

Dealing with **Auto Accidents** in Maryland

A Handbook of Personalized Legal Services
That Yield Positive Results



Edwin K. Fogam, Esq.

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Auto Accidents
in Maryland

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That Yield Positive Results

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FOREWORD

The time and age we are living in ensures numerous sources of information regarding auto accidents in general, and in the state of Maryland in particular. Some of these specifically instruct not only persons who have been involved in auto accidents but also those who have been injured in them. The share volume and diverse perspectives of these materials can be overwhelming and confusing. Hence, the need for a concise, instructive, and authoritative guide in this vein. This book is of that genre.

Lawyer Fogam has compendiously provided materials which are an amalgam of many years of experience in handling auto accidents cases and dealing with insurance companies. He has selected and pointed out some of the issues that are often encountered by those involved with auto accidents in general, and auto accidents in the state of Maryland in particular. You will find this brief volume to be as simple as it is instructive, as straightforward as it is empowering. Use it as your initial guide to protecting yourself and your rights vis-à-vis auto accidents in Maryland.

Dr. J.B. Livings

Optimum Opportunities and Performance Center, LLC

DEDICATION

This book is dedicated to all the sources of its realization,
and to all who will benefit from its presentation.

ACKNOWLEDGEMENTS

Even the simplest of tasks necessarily require the input of numerous entities, known and unknown. This brief publication is not an exception to that rule. Therefore, I recognize and appreciate the intervention and assistance of divine providence, family, friends, clients, colleagues, and various associates in the production of this book.

E.K.F.

DISCLAIMER

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert who is aware of the specific facts of your case and is knowledgeable of the law in your jurisdiction.

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TESTIMONIALS

“As an Insurance Agent, I have worked with many automobile accident lawyers. Since I first referred a client to Mr. Fogam and his legal team over 8 years ago, I have been referring any of my insured who ask me for a lawyer, to him. Not only have all my referrals to lawyer Fogam’s office been very satisfied, I personally had experienced his office’s efficient and ethical representation when I had a car accident. I was very pleased with the services I received and how my case was rigorously but amicably pursued and settled.”

- S. P. , College Park, MD

“I have known Attorney Fogam both personally and professionally for over twenty years, as an astute legal expert. He has years of experience and has assisted numerous clients in immigration, personal injury, family law and other legal matters. He has mentored some pupil lawyers and contributed to charities here in the US and his native country, Cameroon. “

- R. E. – CEO Linked Ventures, LLC, Maryland

“Mr. Fogam’s office has represented us (my wife, my son and myself) for over 12 years. From our immigration case through when our son was involved in a motor accident, the Law Offices of Fogam & Associates was there for us. We have always been very satisfied with their services.”

- J. P. Baltimore, Maryland

“Attorney Edwin Fogam handled my divorce case with utmost professionalism and experience. He was very understanding and even my husband’s lawyer respected him. I am happy that I hired Attorney Fogam to represent me during this difficult period of my life. It made all the difference. Thanks to him and his staff, I have full physical custody of my two boys, and I am bringing them up the way I think they should be brought up.”

- S.T. Laurel, Maryland

“Fogam & Associates, LLC, was on top of the game in representing my friend and me in our automobile accident case. Mr. Fogam explained every aspect of our case to us and kept us well-informed about the status of the case. We were very happy and satisfied when the insurance company offered a substantial amount to settle our case.”

- J. M. Silver Spring, Maryland

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ABOUT THE AUTHOR



Attorney Edwin K. Fogam has practiced law since 1996. He is admitted to practice in New York, Maryland, U.S. District and Federal Courts, and the Supreme Court of the United States. He is a member of the American Bar Association, American Immigration Lawyers Association, Maryland Bar Association, Maryland Association for Justice (Formerly Maryland Trial Lawyers Association), and Montgomery County Bar Association. He is also a member of the Cameroon Bar Association and licensed to practice law in the Republic of Cameroon.

In 2015, the American Institute of Family Law Attorneys recognized Attorney Fogam with its prestigious “10 Best” Attorneys award for client satisfaction. Prior to

that, in 2011, the American Bar Institute (ABI) bestowed on Attorney Fogam the “Cicero Award of Excellence for demonstrated effectiveness and distinction in the field of law”, and its “Outstanding Professional in Law” award in 2002. Attorney Fogam holds law degrees from the University of Yaounde, Cameroon and the Washington College of Law, American University, Washington DC.

Prior to starting his own practice in 1996, Attorney Fogam worked with the International Human Rights Law Group, and the Lawyers Committee for Human Rights in Washington DC.

Attorney Fogam brings a unique perspective to his practice of law. Born in Cameroon, Africa, he attended a rigorous Catholic boarding school (Sasse), and lived and worked in a village and farm (Bali) during his formative years. Against tremendous family obstacles (substantially fueled by a deleterious polygamous background), he obtained his first law degree in Cameroon in 1986. He also had the opportunity to participate in an international exchange program in Canada in 1984. However, without ample opportunities in Cameroon to realize his personal ambitions, he remained unemployed for three years after

graduating from University. During this time, he taught and served (virtually without a salary) as the Principal in a small village secondary school (St John's College, Bali), and later worked as a fisherman in a small coastal village in Cameroon (Ngeme). He drifted back to his legal path in 1991 when he was hired as a Lecturer at St Paul's College Bojongo, to teach General Principles of English Law, Commercial Law, and Cameroon Legislation.

