

THE PERSONAL INJURY QUESTION & ANSWER HANDBOOK

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Frequently Asked Questions About Personal Injury Cases

1. How does the insurance company evaluate my claim?

The insurance company will evaluate the claim through THEIR eyes. They use statistical data, computer software, other objective data, and the specifics of your particular case when evaluating a claim. There is also a human component, especially if your case has something unique about it. Also, if you treat the insurance adjuster with respect, they will (in most cases) treat you with the same respect. That doesn't mean they will agree with you but if they have any flexibility in their evaluation, they might resolve it in your favor if you've been easy to work with. That being said, they usually won't view your case the same way you do. Remember, they don't view the case from YOUR point of view.

2. Can I expect to recover for future medical expenses?

Future medical expenses are recoverable if the injured party can show that he or she is likely to need continued medical care as a result of the accident or injury. This amount may be determined by the advice and opinions of your doctors and/or other medical specialists you have seen for treatment. Generally speaking, the future need for medical care must be "reasonably certain" to be incurred. It can't be "speculative."

3. What about "pain and suffering" damages?

Pain and suffering damages may be granted for physical pain resulting from an accident or injury. An insurance adjuster or jury will look at the nature of the injury, the severity of the pain, and how long you are likely to be in pain to determine the amount of damages. Remember that NO ONE will see this case through your eyes. An adjuster or jury's evaluation of your case may differ greatly from your own. I hate to say this, but in most cases, they won't be as generous as you'd like them to be.

4. What about my lost earnings?

When it comes to lost earnings, letters from your employer, pay stubs, tax returns, deposit slips, etc. may help prove your claim. Also, if you choose not to work, it usually has to be under doctor's orders. Make sure you get a note or other documentation from your doctor, placing you off work or limiting your work. You can't just stay home and say, "I don't feel like going to work today." If you lost a job opportunity or other work, get a letter from the person who was about to employ you in order to substantiate your claim.

5. What about the damage to my car?

Recovery for the value of property that was damaged, including your vehicle and its contents can be obtained. This also includes loss of use (i.e., rental value for the period of time you were without a car). Please remember that the defendant (or their insurance company) is not obliged to buy you a new car! You can also ask your own insurance company to repair your vehicle, but you first need to confirm you had the requisite insurance coverage and you might incur a deductible (which might be reimbursed to you in the future).

6. Should I accept the offer from the insurance company?

Every client has to make a decision at some point. They can either take the offer being made or file a lawsuit against the other party. If the insurance adjuster won't offer you any more money, no amount of yelling or screaming is going to help. Remember, this is the same person writing you a check. Be nice. In some cases, filing a lawsuit makes sense. However, you need to take into consideration the costs of filing a lawsuit. Even though you may recover more money from a jury, you may actually end up with less money when all is said and done. I've actually done the math on some cases where even if the recovery were DOUBLE the amount being offered, the client would actually net less after all costs and fees were deducted. Also, going to trial takes a physical and emotional toll you may want to avoid.

7. What if more than one person is responsible for the accident?

In California, we employ the law of "comparative negligence." This means that one party or another doesn't necessarily have to be 100% at fault. In other words, California law recognizes that sometimes, *both parties* might share in the blame. Then it becomes a matter of how much fault each party shares. This is not a scientific matter. We won't know "precisely" but we often have to estimate fault.

For example one person might be 60% at fault and the other would be 40% at fault. It could be 70/30 or any other combination. If the plaintiff is at fault, his/her recovery would be reduced by the amount of fault they share. For example, if a case is worth \$100,000, and the plaintiff is 50% at fault, his/her settlement (or verdict if in trial) would be \$50,000. Just because the police report is entirely in your favor will not prevent another person from arguing you had something to do with the accident.

8. How many pictures should I take of my auto damage?

First things first, make sure that you take photographs of every vehicle that was involved in the accident. If you have the energy at the scene of the accident, and you have a camera or perhaps a cell phone that has a camera, take many pictures - but not only of

your vehicle. If you can, take pictures of all the other vehicles that were involved in the accident as well. You should also take pictures from several angles because a picture is a static two-dimensional image. Sometimes it's very difficult to assess the damage just by looking at it from one angle. If you're taking a look at a vehicle with your own eyes you have three-dimensional ability, and you can, you can kind of assess the damage a little bit better. If you don't have photographs, it's not terribly helpful when you're trying to convince a jury or an adjuster or anybody else of the severity of the impact. Pictures really do speak a thousand words. If your vehicle has already been towed to a yard, see if you can get to that yard or have a friend or a family member go to that yard and take some pictures of your vehicle.

