

— ABSOLUTELY —

ESSENTIAL QUESTIONS

TO ASK **BEFORE** YOU PICK A LAWYER
OR SETTLE YOUR CASE



GARY BURGER

ABSOLUTELY ESSENTIAL QUESTIONS TO ASK BEFORE YOU PICK A LAWYER OR SETTLE YOUR CASE

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INTRODUCTION AND THE BASICS

You likely are reading this because you and/or a friend or family member has suffered an injury. When this injury is caused by the careless or wrongful act of another person or company, you have a civil claim against that person. There are a wide variety of types of claims – automobile crashes and workers' compensation cases occur most frequently. But people are also injured because of dangerous products, hospital and doctor errors and mistakes, or unsafe property.

When should you settle your claim directly with the insurance company? What questions do you ask the insurance claims representative? How do you know when to hire a lawyer? Which lawyer should you hire and what do you ask them to decide? This short guide is designed to answer these questions.

Drivers who violate safety rules injure and kill people. We are all trained to follow the Rules of the Road and to operate motor vehicles safely. However, when that does not occur people are easily injured. Typically, the rule violations are excessive speed, failure to keep a careful lookout, failure to yield the right of way and violations of traffic signals. Drivers must use the "highest degree of care" or what "a very careful person" would do under the same circumstances.

People violate the Rules of the Road in many different ways, and all of those violations are dangerous. In 2013, 757 people were killed in Missouri traffic accidents. Despite laws requiring them, only 80% of Missourians wear seatbelts. As a result, 6 out of 10 vehicle occupants killed in Missouri traffic accidents in 2013 were unbuckled. Further, despite impaired driving laws, 30% of Missouri traffic fatalities in 2013 involved a substance impaired driver. The leading cause of

fatal car crashes, other than substance impairment, is speeding and improper lane usage. And – don't drive inTEXTicated!

In the United States:

- Over 37,000 people die in road crashes each year
- An additional 2.35 million are injured or disabled
- Over 1,600 children under 15 years of age die each year
- Nearly 8,000 people are killed in crashes involving drivers 16-20
- Road crashes cost the U.S. \$230.6 billion per year, or an average of \$820 per person
- 3 million accident claims per year

When you are in a car accident, you only have a claim for personal injuries if the other driver was negligent, or caused injury to you. If the accident was your fault, no one else should pay you for your injuries, unless you had medical payment benefits or some other benefits through your insurance. If the other driver broke the rules of the road, drove unsafely and carelessly and injured you or a passenger, you *do* have a claim. Those claims usually divide into property damage and personal injury claims. Usually, you should handle your property damage claim yourself as you never want a lawyer to take a fee out of the money recovered for your vehicle-- you are already not going to get full value for your vehicle damage. Typically, people have high loans on vehicles and insurance companies pay wholesale or other reduced costs to pay for property damage.

Make sure you get all your medical care quickly and thoroughly after the car crash. You will want to undergo treatment until you are at your maximum medical improvement. For a medical or personal injury claim, hire a lawyer for moderate and severe injuries and consider resolving small claims yourself. The

guide below tells you how to differentiate between the size/importance of the claim and how to choose the right lawyer for your case. Be careful in dealing with insurance companies – some are fair but many cannot be trusted. They are incentivized to treat you unfairly – caveat emptor or seller beware – and you are selling your claim.

Workplace injuries are equally scary and debilitating. There are certainly conscientious employers genuinely concerned about workplace safety. But there are also employers who cut corners, rush work, understaff, and do not emphasize safety over profits. We learn of these work injuries and deaths and all too often they are preventable. In 2014 in the United States, there were 3 Million workplace injuries – which is an incidence of 3.2 cases per 100 equivalent full time workers. Unfortunately, this included 4,679 deaths. Twenty percent of deaths are in the construction trades – with the leading cause falls. Here are the ten most frequently cited standard violations by OSHA:

1. Fall protection
2. Hazard Communication
3. Scaffolding
4. Respiratory protection
5. Control of Hazardous Energy (lock out/tag out)
6. Powered Industrial Trucks
7. Ladders
8. Electrical and wiring methods and components
9. Machinery and Machine Guarding
10. Electrical Systems Design

When you are injured on the job you have a claim under your states' Workers Compensation Laws. In Missouri and Illinois your employer or its insurance company must provide three types of benefits:

1. **LOST WAGES:** Injured workers are due two-thirds ($\frac{2}{3}$) of the value of their wages while they are treated for their injuries. If an employer can provide the employee with labor that can be completed while on restrictions imposed by the treating doctor, than the employee must perform that newly assigned task until the restriction is lifted. Employers sometimes play games with job assignments for their injured workers by reassigning them to tasks that do not comply with the restrictions. Even worse, workers are sometimes fired for exercising their rights under workers' compensation laws. Both of these behaviors are illegal.

2. **MEDICAL EXPENSES:** Missouri law requires that injured workers receive compensation for any medical expenses incurred as a result of workplace injury. Employers generally have the right to choose the doctor that you will go see.

3. **LUMP SUM:** The employer is only required to pay you for lost wages and medical expenses until you reach your maximum medical improvement. When the law says you will not get any better, the employer is no longer obligated to pay you any disability payments. At that point, the employer will offer you a settlement that is intended to compensate you for any diminishment in your capacity to work for the remainder of your life as a result of sustaining workplace injury.

WHEN SHOULD YOU SETTLE YOUR CASE WITHOUT A LAWYER

Sometimes you should resolve your small injury case yourself **without a lawyer**. My lawyer brethren may not like this, but I often tell mild impact car accident victims with only an ER visit or a couple doctor or chiropractor visits to settle their claims themselves. A worker who has a minor injury with a good employer and insurer who stands by her and pays all benefits owed, may not benefit from a worker's compensation lawyer. Lawyers add value to cases where the injuries, medical treatment and damages are more serious – and where the insurance company is taking incorrect positions or not being fair. If your medical from a car crash lasts weeks or more, or the insurance company is not treating you fairly, you likely need a lawyer. If you have a serious work place injury, or your employer is not treating you fairly, you often need a lawyer. This is for a variety of reasons: Trial lawyers know the full value of your claim and how to get it; there may be legal hurdles for you to recover that a lawyer can get over; and claimants are risk averse while insurance companies are not and you can get more power with a lawyer. Please remember that delay and inaction can negatively impact your claim.

