

**Kentucky**  
**Motor Vehicle Accident**  
**HANDBOOK**

**by**

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# ABOUT THE AUTHOR



Attorney Matthew B. Troutman, of the **Kentucky Auto Accident Attorney** law firm, has represented the victims of auto accidents, truck accidents and motorcycle accidents for over 25 years, including serious injury and wrongful death, throughout the state of Kentucky. Offices are located in Louisville (8644 Aiken Road, Louisville, KY 40245, 502-241-8000) and Lexington (4740 Firebrook Blvd, Lexington, KY 40503, 859-367-0036) to serve the entire state of Kentucky including the cities of Louisville, Covington, Lexington, Bowling Green, Owensboro, Glasgow, Richmond and Hopkinsville. More information about the firm can be obtained at the firm website - [www.kyautoaccidentattorney.com](http://www.kyautoaccidentattorney.com).

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# INTRODUCTION

If you are unfortunate enough to be injured in a car, truck or motorcycle accident, it will probably be the first and only time you will ever experience it in your lifetime, and, therefore, you will probably not be aware of everything you need to do to protect yourself. For the first time in Kentucky, a handbook has been published to help guide the motor vehicle accident victim through the claim process and answer many of the questions that will arise along the way. This handbook was created by personal injury attorney Matthew B. Troutman based upon over 25 years of experience in representing hundreds of motor vehicle accident victims throughout the state of Kentucky.

This handbook is a reference book that you should keep in your vehicle in the event that you receive personal injuries in a motor vehicle accident. If you need additional copies of this handbook or know someone who needs a copy, you may go to [www.kyautoaccidentattorney.com](http://www.kyautoaccidentattorney.com) and download a free copy or use the contact button to order a printed version of this handbook.

# GETTING STARTED

## CHAPTER 1

### **7 things to do Immediately after a Motor Vehicle Accident!**

#### **1. Notify your insurance company of the accident.**

Even though the accident is not your fault, it is important to contact your insurance agent or the claims department indicated on your insurance card to notify them of your accident. You may lose valuable benefits and rights if you fail to notify your insurance company promptly.

#### **2. Obtain Police Report.**

The **Kentucky Auto Accident Attorney** can do obtain the police report for you. If you do it yourself, in most cases, it can be done on the internet (e.g. [buycrash.com](http://buycrash.com) and [kentuckyonlinereports.com](http://kentuckyonlinereports.com)) with information (last name of driver, report #, accident location and reporting agency) given to you by the reporting officer. If it is not available over the internet, then you will need to make a trip to the police department that investigated your accident and pay a nominal amount for a copy of your report. Normally, the

police report is available 2-3 business days after the accident.

### **3. Obtain rental car and arrange for repair or replacement of your automobile.**

**Establish contact with the at-fault insurance company** to arrange for a rental car and for your vehicle to be repaired. Obtain the name of the at-fault insurance company and their policy number from the police report and then find a claims office on the internet or phone book. Call to find out the claim number and the contact information for the person who is handling your claim. If a claim has not already been set up, then request that it be done.

**Obtain rental car and arrange for repair or replacement of damaged vehicle.** Call the at-fault insurance adjuster to provide a rental, if you need one, and tell them where you would like to have the vehicle repaired. Ask them if they want an estimate from your body shop or whether they will have someone look at it. Make sure that complete pictures of your vehicle are taken showing the damage to your vehicle. Normally, the insurance company paying for the property damage will do this, but it is wise to take your own pictures. The pictures may help your personal injury claim, which will be made later.

**Property damage ONLY release.** If you resolve your property damage claim without the assistance of a lawyer, which is common, make sure that when you sign a release as part of the settlement on the property damage that the release is for PROPERTY DAMAGES ONLY. If you sign

a general release you can release your personal injury claim.

**Don't forget claim for personal items in your vehicle.**

Understand that by signing this release you are releasing all your claims for property damage, which includes damage to any personal property contained in the vehicle. Accident victims tend to forget about other personal items contained in the vehicle that were damaged such as eyeglasses, clothing, laptop computers, ipods, etc.

**If you have problems resolving your property damage claim with the at-fault insurance company, make a claim against your own comprehensive coverage.**

Sometimes the at-fault insurance company will be unresponsive or try to give you less than you deserve for the value of a vehicle totaled in the accident and it is nice to have the option of going to your own insurance company under your comprehensive collision coverage. They will then get their money back from the at-fault insurance company.

If the person causing your accident does not have insurance, go to chapter 23 of this handbook to find out what you can do.

## **4. Find critical liability evidence.**

Evidence regarding who caused the accident or why an automobile failed to function properly is usually found close to the time of the accident when the scene is fresh and the condition of the vehicles can be protected. You may believe that the cause of the accident is obvious, but often parties will dispute liability even after admitting liability at the scene. For this reason, it is important to contact the **Kentucky Auto Accident Attorney** to determine if any

investigation needs to be done relevant to the liability issue. We will help you review this issue free of charge. Take pictures of the scene and the vehicles if you have the opportunity to do so. Cell phones make this easy.

## **5. Reserve No-Fault for Lost Wages Only.**

Frequently, clients contact an attorney after their medical expenses have already exhausted their Kentucky No-Fault benefits, which may leave them with insufficient income to pay their bills. Under Kentucky law, you can instruct your no-fault carrier to reserve your No-Fault benefits for lost wages only and allow your health carrier to pay your medical bills. **You must instruct your No-Fault carrier in writing.** Even if you do not have health insurance, you can instruct your no-fault carrier to just pay lost wages. This may provide the income you need to pay bills while you are injured and unable to work. To better understand Kentucky No-Fault, go to chapter 30 of this book.

## **6 Obtain appropriate medical care.**

It is important for you to obtain appropriate medical care and to follow the advice of your treating medical providers. If you are considering the care of a chiropractor, you should be aware that insurance companies and juries do not give that care the same weight as care from a medical doctor.

