9 THINGS THE INSURANCE COMPANY DOES NOT WANT YOU TO KNOW ABOUT YOUR CAR ACCIDENT CLAIM



AUGER & AUGER ATTORNEYS AT LAW

by **Herbert W. Auger**, Esq

9 Things the Insurance Company *Does Not* Want You to Know about Your Car Accident Claim

First Edition

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Auger & Auger

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Introduction

Every day, over 100 people die in automobile accidents, and more than 1,000 suffer life-changing injuries. Like most people, you probably don't consider the possibility of crashing every time you get behind the wheel. But these sobering statistics suggest that, sooner or later, you or someone you love will likely be involved in a disruptive, scary accident on the road.

The premise of this book is simple, if surprising and a bit disappointing. Most accident victims assume that insurance companies will automatically "play fair" when it comes to assessing car crashes and paying out appropriate compensation.

The sad reality, however, is that insurance companies are fundamentally self-interested, profit-seeking businesses. To that end, they engage in tactics specifically designed to discourage accident victims from seeking compensation and to minimize how much they will have to pay in damages.

The goal of this book is to bring awareness to this reality and to prepare you how to strategically deal with the insurance company, so that you don't make the same

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mistakes made by the average driver, and so that you can be fairly compensated for your claim for medical bills, lost wages, injuries and other damages.

This book provides you with insight into the following:

- How to deal with insurance adjusters and the claim-filing process
- The standard procedures and technological systems used to evaluate claims
- Simple steps you can take to support your case, starting the moment after the accident
- The benefits of hiring a lawyer • The legal framework and specific North Carolina personal injury laws that could impact your case

We recommend that you keep this guidebook handy. Our hope is that you will have a better understanding of the claims process and will be empowered to make smart decisions, regardless of any pressure from the insurance company, an opposing lawyer, or any other party involved in the case.

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Reading this book can help you and your loved ones avoid nine big, life-changing mistakes and ensure that the insurance company treats you fairly.

Our team at Auger & Auger knows that unexpected, unwelcome events can be disorienting. If you have any questions about what to do, please call us at (800) 559-5741 to schedule a confidential, free case evaluation.

1. You Are Better Off with a Lawyer in Your Corner.

Insurance companies spend a tremendous amount of money and energy trying to convince consumers that attorneys subtract rather than add value to claimants' cases. They do this in subtle ways – for instance, by promoting stories about ridiculous personal injury lawsuits (which are exceedingly rare, by the way).

They also appeal to claimants' understandable desires to make case resolution as simple as possible. Most accident victims just want to put the past behind them. They want their cars fixed and their bodies to heal; and they want to get on with their lives. Thoughts of going through a long, drawn out court process or engaging in hard-headed negotiations with an insurer hold very little appeal.

The insurance companies train their adjusters to take advantage of your vulnerabilities at this stage of the process to prevent you from hiring a lawyer. Their adjusters are well trained to manipulate you into believing that they will treat you fairly.

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Study Suggests That Claimants Recover More Money When They Work with Qualified Accident Attorneys

Despite claims by insurers that retaining a lawyer leads to less money, there have been few studies to provide clarity either way. What research has been done, however, is instructive.

In 1999, the Insurance Research Council (IRC) analyzed a large trove of data and found that claimants who retained attorneys on average recovered three-and-a-half times as much money as did those who represented themselves. Settlement amounts were 40% greater for claimants with legal representation.

These statistics are from 1999, so the dollar amounts may no longer be relevant, but the pattern seems clear:

Average injury:

- $3,262 without an attorney
- $11,939 with an attorney

Neck sprain or strain injury:

- $2,480 without an attorney
- $7,918 with an attorney

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Bone fracture:

- $19,105 without an attorney
- $39, 397 with an attorney

Laceration (minor):

- $1,166 without an attorney
- $4,771 with an attorney

Does Fighting for Every Nickel and Dime Really Matter?