Attorney Fogam came to the United States in 1992. In the United States, he put himself through law school while doing various menial jobs, including dishwashing and trash hauling, at several restaurants. Attorney Fogam has a substantial breadth of international experience, an unusual blend of intellectual and physical abilities, and an understanding of the ups and downs of life. This is why part of his personal philosophy is that who we are and what we have are gifts of which we are only custodians. We are required to properly manage these gifts, and generously give them back by what we become and what we do with what we have, always cognizant of the fact that to those that much has been given, much is expected.

This is also why his law practice strives to provide high quality services with empathy and ethics.

Attorney Fogam and his firm have handled and continue to work on numerous cases in the areas of Personal Injury (automobile accidents and others), Immigration, Family Law (divorce, custody, support and more), Criminal Defense, Civil Litigation, Business, and International Transactions. This scope of practice is possible because the firm carefully analyzes each case before committing to it. It relies on its unique practice model- strategic, specialized, selection. The firm also has working relationships with many reputable lawyers and law firms.

Attorney Fogam lives in Gaithersburg, Maryland with his wife of twenty years, eighteen-year-old daughter, and fourteen-year-old son.

CHAPTER 1

TYPES OF AUTO ACCIDENT CASES



Our office has handled personal injury cases, especially auto accident cases for many years. There are numerous types of auto accidents, and we have seen a great variety of them. There are rear-end collision cases where a driver fails to adequately brake on time and collides into the rear of another vehicle. You also have head on collisions, which may be due to negligent driving, failure to stop on time or some other reason. There are swipe collisions caused by sudden lane changes. Collisions also occur at intersections due to the negligence of one or

more drivers. Some cases result from single car accidents, due to defective auto parts or when drivers are distracted. Rollover accidents, especially with trucks and SUVs are also common occurrences. We have seen and handled single vehicle accidents as well as multi-vehicle accidents involving multiple collisions. Some accidents involve pedestrians, bicycles, or motorcycles, while others are “hit and run” where drivers cause accidents and leave the scene. Sometimes drivers are uninsured, resulting in an uninsured motorist claim.

Fault and No-Fault State

Maryland is a fault state. This means that for a driver or someone injured in an accident in Maryland to make a successful claim against the other party, he or she must prove that the other party was at fault. This is contrary to the situation in some no fault states, where the driver who is involved in an accident doesn't have to prove that someone else caused the accident in order to be compensated by the insurance company. At the time of this writing, there are 12 no fault states—Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota,

New Jersey, New York, North Dakota, Pennsylvania, and Utah. All other states are considered fault states.

Contributory Negligence

Contributory negligence simply means that in addition to the party at fault, someone else contributed to the accident. For example, when an accident occurs, the question becomes whether both parties contributed to that accident, or whether one party was the primary cause of the accident. Maryland is considered a contributory negligent state because it takes contributory negligence into consideration when making a determination as to who is liable after an accident. In contributory negligence states like Maryland, if the injured party was partially at fault, or in other ways contributed to the negligence, he or she is completely barred from any recovery (gets nothing). Even if they were just 0.0001% at fault, they will recover nothing from the other negligent party. This is contrary to the position in states that are referred to as “comparative negligence” states. In those states, even if a claimant is partially responsible for an accident, that claimant can still recover some compensation.

Maryland is only one of 5 states that actually use the contributory negligence rule. It is generally believed that this is a very unfair approach in dealing with claims, and in Maryland the general trend is moving towards actually doing away with contributory negligence.

Statute of Limitations

Generally, for automobile accidents in Maryland, the claim must be brought within 3 years. Failure to make a claim within this time period will prevent you from ever doing so. However, this is not the only deadline to consider when dealing with automobile cases or injuries in Maryland. There is also a statute of limitation for personal injury protection (PIP) claims. Claims for personal injury protection in Maryland must be brought within one year. There are also “notice” requirements for certain types of cases. For example, when claiming against a county, a municipality, or the state, you have to satisfy a notice requirement. Failure to give the required notice within the time period, will invalidate any potential claim.

CHAPTER 2

CAUSES OF AUTO ACCIDENTS



There are numerous common causes of auto accidents in Maryland. Generally, auto accidents are the results of carelessness or negligence. These can manifest in many ways. Distracted driving is one of the most common causes of automobile accidents. This include driving and using the phone, making or receiving a call, or texting. Some drivers may be distracted by eating while driving, by heated conversations, or by focusing on other incidents on the highway. Another common cause of auto accidents is driving too close to the vehicle in front, generally referred

to as tailgating. Sudden stops and sudden lane changes can also easily cause vehicle crashes.