9. Should I provide my lawyer with my auto insurance information?

Make sure that you provide your lawyer with all of the auto insurance information. As attorneys, we need to know your policy number, what insurance company you had, whether your insurance was in force at the time of the accident and also what kind of coverage you had in your insurance policy. This information can affect our advice to you regarding your personal injury case. Your insurance policy might provide some benefits that affect your overall strategy to the personal injury claim.

10. Should I provide witness information to my attorney?

If there were any witnesses to the accident, make sure that provide that information to your attorney. Sometimes the witness information is in the police report, but sometimes it's not. Any passengers in your vehicle might also be witnesses to the accident. So once again, it's very important to provide your lawyer with more information than less.

11. Should I be doing anything to help my lawyer with the case?

Make sure you are always providing your lawyer with ALL information. Some people sign up with the attorney, and they think everything's going to happen magically. Not quite. Lawyers don't have dreams about your case where information magically appears to them. We still need to assemble information! Insurance companies don't pay out of the goodness of their heart. We have to prove and present your case to them. If you get medical bills at home, give them to your lawyer. Give the lawyer any and all correspondence. Don't assume the lawyer is automatically getting the same information. Also, if you go to other doctors, make sure your lawyer knows about it.

12. Why is my behavior after an accident important to my case?

Be wary of inconsistent behavior after an automobile accident. If there were any witnesses or others who saw you doing the inconsistent behavior, they can potentially testify against you. You don't want your inconsistent activity showing up on the social media websites either. Inconsistent behavior such as dancing at a party a few days after

an accident that allegedly provided great injury to you is not going to help your case. Also, some insurance companies are very aggressive and hire investigators to film you going to the supermarket, going to the gym, hanging out with your friends and going to a party, playing with your children in the park, and many other activities that may prove to be inconsistent with your allegation of injury. If they want to get very zealous about it, they can bring an action against you for insurance fraud if they can prove you were faking your allegations. Of course, candor is the best policy.

13. How do I know if I have a case worth pursuing?

Just because an accident occurred, and it wasn't your fault, does not necessarily mean that some insurance company is going to pay your medical bills and other related expenses. There needs to be a showing that another party or entity actually caused the accident to occur, whether it is a car accident or other kind of injury matter. You must be able to show that someone was negligent at the very least and that negligence caused your injury to occur. Many times clients tell me that they were involved in an accident but it wasn't anyone's fault. If we cannot show the other party did something wrong or negligent, we will likely be unable to prove that you should recover any kind of compensation.

14. What are the most important things I should do after an accident?

As noted earlier, if your vehicle sustained damages, take plenty of photos of the damage to your car and the other car – if you can. Many cell phones have cameras, or if you don't have any kind of camera, have a friend or family member buy a cheap camera from a nearby store and take as many photos of the scene and the vehicles as you can. If you call them from the scene, ask them to bring a digital camera with them. The second thing you should consider is that **if you have visible injuries (bruises, scrapes, cuts, etc), have a friend or family member take photos of those injuries as soon as possible.** Another thing to keep in mind is to be civil at the scene of the accident. Things you say and do at the accident scene often come back to haunt you. Don't apologize for the accident unless you are 100% sure you are at fault.

15. Should I give a statement to the other party's insurance company?

The insurance company for the other party will likely want to take your statement by phone or otherwise. You are under no obligation to do so. There is probably very little (or nothing) to be gained from giving a statement. At least talk to a lawyer first. The insurance company representative will often act interested in your case, sympathetic, etc...but in my experience, they are usually trying to "box" you into a story so you can't argue otherwise in the future.

16. Why is it important to take photographs of visible injuries I have?

If you've been involved in a car accident, don't forget to take photos of any visible injuries you might have...no matter how trivial. You can talk about your injuries all day, but when it comes to convincing an insurance adjuster, pictures truly do speak a thousand words. If they cut you a large check, they are going to need documentation in their file as to why they did so. Insurance adjusters generally won't pay you out of the goodness of their heart. Take photos of bruises, cuts, scrapes, or worse. If you can't do so, have a friend or family member help you. Make sure the photos are taken from several angles and they truly capture the injury. Don't wait till the injury fades, or else you will be out of luck telling stories to people who, as a general rule, need to see to believe.