Your attorney should not in any way direct your medical care, which is a matter that is between the client and his or

her personal physicians. There are many lawyers, who establish relationships with chiropractors or other medical providers, for the purpose of mutual referrals. This practice is not in the best interest of the client. You need to seek medical treatment from the best medical providers and not the ones associated with your attorney. Also, if you receive medical care from a provider associates with your attorney, that association will hurt the value of your claim because the insurance company and jury will view you as someone trying to take advantage of the system instead of someone with a legitimate injury.

## **7. Contact the Kentucky Auto Accident Attorney to protect your rights.**

The earlier you contact the **Kentucky Auto Accident Attorney**, the better your rights and insurance benefits can be protected. We will answer your questions without charge and help you determine if you need an attorney to represent you.

## CHAPTER 2

# Do I have an injury claim against the at-fault party?

If you suffer personal injuries, as a result of a motor vehicle accident, you can file a claim for damages (see Chapter 27 to understand the damages that you can claim) against the at-fault party **if you meet one of the following “THRESHOLD” requirements:**

- Death.
- Permanent Injury.
- Fractured bone.
- Disfigurement.
- Loss of body member.
- Permanent loss of bodily function.
- \$1,000.00 in medicals.

The \$1,000.00 in medical expenses “THRESHOLD” makes the “THRESHOLD” restriction on the right to sue virtually meaningless, because it is easy to incur \$1,000.00 in medical expenses. If you have rejected Kentucky No-Fault or are making a claim for uninsured motorist benefits, then you can make a claim without having to meet the “THRESHOLD” requirements.

If your claim is only worth a few thousand dollars, it is probably better for you to not hire a lawyer and simply negotiate directly with the insurance company. You can contact the **Kentucky Auto Accident Attorney** law firm and, without charge, we can advise you on the probable value of your claim and how to present your claim to the insurance company.

## CHAPTER 3

### **Injured in a Motor Vehicle Accident - Check to see if you have Underinsured Motorist Coverage!**

Most motor vehicle accident victims do not even realize, at the time of their accident, that they purchased **Underinsured Motorist Coverage**. However, more times than not, this coverage becomes the most important coverage for the motor vehicle accident victim. The reason is simple- people that cause accidents frequently do not maintain sufficient levels of liability insurance to cover the claims of the accident victim. The minimum liability insurance required in Kentucky for motor vehicles is \$25,000.00. If you are seriously injured in a motor vehicle accident and you have a case worth \$500,000.00, but the at-fault driver only has \$25,000.00 in liability insurance, you will only recover \$25,000.00 unless you purchased underinsured motorist coverage.

Underinsured motorist coverage, in effect, allows you to supplement the liability coverage of the at-fault driver. In the example above, you would collect the \$25,000.00 in liability insurance from the at-fault driver and then present a claim to your own insurance carrier to the extent of your underinsured motorist limits. In order to properly preserve, present and maximize an underinsured motorist claim, contact the **Kentucky Auto Accident Attorney** because there are certain legal steps that must be taken to make this claim, which could be easily missed by a lawyer not handling these claims on an every day basis.

## CHAPTER 4

### **Can I stack my Underinsured Motorist policies to increase the amount of insurance available to pay my claim.**

The Kentucky courts ruled in 1993<sup>1</sup> that if the insurance company charged a separate premium for each policy of underinsured motorist coverage on each vehicle owned by the victim, then the victim was entitled to stack the underinsured motorist coverage on each vehicle. In other words, if you owned 2 vehicles at the time of your accident with \$50,000.00 in underinsured motorist coverage on each vehicle, you could stack the two policies and receive \$100,000.00.

After the Kentucky courts created the stacking law described above, most insurance companies simply changed the way they wrote their policies in order to prevent stacking. They began charging a single premium for underinsured motorist coverage no matter how many cars the insured owned. This change means that most underinsured motorist policies in Kentucky are not stackable anymore.

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<sup>1</sup>*Allstate v. Dicke*, 862 S.W.2d 329 (Ky. 1993).

## CHAPTER 5

### Do I need to hire a motor vehicle accident lawyer?

If you are injured in a motor vehicle accident and have incurred at least \$1000 in medical expenses so that you can make a claim against the at-fault party, should you then hire a motor vehicle accident attorney? In most instances, the answer to this question is yes.

The reason you need a personal injury attorney is to maximize your recovery against the at-fault party and recover other benefits that may be available to you. If you present your claim on your own to the insurance company, you will normally receive a smaller recovery. Additionally, you can lose valuable coverage and benefits by failing to satisfy technical requirements in making your claim. You can lose your claim by not filing it in time, failing to provide proper notice of the claim to the insurance company and failing to follow statutory procedures. If your claim is a very small claim, it is probably wise for you to attempt to negotiate with the insurance company on your own. If you need assistance in doing this, please contact the Kentucky Auto Accident Attorney law firm and we will provide this service at no charge.

If you decide that you do not need to hire a personal injury attorney, then you should, at least, contact a personal injury attorney to obtain some general advice to make sure that you are not losing valuable rights. The **Kentucky Auto Accident Attorney** law firm is willing to provide this advice at no charge.

# **LAWYER/CLIENT RELATIONSHIP**

## **CHAPTER 6**

**How to select your motor vehicle  
accident attorney- Consider these 3  
factors:**

**1**

**Select a lawyer who has a practice  
limited to representing auto, truck  
and motorcycle accident victims.**

The laws are very complicated and it is virtually impossible for an attorney to keep up with the changes in the law unless he or she primarily represents motor vehicle accident victims. The personal injury attorney who is dealing with motor vehicle accident issues on a daily basis, and is not distracted by other areas of the law, will best serve you. If your lawyer does not limit his practice to auto accident cases, it is unlikely he will know the details of the complicated Kentucky no-fault laws, underinsured motorist laws and other laws that impact motor vehicle accident cases.