Speeding is almost always a contributing factor to many serious car accidents. Some people consciously or unconsciously drive beyond the recommended speed limits. The problem with excessive speed is that it not only reduces your chances of controlling and avoiding an accident, it actually aggravates the severity of an accident when it does occur. When one is speeding, it's quite easy to lose control and difficult to successfully evade a sudden interference.

There are other common causes of accidents, such as drunk driving, night driving, road rage, poor road conditions, animal crossings, construction sites, and other hazardous conditions.

Some Misconceptions about Auto Accidents

There are a number of misconceptions that people have about auto accidents. The following uninformed views have contributed to failure to recover compensation or the recovery of inadequate compensation as a result of an auto accident.

One of the biggest myths is that compensation is automatically guaranteed after an accident. This is not true irrespective of whether the accident was your fault or not. Compensation after a car accident will depend on one or more factors including, but not limited to fault, severity, the type of injuries sustained, the jurisdiction and actions taken after the accident. For example, in jurisdictions like the state of Maryland, you need to prove that the other party was at fault and that you did not in any way contribute to the accident. Even if and when fault is proven, you may not be compensated if you are unable to show compensable damages that you suffered as a result of the accident.

Another fallacy is that an accident report by a police officer in and of itself is proof of what happened at the accident scene. This is not necessarily so. While a police report may persuade and push an insurance company towards accepting liability, the report is not evidence in court to prove what happened. This is referred to in legal jargon as “hearsay”. This is understandable as oftentimes, a police officer comes to the scene only after the incident had occurred. That notwithstanding, it is undeniable that

a police report can be very helpful in the strategic planning of the case (especially if it contains the names of witnesses). There are also certain situations where by subpoenaing the police officer, you may have certain aspects of the report admitted in court.

Another misleading position is that you don't need any professional representation in dealing with your auto accident case, as you can just deal with your insurance company, or all the other insurance companies. This can prove to be a big mistake. Insurance companies, especially the insurance company of the party at fault, always try to limit their liability, and ultimately pay as little as possible. The insurance companies involved in your case, both yours and those of the other parties, may not always be on your side. Remember that insurance companies' principal *raison d'être* is to make money by limiting their liability. One of the ways you can see through many of the well camouflaged propositions and presentations of insurance companies is to be represented by someone who understands their manner and methods of operation

Some people know that professional representation is necessary after an auto accident, but do not seek it because they erroneously think that professional representation is expensive. It is important to know that most auto accident attorneys (if not all) work on a contingency agreement basis. In other words, you don't pay anything unless and until recovery is made for you. There is really no reason not to get a good attorney to help you when you have an auto accident case. It's important to try to get a lawyer who focuses on automobile accidents, or the type of accident that you're involved in, because certain specialty information and dealings may be necessary.

There is also the erroneous assumption that when you are involved in an accident wherein another car collided into you from the rear, the driver of the other vehicle is automatically at fault. This is not always the case. It is true that there is a general presumption that the driver who rear-ended the other vehicle is at fault. However, sometimes, this presumption can be rebutted. For example, a sudden stop or sudden lane change could be used to argue that the party behind was not at fault.

Some people also have the mistaken view that minor accidents do not cause serious injuries. There is ample factual, scientific and medical evidence pointing to the contrary - minor impact accidents can and sometimes do cause serious injuries.

CHAPTER 3

STEPS TO TAKE AFTER AN AUTO ACCIDENT



Some years ago, we found that many of our clients made mistakes after their auto accident that hurt their cases. Therefore, we prepared a “Special Report” on protecting yourself and your rights after an automobile accident. There are a number of steps to take if or when you are involved in an automobile accident.

First, after an accident you must stop your vehicle and leave it as close to the scene or location of the

accident as possible. If and when a police officer comes, he'll be looking at the situation in order to prepare a report. Of course, to the extent you can, assist anyone in need of assistance at the scene. If you can, proceed immediately to call the police, or ask somebody to call the police to come to the scene. This may prove very helpful in documenting what happened.

You should also obtain any and all pertinent information regarding the incident, the parties involved, and the vehicles involved. These may include drivers' licenses and the car license plate information, addresses, registration and insurance information. In this age of mobile phone cameras, this should not be difficult. It's also important to exchange information with all parties involved in the accident.

In Maryland, if and when the police come to the scene of an accident where there was an injury, a report will be prepared that will contain information regarding the parties involved and how the accident happened. It is important to obtain a copy of such a report as soon as you can or have your lawyer do so.

You should not discuss anything about the accident with anybody, unless and until you talk to your lawyer. You don't want to give any information or make any admissions. Of course, getting the proper medical attention as soon as possible is also very important, not only because you want to check yourself and take care of any injuries, but also because you want to substantiate your claim by talking to a doctor or some medical person to determine what your injuries are. If you are taken to the hospital, this would be clearly documented. You don't have to, and it is not advisable to talk to the insurance company of the other party or parties involved in the accident, without having discussed your case with your lawyer.