Many claimants might look at the above data and nevertheless conclude that the process of searching for and retaining an attorney still seems too daunting and possibly unnecessary.

They might reason, for instance, that since their injuries don't seem to be "that bad," they would rather settle quickly just to finish the process.

This thinking is flawed on two levels:

First, it takes very little time to speak with an attorney to get a quick opinion about your situation. If you have no case, or if you have a weak case, a qualified, ethical lawyer will let you know immediately. It will cost just a

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few minutes of your time, and you'll get peace of mind in exchange, because you'll understand your options.

Second, you might be substantially underestimating the long term costs of the injury. A sore neck might not seem like the end of the world – a nuisance rather than a world-changing event. But what if the soreness doesn't go away, and you need ongoing and extensive treatment? Such costs can add up to huge amounts over months and years.

Insurance companies generally prefer to settle early, because they know that the full scope of damages doesn't manifest right away. Whiplash, traumatic brain injuries, psychological disorders and other complications can take weeks—even months—to appear.

Here's the bottom line: given the big financial and medical uncertainties you face as well as the statistics suggesting that claimants with legal representation achieve better outcomes, why *not* speak with a qualified lawyer?

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2. You May Be Entitled to Medical Benefits Under Your Policy

Before we dive into the core ideas of this chapter, please understand that we are not implying that insurance companies are actively "out to get" claimants or that their efforts to assist people in need are always disingenuous. Your adjuster may genuinely want to help you, but company policy may dictate otherwise.

That being said, appreciate that insurance companies face off in a highly competitive market. To maximize profits and prevent being overtaken by rivals, they need to find efficiencies and minimize payouts. It's not necessarily malice that motivates insurer behavior; however, they are in the business to make money.

Medical Payments Coverage

This coverage is optional, and it provides medical benefits to the occupants of a vehicle involved in an accident regardless of who is at fault. The at fault insurance company is not going to ask you or inform you about this coverage, and your own insurance company may not even mention it, even if they are notified of your accident.

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Many clients are surprised to discover that they are entitled to additional benefits through their own insurance in addition to the benefits that they are entitled to receive from the at fault driver's insurer. Furthermore, the medical payment benefits are not affected if your medical bills are paid in part or in full by your personal health insurance coverage.

The most common coverage amounts for medical payment coverage are $1,000 or $2,000 per person. However, I have seen coverage as low as $500 and as high as $10,000.

Since this coverage is not mandatory, many policyholders are not even aware of it, and they don't even know whether or not they have it. It is also relatively inexpensive to add to your auto policy; the fact that the benefits far outweigh the costs is probably why most agents do not recommend it or mention it to their policyholders.

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3. Your Right to Loss of Value (Diminished Value or Depreciation) on Your Vehicle

In 26 years of practice, I have never seen an insurance adjuster inform a client of their right to compensation for loss of value (depreciation) to their vehicle.

There is a short time frame within which to file this claim following completion of the repairs to your car, and untimely filing may bar your claim. Once filed, the insurance adjuster may use the age of your car, the amount of damage or some other excuse to deny your claim. Keep in mind that it is ultimately your responsibility to prove the loss in value to your car.

A qualified car accident law firm should have a list of independent certified property damage appraisers that they have successfully worked with in the past to help you pursue this portion of your claim.

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4. They Use Sophisticated Technology, Software and Algorithms to Minimize Payouts.

Although you may speak one-on-one with a live insurance agent who exclusively manages your claim, much of the behind-the-scenes work is done by complex technical systems. These systems are primarily designed to minimize payouts. Mark Romano, former claims project manager for Allstate Insurance, has been deemed a whistle-blower of sorts for recently speaking out against the kinds of software programs he once used himself. In an interview with the *Chicago Tribune*, Romano claimed "such software programs can be manipulated, including by omitting the costliest incidents from settlement calculations, to produce low-ball offers to consumers."