17. A friend of mine got a lot of money on his injury case. Can I expect the same?

One of the most difficult things that I do as a lawyer is managing the expectations of clients during personal injury cases. When a client comes into my office regarding a car accident case, I have to make sure they don't have dollar signs in their eyes. Recovering from an auto accident case does not involve becoming independently wealthy, obtaining a shortcut to retirement, or any other way to beat the system. The law provides compensation for reasonable medical expenses that were incurred due to the accident. These are called special damages or economic damages.

In addition to this, in most cases, people can recover general damages or "non-economic" damages. This is also sometimes known as pain and suffering damages. Focus has to be on the word "reasonable." Again, your beliefs about what is "reasonable" usually won't be shared by the insurance company. Comparing your case to an experience your friend or family member had on another case is a waste of your time.

18. When should I get medical care after I've been injured in a car accident?

If you were injured in the accident (or even if you're not sure!), by all means seek medical help (at least an exam) as soon as possible. Most people try to "tough it out" or "see how they feel" before deciding to see a doctor. One of the biggest reasons personal injury claims fail, or get short-changed, is because the individual *waited too long* before seeking medical attention. How long is too long? In my experience, insurance companies will give you a very hard time and discount (or even deny) any injury claim if you wait longer than one week. Remember your actions speak louder than words. **If you don't have health insurance, there are other ways to get medical treatment.**

The longer you wait from the date of the accident to when you first seek medical treatment, the more the responsible party, the insurance company for the responsible party, is going to doubt whether you had any injuries at all.

Make sure you keep track of all the medical providers you visit with after the accident, and make sure that you seek medical care right away even if you just make sure you're all right because if you wait too long, they will doubt whether or not you were injured.

Also, every time you go to the doctor after an automobile accident, **make sure you mention to the doctor why you're there**. Some clients go to the doctor and say, "Oh, my back hurts or my neck hurts," or something like this, and the doctor provides care, but they never mention to the doctor that it was ***because of an automobile accident***. As a result the absence of that information, some insurance adjusters will take a look at that and say the absence means that it wasn't related to the car accident – They may argue you were there for some *other* reason. So you want to make sure you always provide your healthcare providers with the information that is relevant to the matter so that it ends up in your medical file. **Doctors can't read your mind**. You have to tell them why you are there.

Also, when you go to the doctor, **make sure that you mention everything that bothers you**. Start from the head and make your way down even if you're not terribly sure, make mention of it to the doctor because sometimes some people try to tough it out and they don't mention their back because, "Oh, it, I don't want to trouble the doctor or, or I don't want to trouble the physical therapist," but the problem is that all they've done is hurt their own case because once again, **the absence of information in medical records, as far as some insurance adjusters are concerned, means it never happened**. So make sure that you always are very mindful of what you are telling your healthcare professionals. After all, the healthcare professional wants all the information so they can provide you with the best care.

19. How are police reports important in my case?

One of the most important pieces of the puzzle when it comes to your personal injury auto accident case is the police report. However, sometimes police reports are NOT prepared if there is no report of injury. In fact, some insurance adjusters will point to the absence of a police report as evidence of absence of injury. In other words, if there was no police report, then you obviously weren't injured. Therefore, if you are injured, you should tell the 911 operator or officers. Otherwise, the police will either not show and/or not write a report.

A police report can be very helpful when analyzing your accident case. First, I always look to see who the officer found at fault. The person at fault is *usually* listed as party #1. I also look to see what California Vehicle Code violation the office determined was involved. This information is usually found in the report. Sometimes the officers will also prepare a small diagram which can be helpful in determining what happened.

Unless the guilty party was under the influence, most officers won't issue a citation to the guilty party. The lack of citation carries little legal significance. I also look to see if there are an "associated" or "secondary" factors involved. Sometimes, my client is listed as an associated factor. That's not a great thing, but it cannot be overlooked.

The report will also have the officer's determination of road conditions, witness statements, reported injuries and if anyone was transported to a hospital, and the officer's opinion regarding the severity of the property damage.

The officer's opinion regarding fault carries a great deal of weight but is not legally binding. In most cases, the officer didn't see what happened and only "investigated" the scene after the fact. His/Her opinion is important, but can be challenged. If you notice something wrong in a police report, you should take the time to file a "supplemental" report with the appropriate agency.

Therefore, police reports are helpful when it comes to accident cases. I will be honest...if the report isn't in your favor, you are going to have an uphill battle.

Sometimes you won't have the police report. Instead you will have a police report card that the officers give you at the scene and it will have the police report number on it. Give that to your lawyer so they can secure the police report from the responsible agency. Also sometimes officers take photographs at the scene of the accident and your attorney can obtain those as well.