In a car crash case, you can resolve your property damage claim, get full payment to repair your car or get a new vehicle. If you get basic medical attention after a car crash and are completely healed from that treatment, you can provide the medical bills and records to the insurance claim representatives to get payment for pain and suffering and resolve the claim yourself. Similarly, if you have a small slip in the grocery store but only go the urgent care and are fine, settle it without a lawyer. They will often quickly pay your medical bills. Only if

your injuries exceed this basic medical treatment do you need an experienced and qualified lawyer to assist you.

Here is what you should do if you want to try to resolve your own case. Be courteous and kind to the insurance claim representative and advise them of what happened (but no recorded statement is needed – they can take notes and it is not complicated). Tell them how you were rear ended or the other driver violated the light signal or why the other driver is at fault. Most lawyers will tell you not to give a recorded statement and that is generally true. However, if you have a small claim, you are not significantly injured, you are not going to get any medical records, and you want to quickly handle it yourself - go ahead and give a simple recorded statement. It is not going to hurt you- just make sure that you tell the agent that the other person was at fault and how they were at fault. Organize your thoughts and write them down beforehand. If it's a slip and fall, do the same – report the incident to the business and fill out an incident report or have them do that. Then communicate with the representative of the store or their insurance company. They likely will take care of your bills and pay you a little extra for the inconvenience.

In trying to settle your case, provide all your medical records and bills to the insurance company. Provide to them photos and any other material that is relevant. Have them pay the full price of the medical or the reduced price that your insurance paid. Do not let the defendant's insurance get any benefit because your health insurance paid the medical. This is a source collateral to the defendant and one that they should not get the advantage of. You are the one that paid insurance premiums, so you get that benefit. Have the insurance company pay the full price of all the medical bills that were paid--not necessarily

what was billed, but what was *paid*--and then add a reasonable amount for your pain and suffering.

Make sure your property damage, rental car, and any other charges are paid. If you have wage loss damages from missing work, provide copies of pay stubs to show what you are making in the hours you missed. Advise them of any miscellaneous damages like a broken phone or lost property.

If the insurance company is offering a quick and fair settlement in a relatively small injury case, settle it. But make sure your entire medical treatment is completed and you are not going to get any worse or have any additional medical treatment. You do not want to settle a case and need further unknown medical care or additional uncompensated damage. I advise folks in such circumstances to add some for pain and suffering and settle their case. A lawyer like me cannot add value to that case and you will put more money in your pocket without me and my fee.

Make sure they pay your settlement. You want to make sure you are the only one on the check and they are not paying your other medical providers. You also want to make sure they are not paying any other money to med pay or any other "lien holders." A lien holder is any person or entity that might have a legal claim or lien on the settlement monies you are getting. The cases where you should settle yourself are ones where fault is clear, you are not significantly or permanently injured, your injuries have healed fully and relatively soon after the accident, and the amount of the total claim is relatively low. Remember you do not have to accept what the insurance company offers. You can negotiate higher. If the insurance company starts saying they are not going to pay you adequately or that it is your fault or playing games with you, that is the time where you want

to talk to a lawyer. Never settle a claim at the scene of the accident or before you know the full extent of what your damages are. Remember that if the other driver doesn't have insurance, you can still make an uninsured claim against your own insurance company and get fully paid.

In worker's compensation cases, make sure you get paid 2/3 of your weekly wages. Make sure your employer pays all your medical bills. Cooperate with the nurse case manager or claim representative so they can expedite your care and claim. Then ask what your disability rating is and what they are offering to pay you to close out the case. Make sure this is fair. Many workers do this. Ask them to explain it to you. If your employer/insurer is not fair or candid with you – call a lawyer. Workers' compensation lawyers should only take legal fees on the lump sum disability payment at the end of the case (usually 25% in Missouri and 20% in Illinois but my firm charges less in bigger cases).

ESSENTIAL QUESTIONS TO ASK BEFORE YOU SETTLE YOUR CASE

1. Is the insurance company looking out for you or itself?

To be sure, there are good and reputable insurance companies and honest and fair adjusters. But I often say that insurance companies are the best source of business for injury lawyers because some of these companies can be unfair. I have many stories of people who did not want to go to a lawyer and wanted to handle their claim themselves. But when they are not treated fairly, they need an attorney to help. Good meaning people who "never like to sue anyone" spend great time and energy talking with the insurance company, giving recorded statements, providing full documentation of medical records and authorization,

giving photos, etc., and waiting for months and months – only to have the insurance claim representative offer a very low amount that doesn't come close to full compensation. The claimant (person injured because of the wrongful acts of another) can then be a year out from their auto accident and have nothing to show for it because they thought the insurance company was going to be fair.

Bad insurance companies are in the business of taking premiums and denying claims. They have no legal duty to be fair to you; they often protect their interest and not yours. There are many instances of insurance companies acting improperly. I have had many occasions to represent good, hard working people, file suit, litigate cases, take depositions, take video depositions of doctors, and then either try the case to get a fair result or have the case settle on the eve of trial. The conduct of insurance companies can be ridiculous. Valid claims in workers' compensation, auto crashes, disability, property damage, dangerous and unsafe property claims are all too often summarily denied. Insurance companies will callously deny liability on a clear rear end auto accident with extensive property damage and never pay. They will deny liability until the opening statement at trial when all of the sudden, they admit they were negligent and they caused damages. This is their technique to try to surprise you and gain sympathy with the jury. I can list 20 other ways the insurance companies try to rip off consumers – misrepresent amount of insurance; say uninsured coverage does not apply when it does; deny coverage of clearly related medical treatment; create arbitrary timetables of coverage and deny medical after that; say you were at fault and recovery is reduced when that is untrue; saying they 'arbitrated' the claim with another insurance company and are reducing recovery; saying your medical condition is degenerative when it isn't or is irrelevant; only paying for a

certain number of physical therapy visits; saying your medical insurance precludes covering medical bills; saying they only will pay medical bills and not pain and suffering; saying wage loss damages cannot be verified; saying there was too low an impact to justify medical damages, etc (is that 20? – if not go to our website for many more crazy stories).