Romano even co-authored a report for the National Association of Insurance Commissioners titled, "Low Ball: An Insider's Look at How Some Insurers Can Manipulate Computerized Systems to Broadly Underpay Injury Claims." Among other findings, the report explained that bodily-injury claims were traditionally based only on the knowledge of adjusters, but a recent industry-wide shift

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indicates increasing reliance on computer-based assessments.

Claim Manipulation by Computer Software Known as Colossus

"Colossus" is a software program used by most but not all insurance companies to determine the settlement value of injury claims. The claims adjuster reviews an injured person's records and enters injury codes into the computer along with a severity code. The Colossus software program then spits out a settlement range. According to the Romano report, the system is precisely designed to produce low-ball claims through the following methods:

- Manipulate the value by selectively removing or excluding higher-cost claims.
- Manipulate the trauma severity to obtain desired variables.
- Require adjusters with no formal medical education or credentials to second-guess medical professionals by altering significant details of medical reports and

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selecting injury codes that yield lower recommended settlement values.

- Encourage adjusters to select final prognosis codes that lower the recommended settlement values.
- Prohibit adjusters from entering information about the likelihood of future medical visits and permanent impairment ratings, which reduces settlement values.
- Require adjusters to run medical bills though a medical re-pricing software program and then enter the reduced bill amounts in Colossus.
- Encourage adjusters to determine that claimants are comparatively negligent and are thus responsible for paying part of the cost of their treatment.

Allstate is not the only culprit. State Farm was recently ordered to produce internal documents, which proved a systematic, deliberate practice of using delay tactics and encouragement of litigation rather than negotiation. Specifically, the internal documents proved that State Farm adjusters were explicitly trained to make low offers,

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to be slow to settle and to "treat the claim as if it were their own money."

The underlying point here is: even if an insurance agent is sincerely concerned about your interests, he or she often has little control over the bureaucratic, technology-based systems that almost exclusively evaluate your claim.

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5. You Should Not Sign Insurance Documents Without Speaking to Your Lawyer First.

Insurance adjusters will often use coercive and manipulative tactics to undermine a claimant's rights and entitlements. One of these tactics involves encouraging you to sign binding documents that grant the insurance company extensive authority over your private information. When speaking with an insurance adjuster after the accident, make sure you never sign or otherwise commit to these proposals without having your lawyer review them first.

Medical Authorization Release

If you were injured in the auto accident, the insurance adjuster may request that you sign a medical release form, also called a HIPPA (Health Insurance Portability and Accountability Act) Release. Although the agent may present the form as simply a formality or standard procedure, you should never agree to sign anything without having your lawyer look it over first. Medical release forms are not necessary to process your claim—your lawyer can provide all of the specific documents the insurance adjusters legitimately need.

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Furthermore, signing a medical release form would give the insurance agency complete authority to access your pre-accident medical history. This is not only an invasion of your privacy, but it could also potentially put your claim at risk.

For example, if you are claiming a back injury resulted from the accident, but the insurance agent finds that you received treatment for back pain three years ago, your medical history can be used to diminish your claim.

Release of All Liability and Claims

You will usually be asked to sign the Release of All Liability and Claims form right before receiving your check, so you want to make sure the amount in question fully reflects what you are entitled to get. Signing this form essentially closes the case and prevents you from filing additional claims and/or taking legal action regarding the same incident in the future. Once again, make sure your lawyer approves before officially signing.

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Property Damage Release A Property Damage Release form is always accompanied by a check for the amount needed for repairs and restoration. If the car is totaled—the damage to the vehicle exceeds 75% of the market value—the insurance company will present an offer reflective of the car's market value in its pre-accident condition. If the car is not totaled, the insurance company will often directly pay the body shop of your choice for all the necessary repairs. You will then be asked to sign off on the repairs.

As always, if you are presented with an unfamiliar document or unexpectedly asked to disclose certain information, simply inform the agent that you will have to discuss the matter with your attorney first.

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6. The Information You Disclose to the Adjuster Will Be Used Against You.