20. Why does the insurance adjuster want to meet me?

There seems to be a new approach being employed by some over-zealous insurance adjusters. They will offer to meet you to "discuss" your case. Make no mistake...they are not interested in "discussing" your case. They are there to offer you a quick, low-ball settlement. Insurance adjusters are often rewarded for "closing" files and resolving them quickly. For some companies, the longer a file remains open, the more questions are asked by supervisors. So the adjuster will meet with you and convince you they have tons of experience with cases just like yours and that \$500 should be enough settlement. They will have their checkbook for sure. **Remember, insurance companies don't make money by paying claims.** They make money by taking in premiums and investing those premiums. If the insurance adjuster wants to meet you, talk to a lawyer first. Never sign anything until you run it by an experienced lawyer. If you sign your rights away, and accept a low-ball settlement, then you cannot come back later and ask for more

21. Will my own insurance company pay for my medical bills?

Your own insurance company might pay your medical bills if you had "medical payments coverage." Whether you choose to take advantage of this coverage is something you should discuss with your attorney.

22. Will the responsible party's insurance company pay my medical bills?

Well, yes and no. You may be surprised to learn the other party's insurance company usually won't pay your bills *as they come due*. Your health care providers won't be too excited about that. Even if they do eventually pay, don't be surprised to learn they won't pay for *all* your bills. People are surprised to learn that the insurance company for the party at fault does not pay their medical bills as they become due. They won't pay your medical bills until you are finished with your treatment in most cases. Even then, they might discount the charges and nickel and dime you to death.

23. Why do insurance adjusters keep asking me for more unnecessary information?

Some insurance adjusters drive me crazy by requesting lots of unnecessary information. It seems that regardless of how much documentation you give them, they always want more. In my opinion this is nothing but a stall tactic. You'll provide them with adequate information regarding lost earnings but unless you have a video of you sitting at home in pain, they just won't believe you. These insurance adjusters are making life difficult because they are trying to postpone the settlement of your case. They realize the additional information is not going to make any difference in their offer. Nevertheless, they will string you along and they will continue asking for additional documentation!

Not all adjusters are so myopic. I think some adjusters simply confuse the standard of proof in a civil case with that required in a criminal case. They need proof "beyond a reasonable doubt" when, in fact, a "preponderance of the evidence" is the actual standard.

24. Should I sign the medical release sent to me by the other party's insurance company?

After you open a claim with the opposing insurance company, they will more than likely send you a medical authorization for you to sign. They want to sign this document and return it to them so they can get all of your medical records for their review. Often, the authorization they send you is a broad and blanket authorization for medical records with no date limitations. That basically means, you are giving them your permission to get any and all medical records from any and all healthcare providers. Unfortunately, many insurance adjusters want nothing more than to go fishing through your medical records to find any reason at all they can deny the claim. They might find a similar injury over 10 years ago, and they will sink their teeth into it. For example, if you have *any* back injury in your history, they will use that against you if you are trying to claim back pain from the current accident. As always, there are exceptions to the rule, but in my experience, most insurance adjusters who send broad authorizations are seeking to go fishing for information.

I usually advise my clients to provide whatever information they want to provide. I don't typically provide any previous medical records unless it is critical to the case. If you are

claiming a significant personal injury from an accident, they may indeed insist on getting your previous medical records to ensure that you are not trying to pull the wool over their eyes. If you have a herniated disc from an accident for example, but you actually have a herniated disc from before the accident, and that will be a significant issue in your case. However, by the same token, if your previous medical records are devoid of any mention of herniation, that might play in your favor. In short, I advise against signing anything the opposing party's insurance company sends. There is nothing to be gained in most cases. You control what information you provide to them. Do not give them permission to fish through your past looking for a reason to deny your claim.

25. Can I use my own health care insurance to pay for treatment after an accident?

After a car accident, you are certainly free to use your own health insurance company to pay for your health care costs. In many cases, by using your own health care provider, your case becomes more "credible." Sometimes, claims adjusters and juries frown on "attorney-referred" doctors who work on a "lien" basis. They infer, usually incorrectly, that the attorney is running the show and sending their client to doctors. However, in some cases, that is the only the option a client has if they don't have their own insurance.

Also, some clients have to wait weeks or months before they can see a doctor due to their particular insurance plan. By using a doctor who is attorney-referred, a client can usually get medical attention much faster. When you see a doctor on a lien, the doctor is essentially deferring his/her payment until you recover money from the responsible party. Once you settle your claim, the doctor's office will expect payment.