The fact is that people don't know the claims handling process and it is difficult to know what to do or what is fair. You want to trust your insurance company because you have been paying premiums to them for years, but they may not have your best interest in mind. If you have significant damages at stake, look out for yourself and get a lawyer to look at the case. The lawyer should be able to tell you why they would add value to the case.

2. Are you completely done with your medical treatment and you will get no further treatment? Have you reached your maximum medical improvement?

Do not settle your claim before you know the full extent of your injuries. If you ever settle your claim and sign a release, **you fully and finally settle and release your claim.** You can never recover any more money. Releases contain language that you are fully and finally settling and completely resolving your claim for all injuries from the car accident, whether known or unknown. You do not want to settle your claim and then find out that you need additional medical care or have long lasting pain, problems or disability. Maybe the worst mistake that a car accident victim or their lawyer can make is to settle a case and then discover that the injured party needs surgery a month later.

Many times back or neck problems linger for a long period of time and it's only after an MRI or other detailed study that herniated discs or underlying trauma is identified. We have represented car accident victims who tried to

recover without surgery through physical therapy, strengthening and exercise, injections and other therapy, but finally resort to surgery. Typically, medical providers want to try the least invasive and conservative treatments first and only after those have failed opt for surgery. You do not want to settle a claim for \$10,000 and then later find out you need a \$50,000 surgery.

Often, you are not 100% after you receive treatment and may have a residual disability or disfigurement. Any treatment can only last until you are at your maximum medical improvement. But people have lasting symptoms--pain, lack of mobility, loss of function, lack of ability to do things, incapacity to work at full potential, and other disabilities. These are part of damages.

3. Are you settling the case because you need the money or because it's truly at full value of your claim?

The answer to this question is obvious, but the reality is that most folks who sustain an injury also sustain severe financial hardship. Try to get the full value of your damages and not less from the defendant's insurance company. You are settling and selling you bodily injury claim and should get full price. Look to other sources to sustain you financially so you are not forced to settle for less. Get a lesser paying job with less physical demands for a while, move to a cheaper apartment or house, ask family members to work and contribute financially, etc. Remember that the insurance company has both time and statistics on its side. If they do not prevail on your case, they may on the next one. They are in no rush to settle you case unless they can get an advantage by doing so. Claimants are emotionally and financially involved on a personal level in the outcome of their particular case. Defense counsel and the insurance adjusters are not. Once more, advantage to the insurance company. It is the insurance company that decides,

by the settlement offers they make, which cases settle and which ones go to court. A review of verdicts does not necessarily include all those cases that settled prior to trial, or during trial, and prior to verdict. As a generalization therefore, it is often that the weaker cases from the plaintiff's perspective that end up actually being tried to verdict. Do not rush to settle your case if you are not getting the full value of your case.

4. How should you negotiate?

In negotiating with the insurance company, be polite. Kill them with kindness and be sweet. Be professional, non-argumentative and direct. Send things by paper or email and document your interactions. Follow up on matters and don't let things delay too long. Give reasonable time for claim representatives to review material, as you are not their only claim, but then follow up in a courteous manner. Establish a rapport and a goal to resolve and settle this claim with the claim representative. Don't give outlandish monetary demands. Once you settle the claim, you can sign a release which releases your rights. But read it carefully and make sure you are not still injured and being undercompensated.

Do not be argumentative or adversarial with the claim agent. You can be firm and resolute, but be nice and kind at the same time. Claim representatives have a lot of authority and discretion in handling claims. If they like you, they might pay you more. If you are a jerk, they will not do you any favors and may not pay you as much as they would otherwise for your property damage claim, small personal injury claim, med pay, etc. Make sure you provide adequate documentation. You need to provide medical bills, a medical authorization so they can verify the bills, medical records, witness statements, pictures, etc. If the claims agent refuses to pay you because they think it's a low speed impact, and

you have photos showing tremendous property damage, provide those photos to them. If you have medical records showing severe injuries that would warrant a much higher settlement, you should provide those records. Although you would not normally want to provide anybody all of your medical records, if you are going to make a claim for personal injuries, you put your personal health at issue. So, many times you will be expected to provide medical authorizations to enable the claims representative to get all of your medical records and bills. This is normal. You can provide authorization and request copies of the records and that they will be destroyed when the claim is resolved.

Communicate by email so you document your interaction with the insurance company. You can go back later and show delay, positions taken or incorrect representations that are made. Confirm positions in writing – especially regarding insurance coverage, liability and damages.

- 5. Do you know all the facts and have you fully investigated the case? Is the insurance company trying to settle your case at a discount because they say: you are at fault; the impact was not strong enough; they only have to pay some of your medical bills; your car is worth less than it really is? Are they pushing you to settle the case quickly while you are still treating for your injuries?**

Make sure you are fully informed about the case before you settle. If the insurance claim representative is playing games with you do not settle – call a lawyer, at least to verify what is being told to you by the insurance company. Do not give a recorded statement if you have significant injuries or liability concerns. That is only going to be used against you later. Do not sign a release or other document regarding your rights without knowing what you are settling and/or consulting an attorney. Do not trust the insurance company's representation of

the scope of insurance coverage if it constrains or limits coverage. Do not sign or negotiate your claim while on medication or while still recovering from your injuries. Do not assume the insurance company will be fair with you. Discretion is the better part of valor. Verify everything. Regarding damages, make sure you get all your medical care and fully complete your medical course of treatment. It may be that when you are completely done with treatment you still are not 100% and have some degree of disability. It is only after you complete your medical care and reach your maximum medical improvement that you should resolve your case.