If you really want to be proactive, you may call them to obtain the claim number and information of the claim handler. Do not volunteer any further information about the accident. If they insist, tell them you are consulting with a lawyer and will be getting back to them. This should keep them quiet until when you and your lawyer are ready to talk to them.

Notify Your Insurance Company of the Accident

It's always advisable to notify your insurance company as soon after the accident as possible. Whether you are wrong or right, your insurance company generally investigates the accident. If you believe the accident was not your fault, you should clearly explain this to your insurance company. Additionally, if you are injured, you may be entitled to compensation from your insurance company under your Personal Injury Protection (PIP) coverage. If not waived, this coverage is available to the claimant whether he or she was at fault or not. As previously indicated, there is a one-year statute of limitation for a Personal Injury Protection claim. Therefore, the sooner you notify your insurance company, the better.

Follow Your Doctor's Advice

Following a doctor's instructions is very important, because when a claim is being made for damages, it will have to be properly documented. For example, if you claim that you have an injury in your back, a medical doctor, as well as a physiotherapist, or a chiropractor or some other medical provider must document it. It is important to follow the treatment schedule and have all this

documented. The medical report, days and tiers of treatment, and all the necessary documents will have to be presented or will have to be used to prove your damages. This can include both specific damages, like medical bills and lost income, as well as general damages like inconvenience, pain and suffering. It is always important to follow your treatment plan. You may also have your own personal log or report, in which you document how your treatment is going and how you feel day by day.

Gaps in treatment can hurt an auto accident claim. It is true that some gaps in treatment can be justified, but many times insurance companies will use gaps in treatment to argue that the claimant was not actually seriously injured, and that's why he or she did not go for treatment over a period of time. However, sometimes gaps in treatment can be because the injuries subsided but then resumed. It is not advisable to have gaps in treatment, but if they do occur it is important to determine the justification for them.

Keep a Log or Journal of Events

Documenting everything during your treatment is very important as this will assist your lawyer in

understanding and articulating certain unquantifiable aspects of your claim.

Keeping a journal or some sort of a logbook to document what happens after the accident and going forward is a good idea. Generally, people forget very easily. For example, if you ask someone what they had for breakfast last Tuesday, they would probably not remember. After an accident, there are many things that you would need to document going forward, especially if your treatment takes a long time, and other activities are affected on a daily basis. To the extent possible, document each and every injury that you sustained and how it is affecting you. Endeavor to determine day by day the symptoms, and your recovery.

You also need to try to document the things that you are not able to do, or that you would have been doing but for the accident, and how that is affecting those things. This documentation can help you in many ways including explaining your situation to your doctor, lawyer and to a Judge or Jury in court if your case proceeds that far.

CHAPTER 4

FACTORS THAT AFFECT THE VIABILITY OF AN AUTO ACCIDENT CLAIM



Whether you will be compensated after a car accident and to what extent will depend on various factors. Your injuries if any, and other losses incurred will be the main considerations. Your injury may be minor or serious, it may be a soft tissue injury or hard tissue (fracture) injury. There may also be lacerations and some injuries can be permanent. In addition to the nature of the injury, the period and intensity of the treatment will be important considerations.

Generally, the damage to the vehicle is an indication of how serious the injuries are. However, there are cases where a minor impact may cause serious injuries and vice versa. Losses sustained after an accident are referred to as damages

Damages may be specific or general. Specific damages include those things that can be quantified or documented, like medical bills, lost income, or the estimated damages to the vehicle. General damages on the other hand include all unquantifiable damages that were suffered as a result of the accident - pain, suffering, inconvenience, aggravation, loss of consortium and more.

Importance of Evidence and Witnesses in Auto Accident Claims

Evidence and witnesses can be very important in auto accident claims. There are many types of evidence, that can be used in auto accident claims. These include but are not limited to testimonial, documentary, and circumstantial evidence. It is necessary to underscore the previously stated fact that a police incident report in and of itself is not admissible as evidence of fault.

When an auto accident occurs at an intersection, or happens as a result of a sudden lane change, or sudden stop, a witness or witnesses can make or break the case. A witness' testimony can determine what happened and who did what.

There are some types of accident cases where the presumption of liability is very high. One example is rear-ended collisions. In Maryland, most insurance companies will presume that their insured was responsible for the accident, if he or she rear-ended another car. However, this is not always the case.

How Is My Auto Accident Claim Valued?

Auto accident claims are valued through the prism of Damages. Damages may vary. The topic of damages is complex. Briefly, after an auto accident, your specific damages such as medical bills will be considered. Loss of income after the accident including future income that would be lost as a result of the accident, may also be part of the specific damages. You could have other specific damages such as rentals and money spent on specific things. Again, these are quantifiable and specific losses

referred to as special damages. On the other hand, general damages or non-economic losses result from the things that happened to you because the accident happened, and which cannot be clearly documented. For example, you couldn't go to the gym, you couldn't take your children to daycare as you normally did, or perhaps the loss of time spent with a loved ones and so on.

Each auto accident claim will have certain unique aspects that will determine how that particular accident will be valued. These vary from one accident to another, so there is really no hard and fast rule that applies to every case in the same way. Suffice to say that one has to analyze each claim very carefully to determine what aspect or aspects of the claim will affect its valuation.

