

# The Nuts & Bolts of Handling an Auto Accident Case

## I. INTRODUCTION

A. Opening Remarks

## II. THE INITIAL PHONE SCREEN

Use the initial phone screen to determine whether you want to meet in person.

## III. CLIENT INTERVIEW

Goal: To decide whether you want to handle the case and whether the client wants you to represent her.

### A. Client Brings to Meeting:

- Auto insurance Declaration page
- Photographs of vehicle and injuries
- Adverse Party information
- Medical Bills and Records
- Traffic Collision Report
- Medi-Cal/Medi-Care Cards

### B. Allow the Client to Tell their Story

Use the Intake Sheet as a checklist to obtain necessary information

### C. Liability - Who is at Fault for the Accident?

Traffic Collision Reports  
Witnesses  
Comparative Fault

### D. Property Damage

Photographs  
Repair Estimates  
Low Impact Cases

### E. Injuries

Elicit a detailed account of injuries  
Type of injuries  
Body parts injured  
Type of pain  
Treatment  
  
Pre-Existing Injuries  
  
Prior Claims

**F. Wage Loss**

Has Client missed time from work due to accident?

Did doctor authorize time-off?

Able to verify wage loss?

**G. Insurance Coverage**

**a. Is client insured for accident?**

Prop 213 requires all California Drivers to carry auto insurance

No insurance = no pain and suffering damages

**b. The Auto Insurance Policy**

**c. Does Adverse Party have Insurance?**

**d. Uninsured Motorist Claims**

Uninsured motorist protection is required by California law for every policy of automobile liability insurance issued in the state. It must be issued with limits of no less than \$15,000.00 per accident. It protects drivers against uninsured drivers, but it also protects pedestrians and cyclists if they are injured by an uninsured driver or hit and run driver.

**e. Underinsured Motorist Claims**

If your injury is worth in excess of the 3<sup>rd</sup> party's bodily injury limits, you have the right to go to your own insurance carrier and file a claim. An underinsured driver is someone who met minimum legal financial responsibility requirements, but did not have payment limits high enough to cover the damage they caused.

**H. LIENS**

A medical Lien is the right of a health care provider, doctor, or hospital to assert an interest in personal injury recoveries of its patients. The amount that can be recovered by way of a medical lien will be limited to the cost of the treatment or the service provided.

**Types of Liens:**

**Medpay**

**Kaiser**

**City & County of San Francisco**

**MEDI-CAL**

Right to recover reasonable value of benefits they provided to client. State is afforded a lien against any settlement or judgment in case. Lien is reduced 25% to defray attorney fees and litigation expenses.

The attorney representing a Medi-Cal Beneficiary has a duty to notify of claim. *Welfare & Institutions Code Section 14124.73(a), 14124.76(a), 14124.79.*

**MEDI-CARE:**

Insurance company and Plaintiff's attorney are on the hook

**I. RED FLAGS TO WATCH OUT FOR**

**a. Client is unrealistic or difficult**

**b. Client switching attorneys or has been previously represented**

**c. TIME LIMITS**

Generally two year statute for injury or death actions. *CCP Section 335.1*

Shortened Time for Public Entities (State, City, County)

Claims for Personal Injury or property damage must be presented not later than six months after the accrual of the cause of action. *Govt. Code Section 911.2*

Federal Tort Claims Act - 2 years. *28 USC Section 2401(b)*

**J. DAMAGES INJURED PARTY CAN RECOVER**

Medical Bills

Property Damage/Loss of Use

Wage Loss

Pain and Suffering

**IV. CREATING AN ATTORNEY-CLIENT RELATIONSHIP**

**a. Contingent Fee Agreement**

**b. HIPAA Health Authorizations**

**c. Setting up File and Calendaring Statute of Limitations**

**d. Keeping in contact with Client**

## **V. THE CLAIMS PROCESS**

### **A. Initial Contact with Insurance Adjustor/Claims**

- a. Letter of Representation
- b. Be Polite - Everything you say is memorialized
- c. Do not agree to Recorded Statement or signing Medical Release Authorizations

### **B. Gathering Documents**

Obtaining Client's Medical Records and Bills  
Wage Loss Documentation  
Photographs  
Incident Reports

### **C. DEMAND LETTER**

Adjuster will only consider objective evidence  
Valuing Case  
Negotiating Claim  
Should I settle the claim?

## **VI. LITIGATION**

### **Filing a Lawsuit - Litigation**

Brief overview of litigation process

### **Discovery**

#### **Written Discovery**

Interrogatories  
Document Production

### **Depositions**

### **DMEs**

### **Experts**

### **Judicial Arbitration/Mediation**

## **RESOURCES:**

San Francisco Trial Lawyers Association - SFTLA  
Consumer Attorneys of California - CAOC

**Rutter Guides to Civil Practice Before Trial and Personal Injury**