Insurance claims adjusters have training and experience to get the upper hand over claimants. They know how to negotiate. They are the ones who have the money and are writing the check – the claimant is out money and damaged and needs the compensation. They know many aspects of the law, damages, medicine and insurance policy provisions. They know what jurors typically award in typical cases in certain venues. They are not risk averse like a claimant – they do not mind taking the risk of not settling as much as an injured person minds. They know certain statements and or positions to take to get the upper hand in negotiation – they negotiate for a living.

If an agent says you are at fault or partially so, they will reduce your damages. You may have no choice but to get a lawyer. I have encountered many many times that a defendant makes up a story to sound less at fault in a case. We have to go to great lengths to prove that falsehood (lawsuit, investigation, deposition, trial) and it can be frustrating. If this occurs tell the adjuster it is not true and show the police report, other witness statements, or the improbability of the defendant's story.

If they say the impact was not hard enough, tell them it was and that all of the force of the impact went to the front seat where you were sitting. Or, that there was more damage than meets the eye – i.e. you have a steel bumper, or a collapsible one, or that the other car went under yours, or look at the damage to the other car. If they arbitrarily cut off paying for your medical care at some point, resist it. You are still in pain and need the treatment. Go to your primary doctor or an orthopedic doctor to verify the chiropractic treatment. They may say you should only get medical care for a certain length of time, but that is arbitrary. If they say they will only reimburse copays or limit your medical, do not agree. You should be paid for the amount paid to satisfy your bills and unpaid bills in Missouri. You should be paid the full amount of your medical bills in Illinois. If you have health insurance – the defendant does not get the benefit of it. Same with sick or vacation pay – you still should get paid for your wage loss even if you had other benefits of employment, including short term disability, which paid you. Make sure you get paid the full value of your car – this can be hard. If they offer you less, but you need the money, take the money but do not sign a release and make sure neither the check nor anything from the insurance company says it is paid in full, a release or prevents you from further compensation.

6. Do you know some of the false statements made by insurance agents to try to settle the case on the cheap?

- They do not have to pay for medical care if your personal health insurance paid for it.
- Do not have to pay your wage loss damages because you took sick time, disability or your employer covered you.

- They only have to pay wholesale value for your vehicle property damage.
- You are at fault and that they have witnesses or information that show that you will not recovery and will not get all of your damages.
- That a lawyer will only take away money from you and out of your pocket in a settlement. (this is false because we would not take a case if we could not add value to it).
- That there is time urgency to settle your case and that if you don't settle it right away they won't offer any more money down the road.
- That because of the level of impact your case, they can only pay for a certain amount of medical care, like a few weeks of physical therapy or chiropractic treatment.
- That there is no way you could have been as injured as you were from the impact.
- That the insured only has a certain amount of insurance coverage so they cannot pay. (Get a copy of the declaration page and the policy terms and make them give you an affidavit that there is no other insurance).
- That they only have to pay med pay and don't have to pay for your pain and suffering or your other damages.
- No work comp insurance. (Every employer with over 5 employees must have it – turn them into the Department of Insurance).

- No med pay or other insurance. (Have them send you the declaration page and the policy)
- Have to settle now or will rescind offer. (They will not).
- A lawyer will just charge you and you will get less money.
- They can only put so much on the case. (Have them call and get more).

7. What are your rights in dealing with insurance companies?

State law provides different rights to people making claims against insurance companies – either your own or the negligent party that injured you. These laws create duties for the insurer and govern how the insurer makes a decision about whether or not to settle a claim. Because these laws are from each state's department of insurance, they can vary a bit from state to state. In Illinois, insurance providers have the following statutory duties:

- Within 21 days of notification of loss, make a bona fide effort to communicate with all insureds and claimants where liability is reasonably clear and maintain evidence of effort to communicate in the claim file. *Ill. Admin. Code tit. 50, § 919.40; see also 215 Ill. Comp. Stat. 5/154.6(c)*
- Within 15 days from receipt of communication, acknowledge pertinent communications from a claimant or insured with respect to claims arising under the policy. *Ill. Admin. Code tit. 50, § 919.40(c); see also 215 Ill. Comp. Stat. 5/154.6(b)*
- Within 15 days of a request, provide forms necessary to present claims with explanation of effective use of forms. *215 Ill. Comp. Stat. 5/154.6(o)*
- Within a reasonable time, affirm or deny liability on claims. *Ill. Admin. Code tit. 50, § 919.50(a); see also 215 Ill. Comp. Stat. 5/154.6(i).*
- Promptly, on the case of the denial of a claim or the offer of a compromise settlement, provide a reasonable and accurate explanation of the basis in

the insurance policy or applicable law for such denial or compromise settlement. *215 Ill. Comp. Stat. 5/154.6(n)*.

- Within 30 days after affirmation of liability, offer payment on claims if the amount of the claim is determined and not in dispute. *Ill. Admin. Code tit. 50, § 919.50(a)*.
- Within 30 days after affirmation of liability, tender payment for portions of the claim which are not in dispute and for which the payee is known. *Ill. Admin. Code tit. 50, § 919.50(a)*.
- Within 30 days after investigation and determination of liability is completed, on first party claims if a settlement of a claim is less than the amount claimed, or if the claim is denied, provide a reasonable written explanation of the basis of the lower offer or denial. Include the police definition, limitation, exclusion or condition upon which denial was based, and a Notice of Availability of the Department of Insurance. *Ill. Admin. Code tit. 50, § 919.50(a)(1)*.
- Within 30 days, if the claim is denied, provide the third party a reasonable written explanation of the basis of the denial. *Ill. Admin. Code tit. 40, §919.50(a)(1)*.
- Within 30 days, report vexatious or unreasonable delay findings by a court of law to the director of the Illinois Department of Insurance and enclose copy of findings and penalties, if any. *Ill. Admin. Code tit. 50, § 919.80(a); see also 215 Ill. Comp. Stat. 5/155*.
- Within 40 days, for automobile collision claims, make final payment or render the repaired automobile to the insured or third party claimant. *Ill. Admin. Code tit. 50, § 919.80(b)(1), (2)*.
- If a first party physical damage automobile claim remains unresolved for more than 40 calendar days from the date the claim is reported, provide a reasonable written explanation for the delay to the insured and include Notice of Availability of the Department of Insurance. *Ill. Admin. Code tit. 50, §919.80(b)(2)*.

