aren't reasonable, and if the case is litigated, a jury hearing all the evidence will find in favor of the injured party. People don't just spontaneously fall. We start walking when we are about one year old. We walk just fine for years and years. We don't fall unless there is a reason, and the reason is that the store didn't check the floor often enough to make sure nothing spilled.

Key Point: When you are in a grocery store, the store does not want you looking at the floor. They want you looking up at the shelves. You are not looking at the floor, because that is the way the store was designed. There is a saying in retail, "Eye level is buy level." Stores reserve upper shelves for top brands (the most profitable products), while reserving lower levels for cheaper brands. There is an exception. Kid items are placed lower where kids can see and touch. I once handled a case where a young boy picked up a bottle of bubbles from a lower shelf, opened it, and spilled part of the liquid contents on the floor. The store failed to do a customary periodic sweep of the area, and our client slipped on the liquid and was severely injured. Ultimately, after filing a lawsuit, we were able to attain a good settlement for our deserving client.

Injuries to Older Accident Victims

1. I'm 73 years old. I was rear ended while waiting for a traffic light to change from red to green. I now have permanent neck pain. The adjuster has strongly suggested my case isn't worth much because I am old. She said she would have offered a lot more money if I were 40 years younger. That doesn't seem fair to me. Am I right?

You are right. It is not fair to you, and it is not fair to all the other older accident victims who have settled their cases for less than they deserve because of this argument. The insurance company is trying to take advantage of two unfortunate facts. First, they think we older citizens are less likely to litigate and, therefore, offer less to settle our cases. Secondly, since we typically won't live as long as younger people, we should receive less for our pain and suffering. This misses the point that all time is not equal. Time becomes more precious the older we get. When we are young, we don't value time; we actually want it to pass by quicker so we can become adults and run our own lives. We need to remind the adjuster and juries that if the claim can't be settled, the Golden Years should not be discounted as having little value.

Key Point: Attorney Keith Mitnik of Orlando, Florida, in his great book, *Don't Eat the Bruises,* is 100 percent correct when he points out it is unfair to judge life expectancy as the measuring stick to value the worth of injuries unnaturally thrust upon an elderly person through no fault of his or her own. The point is that injured parties, or their attorneys, should not accept this deceitful argument by insurance companies.

Automobile Wrecks Where Property Damage Appears to Be Minimal

1. My car was struck from the rear by a slow moving pickup truck. There was hardly any damage to my car. The pictures of my car taken after the wreck only show a few scratches on the rear bumper. The insurance adjuster told me there is no way I could have been injured. I sure feel like I was injured. My back is really hurting. Is there anything I can do?

Insurance companies, and insurance attorneys, love to litigate what they call "minimum impact cases." Insurance companies believe they will outright win most of these cases and that the risk of a substantial verdict is minimal. The attorney hired by the insurance company will parade around in front of the jury showing the photos saying, "a picture is worth a thousand words," while smiling with contempt at the injured person. I have seen jurors drop their jaws in disbelief when they first see the photos. No matter how much I tried to prepare the jury during the jury selection process, the jury still seemed shocked when they saw the pictures. To win these cases, the injured must an "A" witness: honest, sincere, believable. "No warts." Your doctor needs to be supportive, and there must be an open-minded jury. The fact is people are injured every day in crashes where there is not a lot of visible property damage. To win, the mindset of the jury must be changed. The fact is that it isn't the contact of the vehicles that causes the injury, but the unexpected and unnatural jarring by forces that

causes the neck to snap back and forth causing injury to muscles, tendons, nerves, and sometimes cervical vertebrae. Analogies used to show contact and damage to the car are irrelevant; it is what happens to the occupant inside the vehicle.

Key Point: We do occasionally accept some “not-much-visible-damage-to-the- vehicle” cases. This is because we know it is unfair to the accident victims who have truly been injured. We also know, if enough cases like this are tried before a jury and won, insurance companies will have to look at these cases more closely before denying the claims and start being more reasonable to people injured in these types of cases.

Injured Person Had a Pre-Existing Medical Condition

1. I am 53 years old. I thought I was healthy, never miss work, and very active. I was hit in my truck by a driver who fell asleep at the wheel. When they started treating me, an MRI showed that I had degenerative disc disease. I didn’t know that, and I am still having problems. The insurance adjuster for the company of the driver who hit my truck claims I should have recovered after six weeks, that now my problems are being caused by the degenerative disc disease, and that it is not the at-fault driver’s insurance company’s responsibility. Am I out of luck?

Not if you retain a good lawyer. Insurance companies try this trick all the time. It’s just another way the adjuster is trying to save money. It sounds like your condition was asymptomatic before the collision. That means it wasn’t bothersome until something happened. Clearly, the trauma from the collision caused an asymptomatic condition to become symptomatic. That means it went from not bothering you to causing you a lot of pain. Your lawyer should be able to get a statement or report from your treating physician showing that the reason you are still having pain is because the collision took your degenerative disc disease from asymptomatic to symptomatic, it is still symptomatic, and it may continue to be symptomatic for an indefinite period of time.