26. Will my attorney clear all my liens?

One of the things I always have to make sure I do as a lawyer is clear any and all liens that might be attached to a person's injury case. Therefore, before I settle with other party's insurance carrier, I have to make sure all those parties and entities that might have a lien are resolved. Here are some things to consider:

1. Did my client's car insurance company pay any money for the medical treatment? Many of my clients have something called "Medical Payments Coverage" under their own insurance policy. In some cases, this "MPC" coverage pays for the medical bills. If so, I have to make sure that we address their reimbursement. Sometimes, they are willing to waive reimbursement under the right circumstances (especially if their insured isn't being made "whole" by the settlement amount).

2. Did any of my client's medical providers work on a "lien" basis. If so, they need to be paid for their services. If the doctors work on a lien, that means they provided care with the anticipation they will be paid from a potential settlement. Essentially, they are deferring their payment.

3. Did my client's health insurance company pay for any care? If so, most health care companies have the right to reimbursement. Therefore, those issues need to be addressed as well.

Before making a demand for settlement and/or actually settling my client's cases, I have to address all existing and potential liens on the case. Otherwise, my clients might be facing an unpleasant surprise later

27. The insurance adjuster for the other party has assured me they will handle my case promptly and fairly. Isn't that good enough?

Keep in mind the insurance company for the party at fault doesn't really have any obligation to you. You don't have a contract with them. You don't pay their salaries. First, they have to "investigate" and "determine" whether or not the accident was your fault or not. After that, don't expect them to pay your medical bills whenever you present them. First, they will have to "determine" whether or not your treatment was reasonable in THEIR opinion. In some cases, they use databases or other computer software to make that determination. Then, they will look at every single charge you incurred to see whether or not they agree with the charge by the doctor. If they don't agree, they will slash the doctor's bills – in many cases dramatically, leaving you with a big hole to fill. So all the assurances of the world from the other party's insurance company should mean nothing to you at the end of the day because there is no guarantee they're going to pay your medical bills. In most cases, the adjuster alone determines your charges are unreasonable. Yes, this is the same adjuster without a medical degree.

28. What does the insurance company mean when they say "reasonable"?

Clients who have \$10,000 worth of medical bills are often surprised the insurance company for the other party doesn't believe the treatment they received was worth \$10,000. In fact, insurance companies routinely examine every single charge from the doctor and hospital and test each entry for "reasonableness." They will compare each charge to what they believe is reasonable in that particular region of the country. In many cases, insurance companies use software to assist them with this task (they usually won't admit to this). The trouble is, some insurance adjusters do not exercise enough "human" judgment and place too much trust in such software. Some adjusters are simply more reasonable and open minded than others. Some make it their mission to make your life miserable. So keep in mind, recovering monetary compensation in a personal injury case is not always a pleasant experience. What you consider "reasonable" is not what the insurance company will consider "reasonable." Usually their number is less than yours.

29. Can I turn to my own insurance company to fix my car?

You don't have to use the other party's insurance company to pay for your property damage. If you have your own insurance company's comprehensive and collision

coverage, you should be able to turn to your own insurance company and have them fix your vehicle. In fact, this is usually the best way to go. You have every right turn to your own company to fix your own vehicle. You will incur a deductible, but your insurance company will reimburse that to you eventually in most cases (assuming they recovery their payment from the other party's insurance carrier). Your personal insurance company has a duty to deal with you in good faith. The other party's insurance company doesn't have that same duty.

30. What should I bring to the first meeting with my lawyer?

Your personal injury lawyer isn't going to magically know about your case. You actually need to provide information about which doctors you went to, which doctors you are going to see, what hurts you, who witnessed the accident, if there was a police report, what the property damage looks like, etc. to your attorney. Don't assume all your health care providers are simply communicating with your attorney. Even if you make your health care providers know about your lawyer, many of them may not cooperate. You need to let your lawyer know about all the important information. During the first meeting with the attorney, you need to bring everything that could help. On my website (www.ValenciaLawyer.com) there is a checklist available.

31. What should I say to family and friends about my case?

Please don't be compelled to talk to everybody about your personal injury case. Remember there is something called confidentiality that exists between an attorney and his or her client. That confidentiality does not exist between the client and anyone else. I've had some cases where my clients tell friends and family information about the accident case that isn't terribly helpful to their case. If those people are called to testify, they might testify against you and whatever you've told them is fair game. You can't claim confidentiality of any sort. You can't even claim it if the witness is your spouse! Spousal privilege only applies to criminal cases. Therefore, unless it is imperative that you share certain information with other people, please keep the facts of your accident case to yourself. Share the information with your doctor and with your attorney and no one else unless it's absolutely necessary. Of course, if you do share information with others, always make sure it's consistent with your claim! What you say to other people can come back to haunt you later on.