Getting a Favorable Resolution in an Auto Accident Claim

There are some ways that someone can help himself or herself get a favorable resolution of their auto accident claim. First and foremost, if you do not know the law and how these claims are handled you should find someone (preferably a lawyer) to assist you. Do not

discuss your claim with anyone who is not on your side. Keep a good account of the facts of the accident, your treatments (if you were injured) and losses you incur. These may prove to be quite helpful when you will need to explain what happened and how it has affected you. It is always helpful to follow the instructions regarding your treatments. If not, your medical records could be used against you. Lawyers will generally give instructions to their clients regarding the accident and the claim. Usually these instructions are based on the strategy being pursued by the lawyer. It is important to follow them. Claimants are advised to respond promptly to request for documents and information whether from their lawyers or from insurance companies. There are many types of documents and information that could be requested including, but not limited to authorization for release of personal records, medical records, information about employment or lack thereof, information regarding lifestyle, and family situation.

CHAPTER 5

DEALING WITH INSURANCE COMPANIES



It is a given that after a car accident, you will have to deal with one or more insurance companies. Based on your insurance contract (assuming you have one), you may have to deal with your own insurance company. Generally, after you report the accident and a claim is set up, a claim representative will be assigned to work with you. Depending on the nature or seriousness of the accident, there may be other agents of the insurance company involved in the claim. It is

always advisable to report the accident to your insurance company as soon as possible.

Generally, you are not obliged to, and should not immediately contact the insurance company of another party involved in the accident. There is always ample time to do so. However, it may be important to obtain some essential information as soon as possible even if you decide not to discuss the accident in detail at that time. All you need to know initially is the claim number, the representative handling the claim and his or her contact information, and related information, but you don't have to talk to them. It is not your responsibility to notify them or provide information about the accident. As long as you have information about the other party and his or her insurance company, the case can go ahead. Once you get these to your lawyer, he or she should know what to do with that information.

In Maryland, after a serious accident, there will be an incident report. If the accident was not serious, the parties will exchange information sometimes under the supervision of a police officer. In that case, you should

obtain all the information about the other driver or drivers, the cars involved, and the insurance companies.

What Should I Do When the Insurance Company Contacts Me?

If the other party's insurance company contacts you, you should never give them a statement without talking to your lawyer first. You should be polite, and you may respond to basic questions such as the fact that you were involved in the accident, where and when it occurred and whether a police or ambulance came to the scene, but no more. If you have already secured counsel, you can tell them you have a lawyer, and that your lawyer will be contacting them. You can give your lawyer's information to them, and they will contact your lawyer.

If your own insurance company calls you after an accident, you may talk to them but you must be careful if the accident occurred in a manner such that liability could be contested. It is prudent to talk with your lawyer before giving any recorded statement even to your own insurance company. Oftentimes, your insurance company is on your side as they would not want to pay the other

party if they do not have to. However, this is not always the case. If you happen to be talking to your insurance company before consulting your lawyer, make sure to keep your notes of the discussion.

My general advice to clients who have retained us, and who have not yet talked to their insurance companies or to the other party's insurance company, is that they shouldn't talk to any of them. Our office would send out a letter of representation, and if the insurance company involved needs to need to talk to our client, we decide whether that will be helpful or not as well as when, where and how to provide any statement.

What Can I Expect from The Other Side Once A Claim Has Been Filed With The Insurance Company?

What you can expect from the other side once a claim has been filed will depend on the nature of the claim. If liability (fault) has not been admitted, you may expect a letter from the insurance company formally denying liability.

If the insurance company has admitted that their insured was at fault, the situation will be different. After your lawyer has put together all your losses (damages), both specific and general, he or she will submit a demand or settlement memorandum to the insurance company of the other party. The insurance company will review it and consult with their adjusters. They may then make an offer to settle the claim based on what they believe the proper compensation should be. Many insurance companies use some methodology (including software) to determine the damages and come up with an offer to settle the case. They usually have a range within which they are willing to settle the case. Sometimes, negotiations to settle a case can drag. If the amount being offered is not agreeable to both parties, then the case will end up in court

Therefore, what to expect from the other side when a claim has been filed will depend on many factors including but not limited to the nature and complexity of the claim, whether liability has been admitted or not, the reasonableness of any offer made, and the policies of the particular insurance company you are dealing with.

Strategies That Insurance Companies Use to Avoid Paying Out on Claims

Insurance companies have several strategies to avoid paying claims because they are in business to avoid doing so. The first thing I tell my clients is that the adjuster or the representatives of the insurance companies are not out to protect your interest. If they are, it will be directly contrary to their main function; limit their liability. They may call, and seem to be nice, but they are not doing that because they want you to maximize your compensation. Actually, they will do many things to minimize the cost to the insurance company that they work for. Secondly, they usually like to secure admission of certain facts on the record. They would ask to take a recorded statement. The statements could be obtained by very detailed questions that can be confusing and misleading. Remember that it is your right to refuse to provide this statement until you are ready to do so. Oftentimes, for obvious reasons, insurance companies try to obtain this statement before you talk to a lawyer or someone knowledgeable.