## 2

### **Select an accident lawyer who litigates cases.**

If the at-fault insurance company knows that your attorney is not willing to try your case in front of a jury, then you will receive a much smaller recovery because a trial before a jury is the most important leverage that you have against an insurance company. Many attorneys are reluctant to try cases because it is stressful and requires a lot of effort and skill. Heavy advertising personal injury firms often do not like to litigate and are motivated to turn over cases prematurely. They are trying to turn your case over to make a “quick buck” and meanwhile they are sacrificing the true value of your case. They can always move on to the next case, but this is your only case.

Many attorneys will tell you that you have a great case at the beginning and give you an inflated value of your claim in order to convince you to hire them. However, when it comes settlement time, he or she will sell you short because they do not want to put in the work to obtain the true value of your case and they overvalued it in the beginning to entice you. Make sure your attorney is willing to try your case before you hire him or her.

### 3

## **Select an attorney who will handle your case personally from start to finish.**

Some attorneys are only the face of the law firm and do not handle the actual cases or will not handle the entire case. It is best that your lawyer is handling all aspects of your case from beginning to end. It is his experience and skill you hired and you are entitled to have him or her handle your entire case. Also, too many mistakes are made in communicating between too many people. You want to be able to speak with the person who will be performing the task and not a go-between. At the **Kentucky Auto Accident Attorney**, your attorney will handle your case from start to finish and you will communicate with him directly.

## CHAPTER 7

### **Beware of Kentucky lawyers loaning money to their clients.**

Kentucky law <sup>2</sup> prohibits Kentucky lawyers from loaning or otherwise providing financial assistance to clients, except that any attorney may advance court expenses. Victims of motor vehicle accidents often struggle financially because their injuries prevent them from working. Injury victims can borrow money from banks or other institutions, but not from their lawyers. Unfortunately, some lawyers disobey this prohibition in order to gain clients and to charge a high interest rate for the loan to make more money off the client.

The reasons lawyers cannot provide financial assistance to their clients include that (1) these loans can negatively affect the attorney's ability to properly advise and represent the client. The attorney's advice on whether to accept a settlement can be clouded by a loan made to a client. The attorney may want to delay the settlement so that he can earn more interest on the loan or he may advise the client to take a lower settlement because he needs the loan to be paid off; (2) Attorneys could effectively buy cases and (3) it would allow lawyers to act as banks and not be properly regulated by the federal government. The **Kentucky Auto Accident Attorney** will assist the client in recovering any insurance benefits due him to offset financial difficulties and will aggressively pursue the case to a conclusion to obtain the best and quickest resolution possible.

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<sup>22</sup>Kentucky Ethics Rule 3.130(1.8(e)).

## CHAPTER 8

### **What is a reasonable attorney's fee in a motor vehicle accident case?**

During the last 25 years, the standard contingency fee in a motor vehicle accident case has been 33 & 1/3%. There is no law guiding the amount of the attorneys' fees other than the requirement that the fee must be "reasonable."<sup>3</sup>

Attorneys have been raising their fees to 35% and 40% and the question is whether that is reasonable. Due to inflation, verdicts for victims of auto accidents have increased over time and, as a result, I believe there is no justification for attorneys to raise their contingency fees. The attorneys who pay thousands of dollars on advertising may justify the higher fees to cover their advertising costs, but consumers lose out with these attorneys.

When looking for an attorney to represent you, consider the amount of his fee and do not simply accept that what he or she requires is reasonable. If a lawyer tells you that his exceptional skills warrant a higher fee, remind him or her that if this is true, then he will make more money by obtaining a larger settlement or jury verdict and thereby be paid for his or her skill. By charging a higher percentage fee, he or she is simply taking more of the settlement regardless of his or her skill. The skill exhibited is actually greed.

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<sup>3</sup> SCR 3.130 (1.5)

## CHAPTER 9

### **Who has the right to decide on settlement in a Motor Vehicle Accident Case – Attorney or Client?**

If you are the unfortunate victim of a motor vehicle accident and you hire an injury attorney to present your claims, who has the right to resolve your case- you or your attorney?

The easy answer to this question is that the accident victim has the right to make any decision regarding his or her case and the attorney's role is to advise the client. The case is yours and does not belong to the attorney.

Despite the easy answer to this question, the reality is that car accident attorneys are making many decisions without consulting the client. There are two types of personal injury attorneys. One type tells the client what they will do when it comes to settlement or filing suit or any other major decision. The other type provides the client with all the relevant information and gives his or her advice on how to proceed, but allows the client to make the decision. The office of the **Kentucky Auto Accident Attorney** subscribes to the later philosophy.

Here is an example of how the failure of a motor vehicle accident attorney to understand that the case belongs to the client can harm the client. In your case, the insurance company's final offer is \$50,000.00, but the attorney

believes that the value is \$100,000.00 and therefore he decides you will try the case. You go to trial and the jury awards you \$30,000.00. This result is acceptable if you make the decision, but it is not acceptable if the attorney forces you to go to trial. You just lost \$20,000.00. The attorney can move on to his next case, but you only have one case and his miscalculation of what the jury would do just cost you \$20,000.00.

Here is another example. Your case is worth \$500,000.00 and the insurance company is only offering \$250,000.00. Although the motor vehicle accident attorney recommends suit, he advises the client of everything and she decides to accept \$250,000.00 because, if she files a lawsuit, she will have to sue her sister and she does not want to do that. It is her case and her decision of when and how to settle her case.

You need an attorney who will handle your case aggressively to obtain the best result possible, but he or she should always keep you informed and respect your right to decide how and when to resolve your motor vehicle accident case on your terms.

## CHAPTER 10

### **Can I discharge my attorney and do I have to pay more for a new attorney?**

If you need to discharge your attorney, he or she will have a lien against your case for their fee, but you will not be required to pay more fees by hiring a different lawyer. You will pay one fee and the two lawyers will work out between themselves what percentage of the fee each will collect. For example, if the retainer agreement signed with the first attorney requires a 1/3 fee and the settlement in your case is for \$30,000.00, the new and discharged attorney will share the \$10,000.00 fee. Some lawyers will try to intimidate you into staying with them by telling you or implying that you will have to pay more if you change attorneys, but that simply is not true. It is wise to make sure that your retainer agreement with the new attorney reflects the fact that you will pay one fee to both lawyers.