The most valuable advice we can give you is this: do not speak with the insurance company until after you have spoken with an experienced injury attorney.

In most instances, the insurance representative will be recording your statements, and anything you say can later be used against you. In fact, one of the lessons learned as a result of the State Farm litigation discussed in Chapter 3 is that adjusters are specifically trained to ask as many questions as possible during the initial contact (the reporting stage of the claim) and before an attorney is retained. This is deliberately done, so that if any facts change, the adjuster will delay or devalue the claim.

Contributory Negligence

North Carolina is one of four states, plus the District of Columbia, which follows the archaic and harsh rule of Contributory Negligence. Under this rule, if you were partially at fault for an accident, even if only 1% at fault, you will be denied recovery, even though another party may be 99% at fault. South Carolina, on the other hand,

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employs Comparative Negligence, which is not as harsh on the plaintiff as North Carolina's archaic rule. In South Carolina, the plaintiff's claim will be denied if his or her negligence exceeds 50%.

This is critical information for you to be aware of,

because the insurance adjuster will be well trained in trying to get you to make statements indicating that you could have avoided the accident. Remember, the adjuster only has to get you to 1% of fault in North Carolina (51% in South Carolina), and they can deny your claim.

The adjuster will try to pin you down to speeds and distances, so that it sounds like you could have avoided the accident or that you may be partially at fault.

Talking Too Much

The adjuster may appear very friendly and empathetic. This strategy is carefully designed to get you comfortable and get you talking. When you talk freely, your words and phrases may be taken out of context, allowing the insurance company or their defense lawyer to argue that your actions contributed to the accident and deny your claim. Be aware that your words are being recorded and can and will be used against you later on.

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Minimizing Your Injuries

For some people, complaining about their aches and pains comes very easily. Others don't want to sound like complainers, and they tend to minimize their injuries. This second group may use statements like "my neck is a little sore" or "I'm not sure if I will see my doctor." Again, the adjuster is well trained to steer the conversation to the adjuster's benefit. Even during the initial greeting, the adjuster will often say "Good morning. This is Adjuster X. How are you today?" If your response is "fine, thanks," you have just diminished your injury.

Remember: it is the job of the adjuster to minimize your damages from the beginning.

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7. Gathering Evidence after an Accident Will Give You a Powerful Advantage.

The more documentation you have, the more likely you are to have a successful outcome.

From the moment the accident occurs, create a paper trail for every action that may be relevant to the case.

Always contact the police, and file an accident report.

The other driver may try to discourage you from getting the police involved for several reasons:

- The driver is currently uninsured.
- The driver was operating the vehicle with a suspended license.
- The driver is impaired (alcohol, drugs or medication) or exhibiting risky and potentially illegal behavior.
- The driver doesn't want his or her insurance rates to go up.

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More likely than not, the other person is a stranger with little incentive (and potentially few resources) to compensate you outside of a formal process.

Often times, in cases that are not immediately reported to police, the at-fault party later changes their version of events that led to the accident. People are more likely to give an accurate account immediately after the event, rather than after a period of time when they have had time to alter their recollection. If law enforcement is called to the scene of the accident, there is less time for the other person to change their story.

Digital communication

Always exchange information with the other parties involved in the accident. If you communicate through text message or email, keep records of these exchanges, and never delete messages, since they may reveal important information about the case. Be polite and accommodating, but maintain formality.

What to Collect for Your Records

Take pictures and video of the accident scene and any injuries you or your passengers sustained. You can use a cell phone camera to do this.

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Record witness statements. Get these statements written down as soon as possible after the crash. Consider this testimony to be similar to milk or fresh fruit; it will "go bad" over time, because our memories are notoriously porous and subject to change. Eyewitness testimony given immediately after a crash will be more trustworthy than testimony provided 6 months after the event.

"Over collect" information. Get names, phone numbers, license numbers, insurance information and other details from everyone involved. Don't worry about whether the details seem trivial or not. Your attorney can evaluate the evidence later and toss what you don't need.