32. What happens if I withhold information from my lawyer?

Don't hide things from your attorney. For some reason, there are some clients out there who want to hide facts from their lawyer. One client wanted to hide from me the fact that she was smoking pot at the accident scene. Well, the insurance company found out because it was in her medical records from the hospital! If she had told me about this information, there may have been ways to deal with it.

Some clients hide previous accidents from their attorneys. In many cases, the clients make a unilateral determination the accident must be irrelevant and therefore they either fail to mention it or the deliberately hide it. Again, this is not going to help your lawyer prepare for your case. If you're hiding things from your attorney, you have bigger problems. The information is going to come to light at some point. If you tell your attorney about the matter, your attorney will be better equipped to handle it. Once litigation begins, they will indeed have the right to that information and they will find out. Therefore, the lesson to be learned is don't hide anything from your attorney because it simply doesn't help anyone.

33. What are soft tissue injuries and how will I be compensated for them?

Soft tissue injuries are injuries to the muscles, ligaments and tendons, and are often sustained during car accidents. While most soft tissue injuries are generally not as serious as, say, bone or organ injuries, they can be very painful and may take a long time to heal. Soft tissue injuries include sprains, strains, tendonitis or bursitis, bruises, dislocation and nerve damage. Whiplash, which occurs commonly during car accidents, is a soft tissue injury of the cervical spine. Treatment for a soft tissue injury may consist of physical therapy, medication and/or rest, and in very severe cases, surgery.

Pursuing a legal case in order to obtain compensation for treatment of soft tissue injuries will likely require that you prove the responsible party's negligence – that they were not driving safely and that you were injured as a result of their negligence. This is known as "causation." If you choose to hire an attorney to represent you in your soft tissue injury case (or any personal injury case), the statute of limitations in California is currently two years, but you will have a better chance at success if you act immediately. Because soft tissue injuries are oftentimes not regarded as serious by insurance companies, as they usually can't be seen by the naked eye or on an x-ray, waiting to pursue your case can only make it more difficult to get the compensation you need. Delaying may not be in your favor.

34. What should I do when seeking attention for my soft tissue injuries?

Seeking medical attention for your soft tissue injuries can be tough. A doctor may prescribe you pain medication automatically, numbing symptoms and lessening your motivation to seek further treatment or contact an attorney. If nothing shows up on your x-ray, it might be a good idea to see a chiropractor or physical therapist, even if you don't feel any pain; they can help detect a soft tissue injury that could cause you trouble later on. Additionally, chiropractors and physical therapists generally offer a gentler therapy that can help tackle the root cause of your pain and help you regain your previous range of motion so scar tissue doesn't build up. Painkillers often mask your symptoms, potentially exacerbating your condition – if a soft tissue injury isn't treated properly, surgery may be in your future or you may not heal to pre-accident condition.

If you are involved in a car accident, seek medical help immediately, and keep a detailed record of how you feel and how you progress or regress. Remember, car insurance companies are notorious for scoffing at soft tissue injuries, regardless of how real your pain is to you. Don't be surprised if they don't treat your injuries seriously. Soft tissue cases can pose an "uphill battle" to any claimant, with or without a lawyer.

35. What kinds of "damages" are there in a personal injury case?

When it comes to damages in personal injury cases, there are two types. First, there are "economic" damages which are damages that can be proven with bills, receipts, invoices, etc. They are easily measurable (that's not to say the insurance company won't give you a hard time about those numbers). However, there are also "non-economic" damages also known as "pain and suffering" damages. They are sometimes also called "general" damages. These are more difficult to ascertain because of their inherently subjective nature.

General damages can be affected by many variables. Sympathy can play a factor. For example, a grandmother who can no longer play with her grandchildren might be entitled to more general damages than someone who doesn't have the same situation. Another example where circumstances affect "general" damages was when a client of mine was unable to attend his father's funeral because of a car accident. These are the kinds of things that are difficult to quantify but should be compensated. Another client of mine has a residual eye injury that may never resolve. He's been told he's a surgical candidate but there is no guarantee surgery will solve his vision problems.