If you discharge your lawyer, you are entitled to have your file. The lawyer being discharged may request that you pay for copying the file, but he may not refuse giving it to you even if you do not pay the copying charges.<sup>4</sup>

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<sup>4</sup>KY Ethics Rule 1.16; comment # 10

# THE LAWSUIT

## CHAPTER 11

### **Do I need to file a lawsuit to resolve my claim?**

Most attorneys understand that accident victims do not want to file a lawsuit to resolve their claims and will do everything possible to settle your case without litigation, but, sometimes, it is not possible because the insurance company may not agree with your claim. It may require the proving of your claim through the litigation process.

Litigation can help resolve your claim because: (1) prior to litigation, the claims adjuster will not likely have an opportunity to meet you to understand your effectiveness as a witness; (2) your treating medical doctors will testify in the litigation and their testimony is not always reflected in the medical records, which is what the insurance company must use prior to litigation; and (3) the insurance company may need its own attorney to educate it about your claim. It is easy for an adjuster to become biased in his view of cases and sometimes his attorney is needed to reinforce your view of the case.

There are certain types of cases that insurance companies like to litigate and, thus, they tend to offer very little to settle prior to litigation. These cases are described in Chapter 16.

## CHAPTER 12

# How long do I have to file my motor vehicle accident claim before it expires – Kentucky’s Statute of Limitations?

### THE GENERAL RULE

If you have purchased no-fault insurance on your car, motorcycle or truck, then generally, you have 2 years from the date of death or injury or the date of your last no-fault payment<sup>5</sup>, whichever is later. To be safe, you should think of the statute of limitations being 2 years from the date of the accident. If you have a significant injury, you should contact the **Kentucky Auto Accident Attorney** to monitor your statute of limitations and to allow for proper investigation, maximization of insurance benefits and effective presentation of your claims.

### SOME EXCEPTIONS

Another reason to contact the **Kentucky Auto Accident Attorney** soon after your accident is to make sure that some of the exceptions to the above general rule on the statute of limitations do not apply to your case. Here are some of the exceptions:

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<sup>5</sup> KRS 304.39-230(6)

1. If you do not have Kentucky no-fault coverage on your vehicle, which is not required for motorcycles, then your statute of limitations is one year.<sup>6</sup>
2. If the person causing your accident is an employee of a state or county or otherwise protected by sovereign immunity, then you have one (1) year to file your claim and it must be filed before the Board of Claims.<sup>7</sup>
4. If your claim is a products liability claim (defect in vehicle causing accident), then you may need to file in one (1) year.<sup>8</sup>
5. Loss of Consortium claim is not covered by no-fault statute and, thus, must be brought within one year from date of death or accident.<sup>9</sup>

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<sup>6</sup> KRS 411.130.

<sup>7</sup>*Commonwealth v. Abner*, 810 S.W.2d 504 (Ky. 1991).  
KRS 44.110(1).

<sup>8</sup> KRS 413.140.

<sup>9</sup>*Floyd v. Gray*, 657 S.W.2d 936 (Ky., 1983).

## CHAPTER 13

### **Motorcycle accident victims beware- you must file your claim within one- year if you did not purchase Kentucky No-Fault benefits.**

If you are like most motorcycle accident victims in Kentucky, you did not purchase Kentucky No-Fault coverage for your motorcycle. Kentucky law requires operators of cars and trucks to purchase no-fault coverage in order to drive on Kentucky roadways, but not motorcycles. If you did not purchase no-fault coverage on your motorcycle and you are involved in an accident, you only have one year from the date of your accident to file a lawsuit or lose it forever.<sup>10</sup>

In contrast, had you purchased no-fault coverage, you would have two (2) years from the date of your last no-fault payment to file your lawsuit.<sup>11</sup> This longer statute of limitations gives you the time you need to recover from your injuries so that your lawyer can present the strongest case possible to the insurance company. Additionally, it gives you the time you need to try and resolve your case with the insurance company without having to file a lawsuit.

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<sup>10</sup> KRS 411.130; KRS 304.39-230(6).

<sup>11</sup> KRS 304.39-230(6).

## CHAPTER 14

### **If I need to file a lawsuit to resolve my claim, do I sue the insurance company or the at-fault party?**

Kentucky law requires you to sue the at-fault party because it is the at-fault party that is responsible for causing your injuries. The insurance company has a contract with the at-fault party to pay for any judgment entered against him or her within the policy limits. When you file a lawsuit against the at-fault party, it does not mean that you are attempting to take any of his or her assets. 99% of the time, you just want the insurance he or she purchased to protect themselves from your claims.

If your claim greatly exceeds the insurance available to the at-fault party, how will you collect the remainder of your claim? Hopefully, you will have purchased underinsured motorist benefits on your own vehicle and you can use that coverage to satisfy the portion of your claim not satisfied by the at-fault party's liability insurance. For a more detailed discussion of "underinsured motorist benefits", please see Chapters 3 & 4.

## CHAPTER 15

### **You lose some Privacy when you make a claim for personal injury in a motor vehicle accident case.**

Many clients are surprised that the insurance company can obtain all of their medical records. The law provides that if you are going to make a claim for personal injury, that the insurance companies may obtain all your medical records to see if there are other causes of your symptoms. If you have sensitive information in your medical records that is clearly not related to your injuries, we can seek protection from the Court to keep these records private. Also, it is important to understand that not all records discovered are admissible into evidence at the trial. The rules allowing evidence are more restrictive than the rules allowing discovery of information.

If your case involves the loss of income, then you will have to release employment records and tax returns in order to prove your damages.

The insurance company can also require you to submit to an examination by a doctor of their choosing. This happens in less than 10% of the cases.

# CHAPTER 16

## Understanding the Insurance Adjuster.

If you are injured in a motor vehicle accident and you need to make a claim against the responsible party's insurance company, then your accident attorney will be dealing with an insurance adjuster. It may be helpful to you to understand some things about insurance adjusters as you go through the claim process.