- Within 60 days, for automobile property damage liability claims, make final payment or render the repaired automobile to the insured or third party claimant. *Ill. Admin. Code tit. 50, § 919.80(b)(1), (3).*
- If an automobile property damage liability claim remains unresolved for more than 60 calendar days from the date the claim is reported, provide a reasonable written explanation for the delay to the third-party claimant and include Notice of Availability of the Department of Insurance. *Ill. Admin. Code tit. 50, § 919.80(b)(1); see also Ill. Admin. Code tit. 50, § 919.80(d)(7)(A); see also 215 Ill. Comp. Stat 5/143.13.*
- Within 40 days, make final payment on claims on policies of fire and extended coverage insurance. *Ill Admin. Code tit. 50, § 919.80(b)(1); see also Ill. Admin. Code tit. 50, § 919.80(d)(7)(A); see also 215 Ill. Comp. Stat 5/143.13.*
- If claim on a policy of fire and extended coverage insurance remains unresolved for more than 75 calendar days from the date it is reported, or 25 calendar days after receipt of proof of loss, whichever is less, provide reasonable written explanation for the delay to the insured and include Notice of Availability of the Department of Insurance. *Ill. Admin. Code tit. 50, § 919.80(d)(7)(B); see also 215 Ill. Comp. Stat 5/143.13.*
- Upon request, for fire and extended coverage claims, supply copy of written estimate upon which settlement of partial losses is based to insured. *Ill Admin. Code tit. 50, § 919.80(d)(7)(C).*
- Promptly, for fire and extended coverage claims, review and respond in writing to insured in regard to a written estimate obtained by insured and provide insured with the name of a repair shop or contractor that will make the repairs. *Ill Admin. Code tit. 50, § 919.80(d)(7)(c).*

Under Missouri law, there are fewer statutory duties for insurance companies. However, those duties that do exist are more strict and usually have shorter time frames. In Missouri, insurance providers have the following statutory duties:

- Within 10 working days of receiving notification, acknowledge receipt of notification of claim from claimant. *Mo. Code Regs. Ann. Tit. 20 § 100-1.030(1)*.
- Within 15 calendar days of a request, provide forms necessary to present claims with reasonable explanations regarding their use. *Mo. Code Regs. Ann. Tit. 20, § 100-1.030(3)*, see also *Mo. Rev Stat. § 375.1007(13)*.
- Within 10 working days, reply to communication from any claimant which reasonably suggests that a response is expected. *Mo. Code Regs. Ann. Tit. 20, § 100-1.030(2)*.
- Within 15 working days, advise the first-party claimant of the acceptance or denial of the claim. *Mo. Code Regs. Ann. tit. 20, § 100-1.959(1)(C)*.
- Within 45 days from the date of the initial notification and every 45 days after, notify claimant that investigation remains incomplete and state what information remains outstanding. *Mo. Code Regs. Ann. tit. 20, § 100-1.050(1)(c)*.
- Within 30 days before the date on which the time limit may expire, give first party claimant written notice that the statute of limitations may be expiring and may affect claimants rights. *Mo. Code Regs. Ann. tit. 20, § 100-1.050(1)(c)*.
- 60 days before the date on which the time limit may expire, give third party claimant notice that the statute of limitations may expire and may affect claimants rights. *Mo. Code Regs. Ann. tit. 20, § 100-1.050(1)(E)*.
- At the time settlement is entered into, give insured copy of the present value calculation of future benefits when offering cash settlements of first-party long-term disability income claims and have insured sign it. *Mo. Code Regs. Ann. tit. 20, § 100-1.050(1)(G)*.

Knowing how these regulations work is a huge asset when negotiating your insurance settlement. Because these rules govern the behavior of the insurance adjuster, they are a good check on the most obvious examples of insurance company misconduct. Missouri defines improper claims practices at Mo. Rev. Stat. section 375.1007 and Illinois's statutes are referenced above.

8. Do you know the full limits of your insurance?

Make sure you know, in writing and with seeing declaration pages and copies of policies, the full amount of insurance for a claim. There may be more insurance or benefits that are not being told to you. In workers' compensation claims, workers regularly resolve and/or do not pursue their lump sum disability claim at the end of their case/treatment. After an employer pays temporary disability and wage loss damages, it must pay temporary or permanent total disability settlement. Do not settle your case without that recovery. Every employer with 5 or more employees must carry workers' compensation insurance in Missouri and Illinois.

In auto crash cases, the negligent driver has to have car insurance under the law of each State. That should pay for your property damage and injuries to you and your passengers. These damages include medical bills, wage loss and pain and suffering and mental anguish. But you have insurance too, which will pay you all of this if the negligent driver does not have insurance. In addition you probably have medical payment coverage which pays medical bills or co-pays regardless of fault. You also have Uninsured Motorist insurance coverage and may have Underinsured Motorist Coverage.

Uninsured Motorist Coverage

All auto insurance policies carry uninsured motorist coverage (in Missouri and Illinois) in the amount of \$25,000. This provision means that if you, a family member or friend are injured in an automobile accident and the driver who was at fault did not have insurance, and is uninsured, your insurance pays. This includes compensation for medical expenses, wage loss, pain and suffering and emotional distress. Every policy holder has this coverage and it is the same as if

the other driver actually did have insurance-but your insurance policy provides coverage for the other driver's negligence.