Ask a passenger or friend to help you collect information if you're too hurt or sick to gather evidence or keep a paper trail.

Consider getting a forensic analysis of the accident scene. This process needs to happen quickly, before police and road workers clean everything up. Experts can reconstruct what happened and why and give you ammunition to prove your claim to the insurer or to the court. An attorney can help you find a qualified specialist.

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See a doctor ASAP – at least within 72 hours after the accident, especially if you feel any symptoms, such as a headache or backache. Follow the doctor's orders regarding your treatment, and retain all relevant paperwork and pay stubs. Record all purchases related to your treatment, such as prescription drugs, medical devices, chiropractor services, and so on.

Track your recovery in a journal. Depending on circumstances, the journal can be used as evidence to prove that you did, in fact, get hurt. The journal can give your doctor or therapist insight into the effects of certain medications or recovery processes.

Care for your mental health, and track your costs.

According to the National Center for Post Traumatic Stress Disorder (PTSD), approximately nine percent of auto accident survivors develop PTSD. Another extensive study of car accident survivors found that 27 percent had developed an anxiety disorder in conjunction with PTSD, while 15 percent of survivors reported a phobia of driving. Although mental health issues are comparatively less common than physical injuries in car accident victims, consider getting evaluated by a mental health professional after the accident.

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Be honest. Avoid exaggerating your damages or downplaying them. Think of what your doing as similar to journalism. You want to obtain and preserve *facts.*

Your attorney will use your evidence to negotiate with the insurance company and build your case.

The goals are: to clarify the nature and extent of the damages and to identify who or what caused the accident. Again, while you can (and should) begin to assemble this evidence yourself, strongly consider getting strategic insight from a qualified attorney about what to record and why.

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8. You Can Take Legal Action Against Insurance Companies for Egregious Conduct.

As we discovered in the Romano report (see: Chapter #3), the insurance company's methods for processing claims can be unfair and possibly even illegal. In fact, Computer Sciences Corporation (the company behind the Colossus software) has been the subject of multiple class- action lawsuits by consumers alleging they were harmed by low-ball claims payments stretching back to 2005.

In 2009, more than 40 states received a portion of a $10 million settlement with Allstate. Allstate was also ordered to comply with a new requirement to notify policyholders that the company may use software to assess claims.

Although these lawsuit outcomes may lead to favorable changes for some consumers in the future, Colossus and similar software products are currently still marketed as tools to minimize payouts. Moreover, Allstate is just one company. If your case involves a different insurer, that lawsuit likely had minimal to zero consequence.

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Good faith and fairness

Every contract (including your insurance policy) has an implied condition that each party involved must act in good faith and not deliberately impede the contract's completion. The law states that failure to act in good faith results in a breach of contract and liability for all subsequent damages. If an insurer breaches its duty to good faith and fairness, you can hold the company accountable for legal fees.

For instance, if it is found that the insurance company unreasonably denied your claim or offered less compensation than you were entitled to get, you have every right to raise this issue in court. Proving such an offense will require legal acumen and access to crucial records; an experienced attorney can help you.

Examples of "bad faith"

Insurance companies can act in "bad faith" in diverse ways, some of which are more obvious than others.

- Denying your claim without providing a reason or conducting a proper investigation.

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- Delaying payments on the claim for unreasonable amounts of time.
- Improperly communicating or omitting important information regarding the claim.
- Failing to negotiate a claim.
- Paying less than the amount you are owed.

An experienced attorney can advise you about how to compel the insurer to play fairly and also assist you with taking legal action against the insurer, if needed.

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9. How to Find a Qualified Car Accident Attorney.

Your cousin in law school, beloved TV court judge, and even your divorce lawyer (assuming he or she does not handle car accident claims on a regular basis) won't cut it for your car accident case. You want an attorney with extensive experience representing car accident victims and dealing with insurance companies.

In addition to checking references, ask the following questions during your initial consultation.