Insurance adjusters, like everyone else, are influenced by their past experiences. They are used to people exaggerating their claims, misrepresenting their claims, and failing to provide all the information necessary to properly evaluate their claims. There are certain types of claims that insurance adjusters are certainly biased against and these types of claims are described below:

1. **Low impact cases** (accidents where there is minimal property damage to the vehicles);
2. **Soft tissue cases** (accidents where the claimed injury is a muscle-type injury, such as whiplash);
3. **Chiropractor treatment cases** (accidents where the primary treating doctor is a chiropractor);
4. **Subjective complaint cases** (accidents where the claimed injury is not verifiable by a diagnostic device or other test);
5. **Previous history cases** (accidents where the victim had a previous history of an injury to the same part of the body);

6. **Failure to reveal previous history cases** (accidents where the victim claims the accident as the only cause of the injury and he or she is found to have a previous history);
7. **Disputed liability cases** (accidents where there is a dispute regarding the cause of the accident), and
8. **Other explanation for your injury cases** (accidents where the injury complained of could have been caused by another event).

Insurance adjusters are also motivated by company policies. These policies can include the following: pay as little as possible to maximize company profits, settle cases quickly while the damages are small and there's no attorney involved, delay the payment of obvious claims so we can continue to use our money, require certain documentation or procedures to be accomplished before evaluating claims and litigate cases because we are paying out too much on claims.

## CHAPTER 17

### **If I have to file a lawsuit to resolve my motor vehicle accident claim, how will I have to participate in the litigation?**

Your direct participation in the litigation occurs three to four different times during a normal case. First, your appearance is required at a deposition. A deposition is a question and answer session where the opposing attorney asks you questions before a court reporter. Your attorney will attend the deposition to assist you. Secondly, you will most likely be required to attend a mediation, which is an organized settlement conference where a mediator attempts to mediate a settlement between the parties. Thirdly, you will attend the trial where your claim will be presented to and decided by a jury. Fourthly, although rare, you may be required to attend an independent medical exam. The Defendant has the right to compel you to see one of their doctors so that he or she can examine you to evaluate your condition. This is required in less than 10% of the cases.

Your case can settle any time during litigation. You will most likely have to give your deposition and attend a mediation, but only about 10% of all cases reach trial. Normally it takes a year between the time you file your lawsuit and the time of trial.

## CHAPTER 18

### **How long will it take to resolve my Motor Vehicle Accident Claim?**

After you hire a motor vehicle injury law firm like the **Kentucky Auto Accident Attorney** to represent you in your case, how long will it take to resolve the claim? The answer to this question depends on several factors, including the time it takes for you to reach maximum medical improvement, the competency of your attorney and the willingness of the insurance company to accept your claim.

Once you have reached your maximum medical improvement, your case should normally be presented to the at-fault insurance company within 30 – 60 days. It should take another 30 days before you will know if you can reach an agreement with the insurance company.

If a lawsuit is required, normally settlement will not occur for about 6 months and if a trial is required, it will normally take place about one year after the date the suit was filed.

## CHAPTER 19

### **If I have Medicare, will I have to pay them part of my motor vehicle accident case settlement?**

Medicare has a right to be reimbursed from your settlement with a third-party (called “subrogation”) that caused your injuries. Medicare’s subrogation rights are very strong under federal law, but they should not prevent you from pursuing your claim against the at-fault party. Your auto accident attorney needs to be experienced at resolving Medicare subrogation claims in order to maximize your recovery.

I handled a motor vehicle accident claim where the Medicare lien more than doubled the amount of liability insurance available to the person causing the accident and the client had her case turned down by another attorney due to the amount of the Medicare lien. Despite the amount of the lien, we were able to obtain a substantial recovery for the client. The Medicare representatives can be difficult to deal with but if your attorney is knowledgeable about the Medicare laws, you can negotiate with them successfully.

Do not let the amount of the Medicare lien discourage you from contacting the **Kentucky Auto Accident Attorney** about your claim. An evaluation is provided free of charge and the lien will not make the case not worth pursuing.

## CHAPTER 20

### **All motor vehicle accident settlements are tax free!**

If you decide to settle your auto accident claim, then the Internal Revenue Service will not consider the money you receive as income that needs to be reported on your income tax return. Section 104(a)(2) of Revenue Code provides this relief and the reason that this relief is allowed is to encourage parties to settle their claims and lawsuits. The exclusion from income of settlements has been extended to structured settlements, including the interest earned on the structured settlements.<sup>12</sup>

I have witnessed hundreds of clients taking advantage of this benefit in the tax laws. If your case is large enough, this tax benefit can cover the attorney's fee that you are required to pay. For instance, if your settlement is for \$100,000.00 and you pay your attorney 1/3 as his fee, you will net a recovery of \$67,000.00. If you earned a \$100,000.00 of income, you would have had to pay approximately 1/3 in taxes.

If you receive a judgment, either from a judge or jury, for past or future lost wages, then you will have to pay taxes on this part of your judgment.

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<sup>12</sup>Rev. Rul. 79-220, 1979-2 C.B. 74, Section 104.

# CAN I MAKE A CLAIM, IF . . . ?

## CHAPTER 21

### **Can you make both a WORKERS' COMPENSATION claim and a motor vehicle accident claim if you are injured at work while operating a vehicle?**

The simple answer is YES. However, you cannot duplicate benefits.<sup>13</sup>

The Kentucky Workers' compensation laws provide three distinct benefits:

1. **Full coverage for medical expenses for the rest of your life** so long as your medical expenses are related to the injuries suffered in the work related accident. (This is a tremendous benefit because workers' compensation pays for 100% of your medical expenses, no deductibles or coinsurance limits, and it lasts for your entire life).
2. **2/3rds wage replacement** for time off work due to your accident.
3. **Award for permanent impairment rating** should your injury be permanent in nature.

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<sup>13</sup> KRS 342.700.