Uninsured coverage applies in a wide variety of situations. If there is a hit and run or phantom driver, your uninsured coverage applies. If your car is struck by a driver who then drives away and you don't know who it is, if you're walking and you are struck as a pedestrian by another driver who leaves, or a circumstance where you do not know or cannot track down the identity of the phantom driver, you have an uninsured claim under your own policy to recover all your damages. More typically this coverage is used in cases where the driver who rear ended you or pulled out and struck you or did not look when they changed lanes and struck your car does not have insurance. Also they could have failed to pay their premium and their insurance was cancelled even though they had an insurance card at the scene and you think they had insurance. Under these circumstances, you can recover under your uninsured policy.

Amount of uninsured coverage and stacking are two important areas. You may just have the minimum uninsured amount, or you may have bought higher uninsured coverage. We can figure this out for you, or you can call your insurance agent and find out yourself. Have them email you the terms of your policy or your declaration page. Sometimes insurance companies print this off on your insurance card. Many times insurance companies sell \$50,000 uninsured policies so you may have that amount of coverage. In addition, there is a legal idea called "stacking" insurance coverage. The law in Missouri is that you get to stack the minimum \$25,000 uninsured from every vehicle you own under that same policy. This is because uninsured coverage is mandatory and the State of Missouri, both through statutes and court decisions, require that coverage. For example, if you

are injured and your vehicle has \$25,000 of uninsured coverage, but you also own two other vehicles that are insured on that policy, you will have \$75,000 in uninsured coverage. Insurance companies will never tell you this and very often try to settle uninsured claims directly with their claimants without advising them about stacking. I have had instances where a family with very large damages is contemplating a \$25,000 settlement that is being pushed by an insurance company. Upon inquiry we discovered that family had 3 additional cars and actually had \$100,000 in coverage available. If you settle for the \$25,000 and sign a release, you cannot go after the additional coverage. There are also unique circumstances if you are driving a company vehicle or are a pedestrian that provides you this coverage as well.

Make sure you get fully compensated for all damages regardless of whether you are pursuing an uninsured claim against your own insurance company. You should make sure you get all your medical treatment and reach your maximum medical improvement. Your claim should include all of your medical expenses, your wage loss damages, and all the pain you have gone through and the emotional distress you have experienced. You also should get your medical payment coverage in addition to your uninsured claim.

Underinsured Motorist Coverage

Although not mandatory, many automobile insurance policies contain coverage for when a negligent driver injures you or your family and that driver does not have enough insurance to cover all your damages. If your damages are \$100,000 and the defendant driver who struck your car or hit you while you were walking only had \$25,000 in insurance coverage, you are underinsured for \$75,000. So, all insurance companies sell coverage to fill in this underinsured gap.

To find out if you have underinsured coverage, look on your insurance card or call your insurance agent.

To make an underinsured claim, you first have to settle the claim with the main tortfeasor, or person who injured you, and exhaust their coverage. So, if you are rear ended by a negligent driver, you first have to resolve the claim against the person who rear ended you. This means getting all of your medical care, reaching your maximum improvement, and making a claim against that driver. Sometimes these cases will settle before suit, sometimes after you hire a lawyer and suit is filed. It is very important to note you have to get all of the money available from the negligent driver. If the negligent driver has \$25,000 in insurance, and you settle that claim for \$20,000 you cannot get underinsured coverage. You must completely exhaust all other available insurance before you can make a claim for underinsured coverage. So, under the previous example, you must settle the claim against the driver who rear ended you for \$25,000. It is important that you first put your underinsured carrier on notice, and let them know that you have the claim, let them know that you are settling and resolving the case against the driver who hit you, and make sure they do not object. Then, your claim is ripe against your underinsured carrier. This does not mean that you cannot let them know early on about the claim, you should notify them when you file. This should be done in writing, and they will give you a claim number.

Very often insurance companies will not tell you that you have underinsured coverage or tell you how to make that claim. Often they will have separate claims adjustors and separate departments for underinsured coverage. They do this for a reason-to make it harder to make an underinsured claim. The adjustor for your property damage and your medical payment coverage will not

tell you that you have a possible uninsured claim or a possible underinsured claim. Rather, you must press the issue. As a lawyer, I even have to pursue these vigorously. I recently made a clear underinsured claim and had adjustors calling me asking me if I was really trying to settle a property damage claim, or get medical payment coverage or what exactly I was writing about. They knew and it was perfectly clear-but by putting up obstacles they decrease their payouts and improve their profits. Make sure that when you file an underinsured claim that you do so clearly, in writing and that the insurance company assigns you an underinsured claims adjustor separate from any property or med pay adjustor. Communicate with that adjustor about the status of the claim and advise that adjustor when you are about to settle and resolve the claim against the defendant who was negligent.

With underinsured coverage, there are “set off” and other issues so it is sometimes difficult to determine the exact amount of coverage. Underinsured policies are often written to say that they get a “set off” or credit for the amount you recovered from the underlying insurance of the person who injured you. This is actually a misrepresentation on the part of the insurance company that is regularly done. For example, you buy \$100,000 in underinsured coverage and it is promised as such, and you pay the premiums on that. What you do not know is that it really only offers \$75,000 in coverage. Why? Assume that you are injured by a negligent driver and your damages are \$500,000 (because you herniated a disc in your neck, had to have neck surgery, have permanent pain and problems for that, need lifelong medical treatment and there are significant wage loss damages). You sue the driver who rear ended you and caused this accident and you settled the claim for his insurance policy limits of \$25,000. Now you go to

your underinsured carrier and may demand for the \$100,000. They will say that under a part of your policy the amount that you got from the driver who rear ended you is credited against the policy limits of your underinsured coverage so you can only get \$75,000. If the driver who rear ended you had \$100,000 and you settle and resolve that claim for that full \$100,000, you can make no underinsured claim. The amount to be credited against the coverage is equal to the amount of insurance.

