

WHEN THE RULES OF THE ROAD GET **BROKEN**

A GUIDE TO **ILLINOIS** CAR WRECK CASES

2ND EDITION



BILL TAPPELLA

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WRECK CASES***

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Disclaimer: This book does not constitute legal advice. For a free consultation, contact Tapella & Eberspacher LLC at 855-522-5291.

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INTRODUCTION

For over twenty-five years, I have represented people who have been injured in car wrecks. Over those years, I have advised hundreds, if not thousands, of people on what to do and what not to do when involved in a car wreck. Throughout those years, I have found that there are many questions that are universally asked by almost every client. This book is my effort to address those frequently asked questions for future clients and the public at large. I hope that it will help you in the event that you find yourself in the unfortunate circumstance of a car wreck.

Please understand that the statements in this book are general in nature; they must be. In my twenty plus years, while many of the questions are the same, the answers always depend on the specifics of the wreck at issue.

Two issues distinguish most cases. First, no two wrecks are the same. Whether it is the speed of the vehicles, the size of the vehicles, the condition of the road, the health of the people involved, or the nature of the injuries, all those factors can play a role.

Second, a large part of every car wreck case depends on at least two insurance policies: that

of the other driver and yours. While many policies have very similar provisions, they are all different in some way. Some people buy different kinds of protection than others and some people buy higher levels of protection for themselves and their property. Far too many times, we have struggled to help clients who have been injured by drivers, who had little or no insurance and too little of their own.

Given these many issues, no attorney can offer blanket advice that covers every circumstance. That's why this book is a guide, not legal advice. Hopefully, it will help you ask the right questions and make you more aware of the issues you must consider. It cannot offer concrete advice on the particulars of any one wreck or any one person's legal rights.

One final point: throughout this book, you will see that I use the term wreck. I never use the word accident. In my twenty-five plus years, I have seen very, very few accidents and many, many wrecks.

An accident suggests something that just happened, without the fault of one person or the other. Rarely, is a wreck an accident. In virtually every case I have seen, and all those where I have accepted representation, someone did something that violated the Rules of the Road. Some were very serious, like driving while intoxicated, while others were more common, like speeding. Whether

serious or common, someone violated a well-known rule and that decision, no accident, caused harm to another person. Those are the cases that I handle. I do not handle accident cases.

CHAPTER 1

AVOID THE WRECK!

The best way to deal with car wrecks is to avoid them altogether. To improve your chances, there are a few rules that every driver should keep in mind.

- **MAINTAIN YOUR CAR.** A well maintained car can help protect you and your family. You should regularly service your car and periodically check key safety components, including the brakes and tires. With regard to your tires, you should make sure that you have adequate tread and that your wheels are properly aligned. If there are safety or warning lights that suggest a need for service, get it done.
- **DO YOUR JOB!** When you are behind the wheel, you assume an awesome responsibility. You are in control of a machine that weighs approximately 4,500 to 12,000 pounds. It is made of metal and plastic and carries your most valuable interest: your friends and family. If you are focused on anything other than your responsibilities as a driver, you are a danger

to yourself, to those with you, and to all other drivers and passengers on the road. **DO NOT BE A DISTRACTED DRIVER.** For more information on the issue of distracted driving and highway safety, please visit the following websites: www.EndDD.org or www.distraction.gov

- **DO NOT BE A PASSIVE PASSENGER.** Do not let drivers drive while texting or talking on mobile devices.
- **OBEY THE RULES.** When you attended your driver's education course in high school, you were taught from a book called Rules of the Road. That book, published by the Illinois Secretary of State, is still used in classrooms around the state. When you apply for and accept your driver's license, you make an agreement to follow those Rules and to be held responsible when you do not. Those rules matter, and when you violate those rules, you put yourself and others at risk. Whether you or another driver, when someone violates the rules, they must be held responsible for the damage and injuries they cause.
- **PREPARE FOR THE WORST.** A few simple preparations could make the difference,

literally a life and death difference, in the event of a wreck. Always keep a first aid kit in your vehicle. Like the batteries in your smoke detectors, check the kit twice a year to make sure it is complete and up-to-date. In the kit, keep all the basics, including compression bandages. Prepare yourself; there is simply no downside to attending a basic first aid and CPR course. Finally, keep a small survival kit, including a flash light, road warning triangles, and shovel. For more information on first aid and survival kits, I recommend the following websites: www.redcross.org and www.kidshealth.org