In the typical **motor vehicle accident case**, Kentucky laws provide for the following damages:

1. **Medical Bills** incurred in the past and future medical expenses to the extent the treating doctor can anticipate them to be incurred in the future. The workers' compensation carrier would be entitled to reimbursement for any award of past medical expenses, but possibly not future medical expenses depending on how the case is negotiated.
2. **Pain & Suffering**- A reasonable amount of money to compensate you for the pain, inconvenience, impairment of lifestyle, etc. This damage is not part of the workers' compensation system.
3. **Past and Future Lost Wages**- This element of damage is similar to the wage benefits provided through workers' compensation. An auto accident victim would be entitled to the 1/3 of past wages not paid by workers' compensation (called "excess lost wages") and would be entitled to any impairment to his earning capacity minus the award for permanent impairment rating.

Many states make you choose between a workers' compensation claim and a personal injury claim or simply limit you to a workers' compensation claim. Kentucky allows you to make both but not to duplicate. In order to maximize your recovery of the benefits from both the workers' compensation laws and motor vehicle accident laws, you will need the guidance of an experienced personal injury attorney.

## CHAPTER 22

### **Do I have a motor vehicle accident claim if the at-fault driver INTENDED to hit me?**

The simple answer to the above question is Yes. BUT, there may be no insurance coverage for such a claim because most insurance companies have an exclusion in their policy for intentional injuries and the Kentucky no-fault statute contains that exclusion as well<sup>14</sup>.

If you are injured in a motor vehicle accident and you believe that you may have been injured intentionally, DO NOT TELL ANYONE that you think you were injured intentionally, because you can never be sure of someone's intent and your comments may prevent you from recovering for your injuries. Of course, it is always important to tell the truth under all circumstances, but your thoughts about the intent of the other driver are simply your interpretation of his actions and not necessarily the truth. Normally, these cases involve accidents between individuals who know each other and are involved in some sort of disagreement or incidents of road rage. Contact the **Kentucky Auto Accident Attorney** soon after your accident and he can help guide you through the claim process so that you do not disqualify yourself from available insurance coverage.

Ultimately, the testimony of the at-fault driver will likely answer the question of intent.

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<sup>14</sup> KRS 304-39.200.

## CHAPTER 23

### **Do I have a motor vehicle accident claim if the at-fault driver in my accident is UNINSURED?**

Although you are not supposed to be able to drive a motor vehicle in Kentucky without being properly registered and insured, many people manage to do just that. If you have been victimized by an uninsured driver in an auto accident, motorcycle accident or truck accident, you need to understand the limited options that are available to you.

Normally, the at-fault insurance company will pay for your property damage, but if the at-fault driver does not have insurance, you have two options: (1) file a claim against your own insurance carrier, if you purchased comprehensive property damage protection for your vehicle OR (2) sue the at-fault driver and obtain a judgment against him or her. Once you obtain the judgment, Kentucky law allows you to have his or her driver's license suspended until the judgment is paid<sup>15</sup>.

If you received personal injuries in your accident and you purchased uninsured motorist insurance, then you can file a claim for uninsured motorist benefits against your own carrier. This coverage does not cover property damage and is only for "personal injury" damages, which are described in Chapter 27.

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<sup>15</sup> KRS 187.410.

## CHAPTER 24

### **Do I have motor vehicle accident claim if the person at-fault works for the state or county government (SOVEREIGN IMMUNITY)?**

One of the strange characteristics of the law concerns the negligent acts of government employees while they are working. Kentucky, like all other states, have adopted laws that restrict the rights of motor vehicle accident victims who are injured as the result of the negligence of government workers. These “sovereign immunity” laws say that you may not make a claim or sue the government except on the terms and conditions allowed by that government<sup>16</sup>.

In Kentucky, (1) you must file your claims within one year from the date of the accident, (2) you must file it before the Board of Claims and not a state or federal court, (3) your damages are limited to \$200,000.00 no matter the value of your claim,<sup>17</sup>(4) you may not make a claim for pain and suffering, mental distress, loss of consortium and (5) your claim is reduced by any collateral source payment.<sup>18</sup>

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<sup>16</sup> KRS 44.070(1)

<sup>17</sup> KRS 44.070(5)

<sup>18</sup> KRS 44.070(1)

## CHAPTER 25

### **Can I make a claim against a RELATIVE even if they are covered by the same liability policy?**

Can a child sue his parents for causing personal injuries to the child in an auto accident? Can a husband sue a wife? Can a parent sue a child? Can a child sue a sibling?

The answer to all of these questions is YES. Many people would say that I would never sue my wife, husband, brother, mother or other relative. Although there is no doubt that these circumstances are AWKWARD, it can be done and should be done. The reason it should be done is that the entire purpose of the lawsuit is to collect insurance money to help you deal with the impact of your injuries. If you decide not to make this type of claim, you are making the insurance company richer for not having to pay a claim it is contractually obligated to pay.

If you are concerned about the AWKWARD nature of this claim, you can certainly speak with the relative prior to the claim and explain that you are simply attempting to collect the insurance money. If you have a good relationship, then usually there is no problem in making this claim. As your lawyer, I can send a letter to the relative on your behalf assuring them that you will under no circumstances go after their personal assets.

## CHAPTER 26

### **Can I make a motor vehicle accident claim if the accident injured a PRE-EXISTING CONDITION?**

When someone causes an auto accident, truck accident or motorcycle accident, they do not get to choose the person they injure. In other words, the person you run into could be a 90-year old women with weak bones and the accident could cause severe broken bones because of her weakened condition. Or, you may run into someone with a weak spine because they are over-weight or work at a physically demanding job and the motor vehicle accident causes them pain that a healthy spine could have endured.

If you have an active condition at the time of your motor vehicle accident, then the jury would determine whether the accident aggravated a pre-existing condition and, if so, would award you damages for this injury. These cases are difficult cases and are not well received by the insurance companies and, therefore, you need the skill of an experienced motor vehicle accident attorney to present your case. It is likely that this type of case will require litigation.