Why do you and your team do what you do? Get a sense for the firm's purpose. Are they on a mission to protect victims from being mistreated by the system? Do they believe in equal justice for all? Do they even have a mission statement?

What does the firm value? For instance, is the firm committed to integrity and service? Does the team value customer service and communication? You want to find an attorney whose core values resonate with you.

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Have you negotiated successfully with insurance companies in the past? What's your process? What outcomes have you achieved for people like me? Ask for case examples, and find out how the law firm typically negotiates with insurers. You want an indication that the firm can achieve favorable results.

How would you initially approach a case like mine?

Obviously, based on a single conversation, the lawyer will not be able to predict the future and give you hard answers to questions about the length of the case or what strategies to pursue definitively. However, you should be able to get a feel for the lawyer's thinking process and systems for approaching cases like yours.

What is your communication style? Find out whether you can/should call or email periodically with questions and concerns. Who will be your "point people" on your case? Ask to meet these people, if possible

What is your fee structure? Many car accident attorneys take cases on what's known as a "contingency" basis. This means that you do not pay any legal fees unless or until you obtain a result, such as a settlement or a court verdict.

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Do you have the resources and energy to take car accident cases to trial, if need be? Fortunately, most personal injury cases settle outside of court. However, ideally, you want to work with a lawyer who has the skill and resources to fight for you in court. An insurer will have more incentive to offer you a favorable settlement if you work with an attorney with an established reputation for fighting and winning in court.

Using what you gather during your research and consultations as well as your gut intuition, pick a firm and get started. Don't wait too long to take action; especially if your crash involved serious damages or injuries, time is of the essence. You can be certain that the insurance company is already hard at work looking for ways to minimize its responsibilities to you.

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Conclusion

After reading this book, you should feel prepared to meet the challenges of dealing with the insurance company after your car accident. Let's review the information we discussed.

You Are Better Off with a Lawyer in Your Corner

Nearly 30 percent of auto accidents cause injury, and over 70 percent cause property damage. A lawyer can help you receive fair and appropriate compensation.

Recognize That You Will Not Be Informed of Medical Payment Coverage or Your Right to Diminished Value for Your Vehicle

Your auto policy may include medical payments coverage that you are entitled to use, regardless of fault or if you have health insurance. Furthermore, you may be entitled to diminished value or depreciation for the loss of value to your vehicle, depending on the age of your car.

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Be Aware of the Technology the Insurance Company Uses to Minimize Payouts

Former Allstate claims project manager Mark Romano revealed the shocking ways insurance companies minimize liability through computer-based claim assessments. We highlighted the specific functions of the software system Colossus and revealed regulatory suggestions from the NAIC.

Speak to a Lawyer Before Signing Anything

Signing a medical release form gives your insurance company complete authority to all past and current medical records, which can be used to undermine your claim. Insurance adjusters may also push you to sign other invasive and unnecessary releases. Never sign any forms without your lawyer's approval.

Refrain from Speaking to the Adjuster Without an Attorney

Any statement can be used against you to minimize or bar your claim. Further, avoid directly discussing the details of your medical condition, since even polite

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responses like “I’m feeling fine” could be used against you.

Gathering Evidence Will Give You a Powerful Advantage

File a police report, and keep records of all communication with the other parties involved. Visit medical and mental health professionals ASAP to document your injuries. Collect evidence, and record witness testimony.

You May Have a Separate Claim for Bad Faith Against the Insurance Company

The good faith and fairness doctrine legally protects you from mistreatment by your insurer. Recognizing this obligation gives you leverage in negotiations and empowers you to take legal action if desired.

Find a Qualified Attorney

Ask questions to learn about the attorney’s experience, working philosophy, fee structure, processes and systems, and availability/interest.

On behalf of the committed injury attorneys at Auger & Auger, we hope that this book has given you a clear,

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useful perspective that will at the very least help you sidestep these nine common mistakes.

Our goal is to empower people to fight for their rights.

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