CHAPTER 2

WHAT TO DO IF YOU'RE IN A WRECK

Given the size of modern vehicles, when the Rules of the Road get violated, people tend to get hurt, sometimes seriously. When you've been injured in a wreck, your first concern is the health, safety, and well-being of you and those with you, as it should be. In the event of a car wreck, take the following steps:

- Before doing anything else, if you are able, make sure your car is in a safe place, out of traffic, where you cannot be hit a second time. Activate your emergency flashers and immediately call 911. **Call 911, whether you believe you have been hurt or not.** If someone is hurt, it will be very important that the police prepare a report of the incident and that emergency medical professionals are available.
- Self-evaluate your injuries and the injuries of those around you. In all but the most minor of wrecks, get evaluated by a professional. Not all injuries are immediately visible or

immediately symptomatic. In some cases, the symptoms of a concussion may not be seen for a week or more. Frequently, the adrenaline charge of having been involved in a wreck will mask the symptoms of even serious injuries. Your concern should be on getting help, then taking care of yourself, and those around you. Until that is done, the chances are you won't have a thought about the legal consequences of the wreck and you should not.

- Once you have been medically cleared to do so, by those on site or a medical doctor, you should begin to consider the legal issues that you will face, as soon as possible. You should know that the insurance company began investigating your wreck within minutes of learning about it. There is important evidence that can be lost forever if not preserved immediately. The sooner you act, the sooner your attorney can preserve that evidence. Also, under Illinois law, there are statutes of limitations that limit the time frame within which you may file a claim. ***Typically, the statute of limitations is two years from the date of the wreck, but there are many circumstances that can shorten the statute of limitations for your case.*** For instance, if the condition of the road

contributed to your wreck, your claim against a city or county must be brought within one year from the date of the wreck. There are other exceptions that shorten and lengthen the statute of limitations, so be sure to act as soon as you are able.

- Finally, beware of insurance adjusters. Insurance adjusters are now trained to call you immediately after a wreck. They know that if they can get to you before you hire an attorney, they may save their company money. They literally have training manuals on this. I know, I have one of their manuals! Under your policy of insurance, you have an obligation to cooperate with your company, but that doesn't mean you have to talk to them while you're still injured or in the hospital- and neither does anyone else.

**IF YOU GET A CALL FROM YOUR
ADJUSTER, TELL THEM YOU
WANT AN OPPORTUNITY TO
CONSIDER HIRING COUNSEL
AND THAT YOU WILL COOPERATE
WITH THEM AFTER CONSULTING
WITH COUNSEL. IF THE OTHER
DRIVER'S ADJUSTER CALLS,**

**YOU HAVE NO OBLIGATION
TO PROVIDE THEM WITH
INFORMATION AND YOU SHOULD
NOT TALK TO THEM UNTIL YOU
CONSULT WITH AN ATTORNEY.**

While this book is designed to help you address all these issues and more, it is no substitute for legal counsel. Read it carefully and use it to guide you in your interview of legal counsel. Whether with my firm or another, make sure the attorney you hire is experienced in all the issues presented by your wreck. Many are not.

CHAPTER 3

DO I NEED AN ATTORNEY?

In all but rare cases, the answer to this question is **yes**. You need an attorney and as soon as possible. No matter the severity of your injuries, there are many issues that you will face in securing reasonable compensation for the injuries and property damage resulting from a car wreck. In the later chapters of this book, you will learn about liability issues, damages issues, liens, medical bills, and insurance. All of those factors may affect your ability to secure what's fair.