Another technique used by insurance companies is to entice you to admit fault or liability by telling you that your insurance company or another source will cover your damages. You should never be misled by any promises or suggestions of this type. Some insurance companies may actually tell you that their insured was at fault and make an offer to pay your medical bills and repair your car. If you accept such an offer, they may hurriedly estimate the damages to your car, obtain copies of your medical bills, and send you a check. They will make you sign a “release” preventing you from bringing any further claim against that insurance company.

Some insurance companies would actually try to talk claimants into not hiring a lawyer. They may tell you that you do not need a lawyer because it is a simple case that can be resolved without a lawyer, but if you hire a lawyer, your case will drag. One problem that may result from falling for this tactic is that you may not know the exact extent of your losses. You may need time and an experienced hand to properly quantify your damages, both specific and general. There are known cases where after a minor impact accident, people went to the hospital

emergency room with minor symptoms, and were discharged only to find out many weeks later that the headache, backache or neck pain was not only persistent, but had actually gotten worse. Some insurance companies would talk to you in a way that minimizes your injuries. They have adjusters and representatives who are trained to use medical terminologies. For example, using some “doctor’s language”, they could explain to you what the medical report says and why the injury is not serious.

Some insurance companies have been known for actually delaying payment on a valid claim. This could tire and frustrate a claimant to accepting a low offer to settle a claim. If it’s a big case and the insurance company knows that it would probably be paying a huge sum, dragging the case for as long as possible will be to their advantage. Insurance companies have been known to spy on claimants. They may send out investigators to try to “catch” you in compromising circumstances. If you claim that you were injured in a certain way, they will want to show you doing something that someone who was injured would normally not do.

Sometimes insurance companies strategically deny liability outright, knowing that ultimately they will accept it. There may be many reasons for doing this, including but not limited to, dragging the case and tiring the claimant, making the claimant and his or her lawyer believe that the case is difficult so that when liability is accepted a very minimal offer can be made to settle the case.

Does Having an Attorney Make Insurance Companies Evaluate Claims Differently?

Having an attorney involved in a claim makes insurance companies not only evaluate the claim carefully but more reasonably. If for no other reason, simply knowing that someone conversant with valuation of damages is looking at the claim would accomplish this. Insurance companies, their adjusters, and claim handlers know very well that when a lawyer is involved, a complete demand package presenting all the damages will be prepared and submitted. They are therefore compelled to evaluate the claim properly. They would really have no choice if a demand package is presented articulating and supporting all damages suffered.

Secondly, and more importantly, once an attorney is involved, there is the expectation that if the case is not well-evaluated, it will end up in court. This, in and of itself, causes insurance companies to endeavor to properly evaluate claims that involve attorneys.

We believe, and many insurance Adjusters have confirmed, that they are usually given a range within which they may settle a claim. How far they will go towards their maximum limit will depend on how much they are “pushed”. If they try to settle a case too low from the maximum limit, and that case is not settled, and goes to trial, the adjuster may be get into trouble with his or her insurance company for failing to settle the claim when it could have been settled.

CHAPTER 6

GOING TO TRIAL OR NOT



There are many factors that can cause an auto accident claim to go to trial. If liability is contested (that is, neither party to the accident accepts fault), then the case would most probably end up in court. Sometimes liability is not contested but the insurance company is making an unreasonable offer to settle the case (compensate for damages). In this situation, the case will go to court. In some instances, the offer to settle the case may not be the best but when the cost of litigating the case is taken into consideration, it would be advisable to settle the case.

Some claimants take cases to court as a matter of principle. Such a claimant needs to be well informed about what to expect during the litigation. Generally, the lawyer should abide by his or her client's wishes if it is reasonable and cost-effective to do so.

What to Expect in a Litigated Accident Claim

Once a suit is filed in court, you can expect the insurance company's lawyer to get involved. Again, depending on the nature of the case and the court in which the case is filed, many different things can happen. After the complaint is filed and answered, there may be periods of discovery, mediation, pretrial conferences, motion hearings, and more. During this time, each side will be weighing its options to determine whether to settle or not to settle. Some cases will be heard by a Judge while others will be presented to a jury. Many cases are resolved before or even during the trial.

In the District Court of Maryland (which is the court for cases involving damages in the amount of \$30,000 or less), the case can go on for between three months to six months. In the circuit court, it could take

anywhere from six months to more than a year, depending on the complexity of the case.

The Judge's decision in a case at the District Court can be appealed to the Circuit Court. A case could be appealed from the Circuit Court to the Court of Special Appeals, and subsequently to the Maryland Court of Appeals. Ultimately, the length of a case will depend on the court in which it is filed, its complexity and the extent to which the parties are willing to litigate the issues.

How Does Going to Trial Affect the Cost of An Auto Accident Case?