When it comes to residual injuries, they can enhance the value of an injury case because someone has to live with a problem for their foreseeable future. Contrast that with someone who received soft tissue injuries from an auto accident and has fully healed. Juries are more prone to award "non-economic" damages where there is a genuine sympathy factor and/or a significant injury that won't resolve itself or at the very least may affect the individual for years to come.

36. Should I settle my property damage claim before settling my injury claim?

One of the questions I often get is whether or not a client can settle their property damage claim before they settle a personal injury claim. The truth of the matter is the attorney is rarely involved to a large extent with the property damage portion of the claim. In most cases, my clients resolve the property damage issue on their own, with occasional guidance from my office. Either the insurance company will offer you something fair or they won't.

Generally speaking, when it comes to fixing your car, you are better off having your vehicle fixed by your own insurance company because they owe you a duty the opposing party's insurance company doesn't owe you. Therefore it is sometimes better to incur the deductible by going through your own insurance carrier. If they don't fix your car

properly, you can complain because you actually have a contract with them. They need to do an adequate job. You generally don't have that leverage when dealing with the other party's insurance company. If you use the other party's insurance company to fix your car, you don't have to pay the deductible, but you also don't have the leverage that you might have with your own insurance company.

Settling your property damage claim should not affect your personal injury claim. As a matter of fact, it is most often that property damage claims are settled before personal injury claims. Some people think they are the same thing. Property damage is NOT a personal injury which involves an injury to the body in most cases. When settling your property damage claim, you must make sure that you're not signing a general release. You need to make sure that whatever documents you are signing pertain only to the property damage portion of your claim. Some unscrupulous insurance adjusters will have you sign a general release and argue that you are cut off from bringing any further claim for personal injury. You need to make sure that you understand your rights and your attorney can guide you through that minefield.

37. Should I get a copy of a property damage estimate for my car when I'm involved in an accident?

If you are involved in a car accident, make sure you get a copy of a property damage estimate. If you've been involved in a car accident, it is very important to obtain a copy of the property damage estimate. This is especially important when the visible damage to your vehicle doesn't tell the whole story. An itemized property damage estimate will help outline all the parts of your vehicle that were damaged as a result of the automobile accident. You can use that to your benefit when arguing to an insurance company that the impact was major. What is most important to my analysis is a finding of frame damage. That information is usually contained near the end of the estimate.

Make sure you also take pictures of all the damage to your vehicle from a variety of angles. Sometimes, one angle simply doesn't do justice, and people may doubt the nature of the impact. Remember you are trying to impress an insurance adjuster, and they want to see more evidence than most people.

38. Should I get a property damage estimate even if my vehicle is a total loss?

It is important to obtain a property damage estimate on your vehicle after a car accident. If your car has been damaged, make sure you get a property damage estimate for your vehicle, maybe even two. Take it to a shop, a dealership, wherever you want to take it and make sure you get a **detailed property damage estimate**.

Sometimes people say, "Well it was a total loss." Well, a total loss doesn't really mean much except that the value of the car was less than what it cost to fix the car. So if you have a \$1,000.00 vehicle, and you have \$1,500.00 worth of damage to that vehicle, which

isn't very difficult to do by the way, you might have a "total loss." But that doesn't really tell the attorney anything about what exactly was damaged in the automobile accident. A detailed property damage estimate shows exactly what was damaged as a result of the accident.

Your property damage estimate is very helpful because it'll show whether there was a any frame damage, any damage to the door frame, any damage to the axle of the vehicle, wheel alignment issues, etc., bumper support structures. Those kinds of things, those kinds of bits of information in a property damage estimate can be very helpful to the attorney when they're advocating for you. So even if you've been told, "Oh, it's a total loss," see if you can get a property damage estimate nevertheless.

39. What is an arbitration?

One common alternative to trial is arbitration. The rules of the arbitration can be set out in advance and an agreement signed by all parties to the matter. You can also agree to the maximum amount of compensation to be received by the claimant and the least amount of compensation they could receive. This is sometimes called a "High-Low" or "Mini-Max." Given those parameters, sometimes people are more willing to engage in arbitration knowing their full exposure. A hired judge that both sides have agreed to listens to the case and makes a decision that is binding upon all the parties. Essentially, both sides have hired a private judge to hear that matter and avoid the traditional trial system.

40. What are mediations?

Another alternative dispute resolution that is commonly employed is mediation. Both sides to the dispute agree on a neutral third-party who serves as a mediator between the sides. The mediator will sometimes put all the parties in the same room, but more often than not, they will separate the parties into two separate locations and the mediator begins shuttle diplomacy – where they are going back and forth from one room to another trying to negotiate a settlement to the case. For a mediation to be successful, both sides have to be willing to bend. An intractable party is not going to be helpful in the mediation setting. Therefore, not all cases are well suited for mediation. However, in some cases, mediation is a good idea because you have some kind of control over the outcome of the case rather than submitting your matter to 12 strangers in a jury box.