Many policies try to limit underinsured coverage. For instance, if the driver did not have any insurance, then it is an uninsured claim not underinsured. If you do not get all of the money in a settlement from the underinsured driver who hit you or if you do not communicate to your insurance company, they may find grounds to deny your claim. Many times insurance companies will decline coverage and say there is no coverage, or that they will not pay a loss, with strained and inaccurate readings of the insurance policy. Make sure that you get a lawyer or someone to review these insurance policies. Do not take the insurance company's word for this, even though you are their insured, they are not on your side and they are actively working to decrease your recovery as much as they can. It is just the way insurance companies operate. They will wrongly read their policies, they will misinterpret policies, they will ambiguously word policies on purpose to give them wiggle room, and employ lots of other tactics to decrease the amount they have to pay out to claimants, including their own insured customers. They do not owe a fiduciary duty to their insured clients, even if you think they should.

Note that in Illinois, underinsured motorist coverage claims are arbitrated and you don't have the right to file a suit in court. In Missouri, those arbitration

provisions are not enforced. Arbitration in Illinois fosters quicker resolution of these claims. But the downside is that you do not have the right to a jury trial and it can and does lead to insurance company abuse.

9. Have you consulted with a legal expert before signing a release so you can fully know your rights and the potential recovery you have?

You should if it's more than just a minor claim. Even call the lawyer up and ask him a question. Most of us will answer these questions over the phone for free. If you sign a release you give up your claim forever and cannot sue again or recover anything else from the defendant. You cannot settle and then get more money for medical bills, wage loss and/or future damages. This your only recovery and that if you sign a release you can never get any additional money for your injuries or damages. There are many other reasons to consult counsel. The main ones are if your damages are significant enough that a lawyer could add value to your case or if the insurance company is taking unfair positions. Lawyers should quickly answer these questions and advise if it makes sense to hire them.

ESSENTIAL QUESTIONS TO ASK BEFORE YOU HIRE A LAWYER

Choosing a lawyer is tough – how do you know who to get? You want the best you can get, to be treated nicely and fairly, and to get the full value of your damages as quickly as possible. Here are some questions you should ask a lawyer before hiring them:

- Do I even need a lawyer? Is my case so small because I don't have much medical that I would put more money in my pocket if I call the insurance company directly? Will you give me some guidance on how to do that without having to pay you?
- Are you going to handle my case personally?
- I know you say 'No Fee if No Recovery' and I get a free consultation, but if you lose my case are you going to want me to pay at least your expenses? Or do I really have no obligation whatsoever if we do not win my case?
- Do you go to court, take depositions, and fight these cases or do you just sign these up and let your associates do the work?
- Do you file lawsuits and try cases, or are we just going to collect a bunch of documents, send them to the claims adjuster and settle this case cheaply?
- Have you actually litigated and tried these kinds of cases? Do you continue to train and keep up with your trial skills?
- Do you have a reputation in the legal community and with claim adjusters and defense lawyers that you will fight to the very end for a

case to ensure that you get the full value of the settlement of the claim, rather than a reduced value?

- Do you have a packet of information (published articles, books, pamphlets, etc) to educate me about your firm so that I know that you will be able to strongly represent my interests?
- Are you going to look to try to get 50, 60, or 70% of my damages, or are you going to try your hardest to get 100% of my damages from the defendant?
- Do you have experience in winning difficult liability cases, pursuing claims where injuries are severe, finding additional insurance where no one else thought there was any, thinking outside the box, investigating claims and being aggressive to ensure that we get a fair recovery?
- How long have you been practicing in this field of law? Have you ever handled a case like mine before?

These are the main questions (and there are more below), and they are important. The public has a distrust of lawyers. Stories of bad lawyers get attention and lawyer jokes are legion. Know why sharks do not attack lawyers? Professional courtesy. But law is a profession that is well regulated. Lawyers must be licensed by the state in which they practice and there are civil and criminal penalties for practicing law or taking money to practice law without a license. Lawyers have Rules of Professional Conduct and an oath of admission to guide them in practice.

Missouri lawyers take the following oath:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Missouri;
That I will maintain the respect due courts of justice, judicial officers and members of my profession and will at all times conduct myself with dignity becoming of an officer of the Court in which I appear;
That I will never seek to mislead the judge or jury by any artifice or false statement of fact or law;
That I will at all times conduct myself in accordance with the Rules of Professional Conduct; and,
That I will practice law to the best of my knowledge and ability and with consideration for the defenseless and oppressed.
So help me God.

Illinois Lawyers take this oath:

I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability.

Lawyers have rules about honesty, diligence and communication to their clients and zealous advocacy for them. These rules are detailed, are typically uniform across the United States. Lawyers have to study ethics rules in law school, take a test on them to be admitted to the Bar, and take yearly continuing education on them throughout their careers. The Rules of Professional conduct for Illinois lawyers can be found at

http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/default_NEW.asp

and Missouri's ethics rules can be found at

<http://www.courts.mo.gov/page.jsp?id=707>. Members of the public (and clients)

can complain of lawyers and lawyers can be disciplined, suspended or disbarred.

The Supreme Courts of a State and sometimes the state bar associations regulate lawyers. You can find whether a lawyer has been disciplined on the Supreme

Court websites of most states. In Illinois you can find if a lawyer has been disciplined or disbarred at <http://www.iardc.org/> or and in Missouri at <http://mochiefcounsel.org/> or <http://www.courts.mo.gov/page.jsp?id=604>.

As you are further analyzing your choice of a lawyer, here are a number of additional questions you can ask.

- What are the possible outcomes of my case?
- Will you be able to assist me in finding good medical care?
- Will you be able to fight my liens for my insurance company or others who want to take money from my case?
- Do you charge additional money for fighting liens or if I have to get a loan or any other matter other than the percentage that you promised me?
- Are you willing to take my case for a lower percentage than what you have quoted?
- Are expenses included in your fees?
- Will you let me know what is going on with my case in a timely manner?
- Will you answer my phone calls and communicate with me?
- What style approach will you take--aggressive and zealous?
- Although I certainly want to settle my case, will you make sure I get all the money I can?
- Who else in your office will be working on my case?
- Can I have your personal cell phone number and email address so I can communicate with you about my case?
- What qualifications do you have to handle my case?
- Can you really add value to my case even if it is a smaller case?