For cases without substantial damages, it would not make much sense to go to trial if they can be settled. This is because the litigation cost could cut into the overall damages recovered. However, in complex cases involving substantial damages, the potential recovery may be substantial enough to justify the time and cost of litigation. It really depends on the nature of the case. There is no question that litigation cost is usually a major consideration. The effective lawyer should assist his or her client to engage in a frank cost-benefit analysis before filing suit.

How Long Does It Take for an Injured Person to Receive Funds After Reaching A Settlement?

An auto accident claim may be settled prior to litigation or during litigation. Generally, if an insurance company is involved, it should not take much time for the funds to be disbursed. If all parties are in agreement, and all releases are signed, the insurance company would normally release the funds within a couple of days. If you are represented by a lawyer, such funds will be deposited in his or her Trust or Escrow account. Thereafter, he or she should prepare and review with you a disbursement memorandum or statement, outlining how the funds are to be disbursed. Normally, from the time when the funds are available to when they are disbursed, should not take more than a couple of days or weeks. Of course, there are a few exceptions. For example, where some entity or entities have a lien on the funds, the funds could be held in the Trust Account for as long as is necessary to resolve the lien.

CHAPTER 7

THE THORNY ISSUE OF MEDICAL BILLS



Whether a case is settled or is decided in court, sometimes all of the claimants' medical bills are covered but sometimes they are not.

A small claim can be settled in a way that all the bills will not be paid. In situations like that, one of the reasons could be that going to court would cost even more in time and treasure.

However, in most cases that are settled, all medical bills are paid. Sometimes, in addition to paying all the past medical bills, additional payments are made for future medical expenses. A good settlement should take care of all your medical bills, plus something on top for general damages or noneconomic loss (pain, suffering, inconvenience, aggravation, and so on).

Generally, when a Judge or Jury renders a verdict in favor of the claimant (plaintiff), all past, related and reasonable medical bills will be covered. As stated above, payments may even be made for future related and reasonable medical bills.

CHAPTER 8

CAR INSURANCE REQUIREMENTS IN MARYLAND



In Maryland, it is mandatory to have auto insurance coverage. The minimum coverage required in Maryland is \$30,000 per person for bodily injury, \$60,000 per incident and \$15,000 for property damage. In effect, each driver in Maryland is expected to have a minimum insurance policy that will pay someone whom they injure up to \$30,000. If two or more people are injured in the same accident, the insurance will pay up to \$60,000 divided between or amongst them. Maryland also

requires that you have a minimum uninsured motorist coverage of \$30,000. Usually, the uninsured motorist coverage is equal to the minimum bodily injury coverage. If the insured has \$30,000 for bodily injury, the uninsured motorist coverage would usually be \$30,000 as well.

Maryland car insurance policies also carry Personal Injury Protection (PIP) coverage. However, while the insurance company is mandated by law to offer this coverage, the insured is not obliged to take it. The insured can waive it, but such a waiver must be in writing. It is generally not advisable to waive PIP because PIP covers medical bills and a percentage of lost income, even if the claimant was at fault. This can prove to be quite helpful to the claimant and the case as a whole, in many ways.

What Happens When The Driver At Fault Has No Insurance, Insufficient Insurance or Escapes?

In Maryland, this will give rise to an uninsured or underinsured motorist situation. All insurance policies in Maryland are required to carry a minimum amount of uninsured/underinsured motorist coverage.

Uninsured motorist coverage provides benefits when the driver at fault has no insurance. This may happen when the driver at fault did not purchase insurance at all, his or her insurance had lapsed, or he or she is driving the vehicle without permission. It can also happen in a “hit and run” situation where the driver at fault cannot be found and therefore his or her insurance company is not known.

Maryland does not use the nomenclature of underinsured motorist coverage. However, underinsured motorist coverage situations do arise and are covered by the Maryland uninsured motorist provisions. An underinsured motorist situation occurs when the negligent driver’s insurance coverage is less than the victim’s damages, and the victim’s uninsured motorist coverage is more than the negligent driver’s uninsured motorist coverage. When this happens, the difference is made-up by the victim’s uninsured motorist coverage. For example, X (negligent driver) has a minimum coverage of \$30,000 and negligently causes damage to Y (victim) amounting to \$50,000. If Y has an uninsured motorist coverage of \$40,000, his insurance company will pay him \$10,000 in

addition to the \$30,000 recovered from the insurance company of X. If Y has an uninsured motorist coverage of \$50,000, his insurance company will pay him \$20,000 in addition to the \$30,000 recovered from X. However, if Y had an uninsured motorist coverage of \$100,000, his insurance company will still pay him only \$20,000 in addition to the \$30,000 recovered from X.

Uninsured motorist coverage also covers passengers in the vehicle and in some cases injured pedestrians. The claim is also a claim in contract since it is brought against your own insurance company. The claim must be brought within three years of the accident.

CHAPTER 9

WHO NEEDS A LAWYER?