Most law firms offer a free consultation. Mine does. In that consultation, the attorney can assess your case and offer you recommendations on how best to pursue your case. If you have chosen wisely, the attorney will tell you whether counsel is necessary to your claim or not, without charge.

Without an attorney, you can expose yourself to liabilities arising from liens from your insurance carrier, Medicare, and Medicaid. Also, you will almost certainly pay more when you do pay those liens.

Finally, Insurance Company studies demonstrate that they pay more to those with an attorney. That is why you will always receive an immediate call from

an insurance adjuster. Inevitably, they will tell you that you don't need an attorney and then they will try to pay you before you have all the information you need to make an informed decision. Do yourself and your family a favor: **do not talk to the adjuster until you consult with counsel.** Do not sign anything until you have protected yourself by retaining competent counsel.

CHAPTER 4

HOW DO I HIRE AN ATTORNEY?

For those who are not an attorney, hiring one can be an overwhelming decision. I think that there are three questions that you must always ask before hiring an attorney:

- 1. WHAT TYPE OF LAW DO YOU PRACTICE?**
- 2. HOW FREQUENTLY DO YOU TAKE CASES TO TRIAL?**
- 3. CAN YOU PROVIDE REFERENCES FROM FORMER CLIENTS?**

Why ask those questions? Let me explain. First, you should ask the attorney about their practice: what type of law do they practice and what do other attorneys in the office do. Just as you would not hire a plumber to work on your electricity, you should not hire an estate planning lawyer to handle your personal injury claim.

Make sure that the attorney you hire has experience in the area in which you need help. If you have been in a car wreck, that area is personal injury work.

In addition, before visiting the attorney, check their website. All attorneys talk about their practice areas on their websites. If the attorney you're meeting doesn't prominently note personal injury work on their website, you may be talking to the wrong attorney.

Once you've made sure the attorney does personal injury work, ask how many case he or she has taken to trial. If your attorney is qualified to handle your case, he will have tried personal injury cases. Make sure you ask specifically about personal injury cases, like car wrecks, medical malpractice, or product liability.

There are many criminal defense lawyers and divorce lawyers that have tried cases, but those are very different cases with very different issues. Those attorneys may be outstanding in those areas, but they could be a poor choice for your personal injury case.

You want someone who knows the issues that come up in car wrecks and other personal injury cases. If your attorney has not taken cases to trial, then either the insurance companies have always paid fair value on his or her cases or the attorney is not willing to fight for his or her clients.

While on this issue, ask the attorney **where** he or she has taken cases to trial. That question will flush out the real trial attorney from the rest.

Finally, ask the attorney for referrals from past clients that he has represented in cases like yours. Again, an attorney who takes care of his or her clients will be able to provide you with references for his or her work. Call those references and ask them:

- **HOW WERE YOU TREATED BY THIS ATTORNEY?**
- **DID THIS ATTORNEY EXPLAIN THINGS SO THAT YOU COULD UNDERSTAND THEM?**
- **DID THE ATTORNEY RETURN YOUR PHONE CALLS?**
- **WAS THE ATTORNEY FAIR WITH YOU?**
- **WOULD YOU HIRE THIS ATTORNEY AGAIN?**

MY FIRM POSTS REFERENCES ON OUR WEB SITE. ANY QUALIFIED LAWYER SHOULD BE ABLE TO PROVIDE YOU WITH NAMES.

Beyond the questions you should ask, you need to be comfortable working with the attorney you choose. For that reason, meet with several before making your decision about who to hire. You will

spend a great deal of time working with your attorney and his or her staff. Make sure the person you hire is someone you will feel comfortable having at your side; someone you are confident will protect your interest.

Finally, beware of advertising. My firm has advertised in the past; we may again in the future. There is nothing wrong with ethically marketing one's service. We still maintain a very nice website and actively engage in marketing. Some firms on TV are very good law firms, but many are not. The mere fact that the attorney advertises is no substitute for your careful consideration. Review websites, talk to the attorney, ask questions (including those noted in this chapter), and make sure the relationship feels right.