- Is this is serious enough injury where I should get a lawyer?
- Does this lawyer have the right experience and resources?
- How is your firm's track record?
- What kind of reputation to do you have?
- Do you feel comfortable with this lawyer?
- Do you have any certifications or peer awards?
- Is the lawyer trying to hard sell you or is it obvious that they a robust business and having them as a teammate to fight your claim would be beneficial?
- If I terminate my representation of you before the matter is resolved, do I have to pay you?
- Will you be responsible for my case or will I be assigned to another lawyer? Or will you work as a team with other lawyers?
- Who is my primary contact?
- What is the best way to communicate with you?
- How are you going to tell me about what is going on with my case?
- Why should I hire you?
- How strong is my case?
- What are its weaknesses?
- What is the likely outcome of my case and what should I do?

If you have a workers' compensation claim you should hire a lawyer: if you missed time from work and no one is paying you; if it has been more than a year and you haven't settled your case; if your employer refuses to provide you medical care; if your employer refuses to pay you two-thirds of your weekly wage

while you are off; if your employer tells you that your claim is not covered by work comp or that they will not pay any benefits at all; if you are contacted by nurse case manager or claim representatives; if your employer refuses to get you medical care and pay your medical bills; if your employer will not tell you who the medical doctors are that you should be seeing; if the company doctor returns you to work too soon when you are still hurt; if the employer is making up light duty work and doesn't really have a position of you; if your employer fires you because you got hurt on the job; or if you think you have legal questions or need help.

In an automobile case, there are developments which raise your need for counsel. If your damages and injuries are serious; if the defendant or his insurance company is denying liability (or fault) for the accident when they should not; if they are asserting that there is no or limited insurance; if the insurance company is pressuring you; or if you think you have legal questions or need help. These are more detailed in my auto accident book.

Appendix 1: Questions To Ask Before You Settle Your Case With The Insurance Company

1. Is the insurance company looking out for you or itself?
2. Are you completely done with your medical treatment? Have you reached your maximum medical improvement?
3. Are you settling the case because you need the money or because it's truly at full value of your claim?
4. How should you negotiate?
5. Do you know all the facts and have you fully investigated the case? Is the insurance company trying to settle cases at a discount because they say you are at fault? Or are they saying that they only have to pay some of your medical bills, and not all of them because your insurance paid? Are they trying to say that your car is worth less than it really is? Are they pushing you to settle the case quickly while you are still treating for your medical care?
6. Do you know the full limits of your insurance?
7. Have you consulted with a legal expert before signing a release so you can fully know your rights and the potential recovery you have?
8. Do you know some of the false statements made by insurance agents to try to settle the case on the cheap?

Appendix 2: Questions to Ask Before you Hire a Lawyer

1. Are you going to handle my case personally?
2. I know you say 'No Fee if No Recovery' and I get a free consultation, but if you lose my case are you going to want me to pay at least your expenses? Or do I really have no obligation whatsoever if we do not win my case?
3. Do you go to court, take depositions, and fight these cases or do you just sign these up and let your associates do the work?
4. Do you file lawsuits and try cases, or are we just going to collect a bunch of documents, send them to the claims adjustor and settle this case cheaply?
5. Have you actually litigated and tried these kinds of cases? Do you continue to train and keep up with your trial skills?
6. Do you have a reputation in the legal community and with claim adjusters and defense lawyers that you will fight to the very end for a case to ensure that you get the full value of the settlement of the claim, rather than a reduced value?
7. Do you have a packet of information (published articles, books, pamphlets, etc) to educate me about your firm so that I know that you will be able to strongly represent my interests?
8. Are you going to look to try to get 50, 60, or 70% of my damages, or are you going to try your hardest to get 100% of my damages from the defendant?
9. Do you have experience in winning difficult liability cases, pursuing claims where injuries are severe, finding additional insurance where no one else thought there was any, thinking outside the box, investigating claims and being aggressive to ensure that we get a fair recovery?
10. How long have you been practicing in this field of law? Have you ever handled a case like mine before?

What are the possible outcomes of my case? Will you be able to assist me in finding good medical care? Will you be able to fight my liens for my insurance company or others who want to take money from my case? Do you charge additional money for fighting liens or if I have to get a loan or any other matter other than the percentage that you promised me? Are you willing to take my case

for a lower percentage than what you have quoted? Are expenses included in your fees? Will you let me know what is going on with my case in a timely manner? Will you answer my phone calls and communicate with me? What style approach will you take--aggressive and zealous? Although I certainly want to settle my case, will you make sure I get all the money I can? Who else in your office will be working on my case? Can I have your personal cell phone number and email address so I can communicate with you about my case? What qualifications do you have to handle my case?

Do I even need a lawyer? Is my case so small because I don't have much medical that I would put more money in my pocket if I call the insurance company directly? Will you give me some guidance on how to do that without having to pay you? Can you really add value to my case even if it is a smaller case? Is this is serious enough injury where I should get a lawyer? Does this lawyer have the right experience and resources? How is your firm's track record? What kind of reputation do you have? Do you feel comfortable with this lawyer? Do you have any certifications or peer awards? Is the lawyer trying to hard sell you or is it obvious that they a robust business and having them as a teammate to fight your claim would be beneficial? If I terminate my representation of you before the matter is resolved, do I have to pay you? Will you be responsible for my case or will I be assigned to another lawyer? Or will you work as a team with other lawyers? Who is my primary contact? What is the best way to communicate with you? How are you going to tell me about what is going on with my case? Why should I hire you? How strong is my case? What are its weaknesses? What is the likely outcome of my case and what should I do?