You are not required to have an attorney to proceed with your claim. However, there are many advantages to having an attorney assist you in your claim. Your attorney can help you in determining liability, properly dealing with the insurance companies involved, and obtaining relevant and sufficient information to investigate your case. An attorney would assist you in documenting your damages, dealing with your medical providers, making sure that your treatment, your reports and everything is well documented, and that they meet the level that will

convince the insurance company or a Judge in court. Sometimes people actually suffer a lot after an accident but are unable to connect the pain and suffering to the accident. A lawyer can help you do this. For all of these reasons and more, you would probably be better placed having an attorney. Furthermore, the case may not end at the level of negotiations with the insurance company.

Some insurance companies deal with claimants in a way that is not advantageous to the claimants. Generally, when an attorney is involved, the insurance companies handle the cases more carefully and are more reasonable because they know that the case could end up in court.

Many times the claimant and the paying insurance company fail to reach an agreement to settle the case. If and when this happens, the next logical step is to file suit in court. Litigation can sometimes be quite complex. Obviously a good attorney will be helpful in court in this regard.

Do Insurance Companies Evaluate A Claim Differently If A Lawyer Is Involved?

Once an attorney is involved with a case, various aspects of the claim will come out and the insurance

company's adjusters will become aware of the fact that if the claim is not properly handled, it will go to court. This generally leads to a better evaluation and settlement offer.

Does The Threat Of Going To Trial Induce A Larger Settlement From Insurance Companies?

The threat of going to trial in and of itself would not necessarily induce a larger settlement offer. What will probably prompt a fair and reasonable offer, is when such a threat is substantiated by facts that can be proven in court to the advantage of the claimant. Once an insurance company knows that a case has credible facts that could be litigated (especially if the damages can clearly be articulated and substantiated), they are going to do a cost-benefit analysis. Generally, they will prefer to resolve the case without going to trial because it will cost less.

How Do the Negotiation Skills and Experience of an Attorney Influence Insurance Companies?

Like all other skills, negotiation skills come with practice and experience. An experienced attorney who has honed his or her skills over time through dedication and hard work will prove to be invaluable to your claim.

Insurance claim agents and Adjusters can very quickly determine who they are dealing with: a skilled lawyer or a novice. Negotiation skills are very important not only at the pre-litigation phase but also during litigation. So, there is no question that good negotiation skills and general litigation experience of your lawyer can make a big difference in your case.

The Unique Way Our Firm Handles Personal Injury Cases.

We delve into the unique aspects of our cases and treat our clients as human entities. We focus on providing very high-quality services with empathy and ethics. Each case is unique because each individual has a distinctive perspective. Therefore, each case has to be handled in its own special way. We carefully and clearly communicate with our clients so as to craft the best strategy for them.

While securing the best possible compensation for our clients (money) is important, we take cognizance of the fact that this should not be the only consideration. Human beings are holistic creatures with numerous interconnecting needs. Failure to realize this may have dire consequences. Hence, our unique approach.

EPILOGUE

Unfortunately, it is a truism that as long as we continue to drive, automobile accidents will continue to occur. Even as advancements in technology and safety measures tend to reduce the frequency of car accidents, the occurrence of any automobile accident is still one too many. The effects of serious automobile accidents on the parties involved and on society as a whole can never be overstated.

Therefore, it is always advisable from an individual perspective to take any and all possible steps to protect yourself, your family and yes, your dreams.

Happily, there are numerous private and public entities, including but not limited to: insurance companies; the court systems; lawyers and legal organizations; non-profit and advocacy groups which are focused on minimizing the deleterious consequences of automobile accidents. This is categorically imperative.

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Dealing with Auto Accidents in Maryland

A Handbook of Personalized Legal Services
That Yield Positive Results



Edwin K. Fogam, Esq.

Attorney Edwin K. Fogam has practiced law since 1996. He is admitted to practice in New York, Maryland, U.S. District and Federal Court, and the Supreme Court of the United States. He is a member of the American Bar Association, Maryland Bar Association, Maryland Association for Justice (Formerly Maryland Trial Lawyers Association), and Montgomery County Bar Association.

In 2015, the American Institute of Family Law Attorneys recognized Attorney Fogam with its prestigious “10 Best” Attorneys award for client satisfaction. Prior to this, the ABI bestowed on Attorney Fogam the “Outstanding Professional in Law” award in 2002, and it’s “Cicero Award of Excellence for demonstrated effectiveness and distinction in the field of law”, in 2011.

“As an Insurance Agent, I have worked with many automobile accident lawyers. Since I first referred a client to Mr. Fogam and his legal team over 8 years ago, I have been referring any of my insured who ask me for a lawyer, to him. Not only have all my referrals to lawyer Fogam’s office been very satisfied, I personally had experienced his office’s efficient and ethical representation when I had a car accident. I was very pleased with the services I received and how my case was rigorously but amicably pursued and settled.”

S. P., College Park, MD

“I have known Attorney Fogam both personally and professionally for over twenty years, as an astute legal expert. He has years of experience and has assisted numerous clients in immigration, personal injury, family law and other legal matters. He has mentored some pupil lawyers and contributed to charities here in the US and his native country, Cameroon.”

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