CHAPTER 5

WHO SHOULD PAY?

In the first chapter, I mentioned your high school days and the Rules of the Road Book. That book and those rules determine what we as drivers are supposed to do on the road. When we violate those rules, we can and should be responsible for the injuries that we cause.

Fault or liability can be very simple or very complicated. In some cases, fault is easy. When there are two cars involved and one car violated no rule while the other ran a stop sign, the driver that ran the stop sign is at fault and responsible for the injuries and property damage he caused. Simple, right?

Unfortunately, not all cases are simple. What about a series of events or multiple cars, where multiple drivers broke the rules of the road? In those cases, Illinois law establishes an assortment of different laws, different rules, that determine who can be held responsible and who cannot.

RULE #1

One such rule provides that if a driver was a "substantial factor" in contributing to the collision, they are responsible for all the damages caused,

unless their fault is less than 25% of the total fault.

There are several problems with this rule. First, what's a substantial factor? Second, how do we determine whether someone was a substantial factor? Third, the rule assumes that judges and juries can take all the fault, all the negligence or rule violations, and divide it up. Attorneys must consider all of the potential responsible parties and use their experience and training to make sure those who were a "substantial factor" pay their fair share.

While I do not think this is a good law or rule, it is the law. So where one driver is 25% or more of the total fault, then that driver can be responsible for all the injuries. For drivers that are less than 25% at fault, generally, they are only responsible for the percentage of the injuries that they caused.

RULE #2

Another law provides that injured people who are more than 50% of the fault cannot recover anything. Many years ago, in Illinois, the law said that if a person was even 1% at fault, that person could collect nothing for their damages. So, when one driver was 99% responsible and the second 1% responsible, the second driver could collect nothing. The courts in our state thought this unfair and through court cases and later through the

legislature, Illinois adopted the rule that bars a recovery at more than 50% of the fault.

Under the new rule, the one percent driver can now recover. However, if he is more than 50% responsible for causing the collision, he cannot recover anything at all. The courts call this system comparative fault. Under comparative fault, where one driver is 60% responsible and another is 40% responsible, the 40% driver can collect 60% of his damages and the 60% driver can collect nothing.

In many cases, the defendants will raise “comparative fault” defenses. The other driver, through their insurance company or their lawyer, will claim that you did something wrong and that you are partially at fault for causing the injury, even when you are sure you did not break the rules. These comparative fault defenses are raised to reduce the other driver’s responsibility for your injuries and to reduce the amount his insurance company has to pay.

CHAPTER 6

SHOULD I SETTLE?

You now have some understanding of how fault gets divided between various drivers. Who makes that decision? The answer depends on whether you settle your case or go to trial. If you go to trial, it depends on whether you have a bench trial, with only a judge, or a jury trial.

TRIALS

Before discussing settlement, let me explain trials. In all trials, the judge is the person who determines the law. When attorneys disagree on legal issues, the judge gets to make the decision. In a bench trial, the judge also decides the disagreements over the facts. So, if one witness testifies that the car ran through a red light and another testifies that the light was green, in a bench trial the judge decides who got it right. In a jury trial, the judge still decides the law, but a jury decides who was right and who was wrong concerning the color of the light and all other disagreements over the facts.

SETTLEMENTS

Many, many cases settle. In some cases, settlement is a fair and appropriate way to resolve the claim. But, in many cases, settlement is not appropriate and a trial is necessary. The most important question you need to ask an attorney, before hiring one, is whether they have tried a case recently. If your attorney is not willing to go to trial, that means he or she is always willing to accept the insurance company's opinion on the value of your case. I can assure you that the insurance company does not always get it right.

**THE LARGEST VERDICTS THAT I
HAVE OBTAINED FOR MY CLIENTS,
SOME MULTI-MILLION DOLLAR
VERDICTS, WERE ON CASES WHERE
THE INSURANCE COMPANY OFFERED
NOTHING!**

To determine whether your case should settle or go to trial, your attorney should weigh and consider a very large number of factors. Among those factors are:

- **HOW MUCH INSURANCE COVERAGE DID THE OTHER DRIVER HAVE?**
- **HOW MUCH INSURANCE COVERAGE**

DO YOU HAVE?