# DAMAGES I CAN CLAIM

## CHAPTER 27

### **3 Types of Damages you can claim when involved in a motor vehicle accident in Kentucky:**

There are three (3) categories of damages for motor vehicle accident victims:

#### **1. Property Damages:**

**A. Personal Property Damage** – You are entitled to damage to your automobile and any personal property damaged due to the auto accident. Kentucky law determines the value for your property by determining the difference between the market value before and after the accident.

**B. Loss of Use (time)** - KRS 304-.39.115 provides compensation for loss of use of an item of personal property like an automobile.

#### **2. Personal Injury Damages:**

**A. Medical Bills** - Necessary and reasonable medical

expenses are recoverable, BUT only recoverable if the Plaintiff had paid them or incurred legal liability to pay them. Normally, an insurance company will pay for your medical expenses and therefore, this claim will be theirs. If you have paid for medical expenses out of pocket without insurance reimbursement, then you will be paid for this claim.

**B. Physical Pain and Suffering-** Recoverable if accompanied by physical or bodily injury caused by the auto accident. The amount is difficult to determine but is related to the severity of the injuries.

**C. Lost Wages** – Income lost from any form of employment that is directly caused by the accident.

**D. Mental Distress** – A claim can be made for emotional distress caused by an auto accident, but it is rarely successful because it requires either physical contact and a resulting mental injury or intentional and unlawful interference with a person’s rights likened to criminal harassment.

**E. Punitive Damages** – If you can prove “gross negligence” by the defendant then an amount can be awarded to punish the defendant for the purpose of discouraging similar behavior by him and others in the future. This claim is rarely made or successful in an auto accident case.

**F. Impairment to Future Earning Capacity** – An amount awarded when it is proven that physical ability to earn money is impaired. You need to prove that your injuries are permanent and prevent you from earning money in the future.

**G. Spousal Loss of Consortium** – If the injuries received in an auto accident prevent the injured from performing household and other duties and that has a negative impact on the life of the spouse, the spouse can make a claim. This claim is generally not successful in a claim for personal injury because it is not well received by juries. It would only be worth pursuing if the auto accident victim is severely injured such as being paralyzed or unable to care for himself for an extended period of time. This claim is very significant if there is a death caused by an auto accident. See below.

**H. Replacement Services** - If you are unable to perform services you normally perform due to your injuries and you have to pay for someone to perform these services, then you can be reimbursed for those replacement services.

### **3. Wrongful Death Damages:**

**A. Medical Bills** - Necessary and reasonable medical expenses are recoverable, BUT only recoverable if Plaintiff had paid them or incurred legal liability to pay them. Normally, an insurance company will pay for your medical expenses and therefore, this claim will be theirs. If you have paid for medical expenses out of pocket without insurance reimbursement, then you will be paid for this claim.

**B. Physical Pain and Suffering**- Recoverable only for that time period between the injury and the death; and, therefore, is usually not a significant claim in a wrongful death lawsuit.

**C. Punitive Damages** – If you can prove “gross negligence” by the defendant, then an amount can be awarded to punish the defendant for the purpose of

discouraging similar behavior by him and others in the future. This claim is rarely made or successful in an auto accident case.

**D. Impairment to Future Earning Capacity** – An amount awarded when it is proven that physical ability to earn money is impaired. You need to prove that injuries are permanent and prevent you from earning money in the future. This is easily done in a death case.

**E. Spousal Loss of Consortium** – This claim is very significant if there is a death caused by an auto accident because the juries highly value a spouse's complete loss of companionship from the victim.

**F. Parental Loss of Consortium** – When an auto accident results in the death of a child, the parent can make a claim for loss of companionship with the child and this claim is not limited to the time between the accident and the time of death.

**G. Child Loss of Consortium** – a child, who is not yet an adult, can make a loss of consortium claim for the loss of a parent and it is limited in time to the time between the death and the child reaching 18 years of age.

**H. Funeral Expenses** – Expenses associated with a funeral are recoverable against the defendant and partially recoverable under most no-fault policies.

## CHAPTER 28

### **Claim for loss of companionship of a spouse has been expanded!**

“Spousal loss of consortium” is a claim by a spouse for the loss of companionship of the decedent spouse, who has died as the result of the negligence of someone else. At common law, which is the law of equity that existed prior to the creation of statutory laws, this right was limited to the time period between the time of injury and the time of death. Therefore, this claim had little value.

The Kentucky legislature codified the loss of consortium laws in KRS 411.145 and the statute in no way limited spousal consortium to the life of the victim. However, the common law confused some courts and erroneous judge made laws were created that limited spousal consortium to the life of the victim. Finally, in 2009, the Kentucky Supreme Court corrected this error in the law through the case of *Tina Martin v. Ohio County Hospital Corporation*.<sup>19</sup> Now the spouse of a wrongful death victim is entitled to loss of companionship of the deceased spouse for the remainder of their life and not just the life of the decedent.

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<sup>19</sup>*Tina Martin v. Ohio County Hospital Corporation* 295 S.W.3d 104 (Ky. 2009)

## CHAPTER 29

### **A claim for Emotional Distress Requires Physical Contact.**

Many clients ask if a claim can be made for the emotional or psychological impact that witnessing an accident may have upon them. For instance, a parent watching their child burn to death in an automobile fire due to a vehicle design defect or a parent watching their child being killed by a truck as the child attempts to cross the road. These two examples could cause the parent significant psychological problems, but can they make a claim against the negligent party for these psychological problems?

A person who suffers from emotional and psychological damage as the result of witnessing a horrific accident cannot make a claim for that injury unless there is physical contact between the person making the claim and the person causing the horrific event. There is one exception to this rule- If the outrageous event is intentionally caused, then there is no physical contact requirement.