There is a legal principle called the Eggshell Plaintiff Rule. It states that the wrongdoer takes the accident victim in the condition he or she finds him. The fact that a victim has a pre-existing condition does not let the wrongdoer off the hook. Even if the victim is more susceptible to injury or it is more likely for the injury to last longer because of the pre-existing condition, the wrongdoer is responsible. The wrongdoer is not responsible for the original condition but is responsible for the aggravation of the prior condition, no matter how long it lasts.

Key Point: It always amazes me how an insurance adjuster who has no medical training claims he can claim that in about six weeks the pain caused by the collision always stops and that any pain thereafter is not from the collision but is just because you have degenerative disc disease. By the way, everyone has DDD. It is just part of the aging process. The problem with the adjuster’s argument is he has forgotten to consider the timing. Consider the facts: no pain, collision resulting in immediate pain, ER visit verifying injury, medical treatment, continued pain. How can the adjuster assert that the injury from the collision lasts for six weeks, and then immediately after the six week period, claim the pain is caused solely from the normal aging process? This doesn’t make sense. If the adjuster doesn’t agree, a lawsuit should be filed. The jury should see through this incredulous argument. The medical records are all key.

V. UNDERSTANDING DAMAGES

1. I was in a wreck. I don’t have a clue what the term “damages” includes.

Damages include both economic and non-economic harm.

The most common economic damages include out-of-pocket expenses, such as:

- Property damage, including cost of repairing the vehicle or payment for a “totaled” vehicle

- Cost for a rental car
- Payment for lost wages, past and future
- Payment for diminution of income, impairment of earning ability
- All medical bills, past and future

The most common non-economic damages include:

- Pain and suffering as a result of the injury
- Physical or mental disabilities
- Emotional distress
- Scarring and disfigurement
- Loss of consortium

2. Do I get to keep all of the money paid for the economic damages?

Probably not. Compensation to cover the injured party's medical expenses usually does not go to the injured party at all. It goes to medical providers to pay the medical expenses that arose as result of the injury. Also, if medical bills were paid by the injured party's insurance such as health insurance, Medicare, Medicaid, Work Comp, or MedPay, those providers will likely have what is called a subrogation lien and will want to be repaid. We spend a lot of time negotiating the reduction of the liens for our clients. We do not charge for this service. Normally, lost earnings make up the largest portion of economic damage,which go directly to the injured party.

3. What are pain and suffering, and how is the value determined?

Insurance companies don't like to pay for pain and suffering. Many adjusters won't even use the term. They often will say they will offer a small amount for "general damages." To receive any substantial sum for pain and suffering, a lawsuit will likely have to be filed. Admittedly, pain and suffering can be difficult to evaluate. There are no set formulas. Every case is different. For seriously injured victims, recovery for pain and suffering and other non-economic damages should be the largest portion of the settlement.

Key Point: Non-economic damages are about the important things in life. They are about the joy of life and the quality of one's life. They are about pleasure, satisfaction, and how the injury has affected you and your family. The best way to look at non-economic damages is as the remedy for what has been taken away or lost by the accident victim.

4. I have heard jurors often are reluctant to award money for pain and suffering and other non-economic damages. Is that true? Also, I feel embarrassed asking for money because I was hurt.

The insurance adjuster wants you to think jurors won't award money for pain and suffering. We believe jurors do their best to make a fair and rightful decision. If they are presented the evidence and the story of your journey dealing with all that has been taken from you, the jury will make the right decision.

Key Point: Accident victims should not feel guilty about asking to be awarded damages. We know most people don't like to ask for money; it's hard. It is important to remember the accident victim didn't cause the injury. He or she is the victim and is not asking for a handout. The accident victim didn't choose to be injured. Jurors who understand their job focus on the value of that which has been taken away from the accident victim because of the action of the person or company that caused the injury.

5. Sometimes I read or hear about large verdicts. Why do some cases merit a large amount for pain and suffering?

Sometimes juries make mistakes. Sometimes they return a verdict that appears too low or too high. However, the vast majority of the time, the jury makes a logical and fair decision based upon the facts and the evidence. Large verdicts based upon pain and suffering and other non-economic damages typically involve cases with permanent injuries and losses that will have a very detrimental impact upon the accident victim and his or her family for the rest of their lives.

Key Point: Insurance companies don’t like cases with permanent injuries. Insurance companies don’t like it when juries pay the fair value of what has been taken away from the accident victim. They know permanency requires greater damages. Juries don’t award jackpot justice. Juries award greater damages when they conclude that injuries are permanent--for all time. If they do their jobs well, juries realize there aren’t re-dos if they make a mistake.