41. Do all cases result in going to trial?

The quick answer to this is not at all. Instead of trial, the courts have become very fond of alternative dispute resolution methods like arbitration and mediation. In fact, parties of most lawsuits are ordered participate in some kind of dispute resolution program prior to going to a formal trial. Trials are expensive and time-consuming. The courts are backed up with many cases, and they don't have enough judges or time to hear the matters as quickly as they would like. Therefore, it can take a long time to get to trial. It's also very expensive for the parties to engage in trial. Oftentimes, mediation and arbitration are very

good alternatives to resolving your case. Make sure to discuss these options with your attorney.

42. What liens may be attached to my case?

You can't just settle your personal injury case without making sure all the doctors and other service providers have been paid. In some cases, the health care professional is working on a lien, expecting to get paid out of any settlement you might receive. In other cases, the health care professional may have been paid by your health insurance company but they have a balance that must be paid because they were not a "preferred" provider. This is known as "balance billing." Other times, the doctor has already been paid by your health insurance, but what most folks don't realize is their health insurance provider expects to be reimbursed from any settlement proceeds. They could technically come after you for reimbursement in many cases. That is an unpleasant surprise if you've already spent the proceeds or settled for less than you should have. Also, if your own insurance company paid any of your medical bills, they might also be expecting reimbursement. If you have Medi-Cal or MediCare, you can bet they want their money back from your settlement! You should always make sure all involved parties have been addressed.

43. How important are the doctor visits to my case?

Whenever I meet with personal injury clients for the first time, I impress upon them how important it is to seek medical treatment as soon as possible after an injury has occurred. But also I impress upon them the importance of making sure they attend every single treatment session and doctor's examination. Insurance companies routinely examine medical records with a magnifying glass. Although insurance adjusters are not medical doctors, they are looking for signs they can use to minimize your claim. The first one that I've mentioned before is the gap from the date of the accident to the date of the first treatment. How much is too much time? In my experience, if you wait more than 10 days before you seek active care from a medical provider, you've probably created some problems for your case.

However, also very important is to make sure you keep all your appointments. We are all very busy people with busy lives. We have jobs that demand a great deal of our attention, spouses who demand time from us, and children who certainly need our attention. However if you skip appointments and there are significant gaps between treatment sessions and significant gaps between examinations, the insurance company will use those gaps against you as evidence that the injury wasn't bad enough for you to go the doctor on a regular basis.

Keep in mind, from the date of the accident you entered into a war between you and the insurance company for the other party. They are not your friend, and there are rarely there to help you. They are there to save the insurance company as much money as

possible. They will do that by using every method in the book including examining your start date for treatment as well as using any major gaps against you. Canceled appointments at the doctor's office and gaps between treatment sessions can come back to haunt you when it comes time to settle your case.

44. What other issues should I be worried about other than monetary compensation?

Surprisingly, there are times when “how much” just isn’t the most important issue for my clients. What they want is fair compensation, payment of their medical bills, protection from surprise bills, etc. Sometimes, just getting “done” with the matter is valuable to a client...in other words, they can potentially get a higher settlement but that’s not as “valuable” as putting the case behind them. I try to listen to my clients to make sure that whatever course of action we take, they are on board and in agreement. Sometimes, settling a case for less can be of greater value to you. Just make sure you communicate such to your attorney.

45. When will my personal injury case conclude?

Keep in mind that most cases do not proceed to trial. Even those that proceed to litigation settle more often than not. Your attorney can rarely prepare and present your case for settlement until you have finished your treatment. It may be that you reach pre-accident status or perhaps you need surgery. Perhaps you’ve reached a plateau, a point where you’ve done all you can from a health care standpoint and nothing more will help. Either way, you don’t want to present your case prematurely until you have a very good handle on your damages – your actual health condition. Your lawyer will review all the documents and make sure he/she has everything they need to prepare and present your case to the insurance company for settlement. A few weeks later, the insurance adjuster will typically contact the attorney and negotiations will begin. Hopefully your attorney will be able to settle your case without filing a lawsuit. If there is no other alternative than filing a lawsuit, make sure you completely discuss the pros and cons of doing so with your lawyer.

The Personal Injury Question & Answer Handbook

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