# KENTUCKY NO-FAULT

## CHAPTER 30

### Understanding Kentucky "No-Fault" Insurance.

Who said a name had to mean something? "**Kentucky No-Fault**" is a name that makes "no-sense." It does not mean that no one is at fault in the accident. What does it mean? For the injury victim in an auto, motorcycle or truck accident, it means two things:

**1. The first \$10,000.00 in medical expenses, lost wages or other reimbursable expenses is to be paid by your insurance company and not by the insurance company of the at-fault party.** Somehow, a brilliant lawyer somewhere decided that because the at-fault party's insurance may not pay damages caused by its insured that this new law should be called "no-fault." Brilliant! Actually, confusing!

**2. The second purpose of Kentucky No-Fault is to somewhat restrict who can sue for personal injuries.** The No-Fault laws establish "THRESHOLD" requirements for suing the at-fault party. The Kentucky "THRESHOLD" requirements are as follows:

- Death.
- Permanent Injury.
- Fractured bone.
- Disfigurement.

- Loss of body member.
- Permanent loss of bodily function.
- \$1,000.00 in medicals.

The \$1,000.00 “THRESHOLD” makes the “THRESHOLD” restriction on the right to sue virtually meaningless, because it is easy to incur \$1,000.00 of medical expenses.

## **Kentucky “No-Fault” has 3 names - Don’t be confused.**

No-Fault benefits pay for medical expenses, lost wages, death benefits and replacement services. These benefits go by three different names and it is helpful to know that these names mean the same thing. The 3 names are: **no-fault benefits, personal injury protection (“PIP”) benefits and reparation benefits**. The term “reparation benefits” comes from the Kentucky “no-fault” statute (Motor Vehicle Reparations Act of 1974); “personal injury protection benefits” comes from the language found in most insurance policies and “no-fault” benefits comes from a term of art used around the country and is the term used by the Kentucky Insurance department. If you come across any of these names, you need to simply understand that they mean the same thing.

## **Why No-Fault laws were created?**

The majority of the states have No-Fault laws. So, why do most of the states have No-Fault laws? Was there an epidemic of stupidity going across the states? Well, no. The

reason the No-Fault laws were created was **to simplify the resolution of auto accident claims**. Before “No-Fault,” the victim of an auto accident had no way to receive compensation for lost wages and medical expenses before reaching a global settlement with the adverse insurance company. This was a great burden for the victim who could not receive the medical treatment necessary to cure his injuries and could not buy groceries because the injuries prevented them from working. No-Fault was designed **to allow the victim to be able to pay for medical expenses and receive lost wages** while he attempted to resolve his claim for all damages against the at-fault insurance company.

## **What do Kentucky No-Fault benefits pay for?**

Kentucky No-Fault pays for the following:

- Medical expenses
- Lost wages. (\$200/week unless you purchased more than \$10,000.00 in coverage)
- Replacement services
- Survivor’s economic loss
- Survivor’s replacement services
- Funeral expenses

## CHAPTER 31

### **Should I reject Kentucky No-Fault?**

Did you know that you can reject Kentucky No-Fault? Most Insurance agents never mention this to their clients. But, should you reject Kentucky No-fault and how do you do it anyway?

Kentucky No-Fault laws artificially restrict your right to sue someone who causes injuries to you in an auto accident. If you do not like this restriction, you can reject Kentucky No-Fault and be free to sue anyone you want. All you need to do is sign a rejection form that your insurance agent can provide for you. The form can also be found at the Kentucky Insurance Department website (<http://insurance.ky.gov>). But, before you rush to sign this form the next time you renew your auto insurance, consider two reasons why I would recommend that you not reject Kentucky No-Fault.

The first reason not to reject Kentucky No-Fault is because the restriction of your right to sue is not much of a restriction at all. Kentucky law describes a long list of ways that you can qualify to sue someone for your injuries including broken weight-bearing bone, permanent scar, etc. Included on that list is the \$1,000.00 in medical bills qualification. In other words, if you incur \$1,000.00 in medical expenses, as a result of your injuries, then you may sue the person who injured you. In today's world, it is easy to incur \$1,000.00 in medical expenses- one stop into the emergency room would do it. Therefore, the restriction on your right to sue is more virtual than real.

The second reason not to reject No-Fault is that it provides valuable insurance benefits. At a minimum, it provides

\$10,000.00 of insurance covering medical expenses, lost wages and other replacement costs. If you can afford it, I would recommend that you purchase “added” No-Fault, which comes in additional increments of \$10,000.00. Health insurance continues to reduce the amount it pays for medical expenses and Kentucky No-Fault is of great assistance to auto accident victims who incur medical expenses and lost wages.

My recommendation is that you not reject Kentucky No-Fault and that you look into the cost of additional Kentucky No-Fault insurance because it could come in handy if you are ever involved in a motor vehicle accident.

## CHAPTER 32

### **The Assigned Claims Plan may provide Kentucky No-Fault Benefits if you have no insurance covering your accident.**

The Kentucky legislature created the Assigned Claims Plan to cover unusual circumstances where you may find yourself without no-fault coverage. Here are some examples:

- Your insurance company goes bankrupt.
- Your insurance company rejects your claim for a reason not allowed under the Kentucky no-fault laws.
- No-fault is not available to you and it should have been. This one covers a myriad of circumstances such as if you were a passenger in a vehicle that was uninsured and you do not own an automobile.
- You were injured as a pedestrian and the car that hit you did not have insurance.

You should consult with an attorney or the Kentucky department of insurance if you believe you may have a claim under the Assigned Claims Plan. You may find the application for no-fault benefits through the Assigned Claims Plan at [www.kyinsplans.org/assigned-claims.html](http://www.kyinsplans.org/assigned-claims.html).

## QUESTIONS UNANSWERED

If this Handbook has not answered a particular question you have about your situation, feel free to contact the **Kentucky Auto Accident Attorney** law office for free advice and information. You can go to the firm website at [www.kyautoaccidentattorney.com](http://www.kyautoaccidentattorney.com) and use the contact form (just click the “contact” button at the top of the page) or send an email to [kyaaa@insightbb.com](mailto:kyaaa@insightbb.com) or call 502-241-8000 or 859-367-0036.