- **DID YOU VIOLATE THE RULES?**
- **HOW SERIOUS ARE THE INJURIES?**
- **IN WHAT COUNTY WILL YOUR CASE BE HEARD?**
- **WHAT ARE YOUR FINANCIAL CIRCUMSTANCES?**
- **HOW WEALTHY OR POOR IS THE DEFENDANT?**

Some of these factors might surprise you. Why is the insurance coverage and the wealth or poverty of you or the defendant relevant to whether your case will settle?

In some cases, these are the most important factors in determining whether a case will settle. If your injuries are very serious, but the defendant is poor or considering bankruptcy, and both you and the defendant have low amounts of insurance, your case is, most likely, best settled.

BUT, WHY?

FIRST, the insurance company only has to pay up to the limits of the policy, no matter how serious your injuries or how high your medical bills. When someone has low limits on their coverage, there is little by way of insurance to pay for your bills and injuries. Remember the old saying: “you can’t get

blood out of a turnip.” It is never truer than in cases with significant injuries and low insurance limits.

SECOND, even if you get a large judgment or verdict against the Defendant, you will not be able to collect if the defendant has little money or declares bankruptcy. There simply will be no money to collect.

Another important factor in determining whether your case will settle or go to trial, maybe the most important factor, is **you**.

Many years ago, I had the great honor to represent a wonderful woman who was facing the greatest of all tragedies: she had lost her daughter in a car wreck. The case had the potential to be extraordinarily valuable because of the magnitude of the tragedy and the conduct of the defendant.

We declined all settlement offers and pushed forward with litigation. After written discovery, we began to take the depositions of the parties; the mother and the Defendant came first. The mother attended the Defendant’s deposition and it went well. I obtained a number of important admissions and knew that the value of the case had risen.

As the mother and I walked from the deposition, she grabbed my arm, thanked me, and said “settle it.” I explained that we needed to press further, that we could enhance the value with just a few more depositions. She said “no” and then told me: “I just

needed to look him in the eye, to know he knew what he had cost me. Get what you can, I want it over.”

We settled within the week for an amount less than the case was worth, but for exactly what my client wanted.

Like the mother in that case, you will determine whether your case settles. In fact, in our firm’s contingent fee contract, we specifically note that your case cannot settle without your permission. When clients are reasonable and helpful, that is never a problem. But, in contrast to the mother in my case, when the insurance company is unreasonable, when clients have unreasonable expectations about their case, the case will go to trial.

Because of the many, many factors that affect value, you should never expect an attorney to know the value of your claim on your first visit.

In my work with clients, they always want to know what their case is worth, but until I get the necessary information and analyze the facts of that specific case, it is impossible to know the value and whether the case should settle or go to trial.

If your attorney answers your question about the value of your case in the first visit, you should run, not walk, away from that attorney.

**THERE IS NO WAY TO
VALUE A CASE BASED UPON
A SINGLE OFFICE VISIT.**

CHAPTER 7

WHAT ARE MY DAMAGES?

The law in Illinois defines the type of losses you can be compensated for in a car wreck or other tort or negligence claim. In order to collect these damages they must be related to, or caused by, the car wreck. (See Chapter 8 on causation).

There are five areas of damages under Illinois law, in a traditional car wreck case: Medical bills, lost wages, pain and suffering, loss of normal life, and disfigurement. Other cases and other facts may give rise to other types of damages, such as emotional distress or, in some cases, punitive damages.

MEDICAL BILLS

Everyone understands medical bills. If you are required to obtain medical care for your injuries, the negligent party should be responsible for those bills.

However, we also must collect for those medical bills that you are reasonably certain to experience in the future. That can be complicated and can sometimes require hiring an expert witness to testify about the need for care, the cost of care, and the amount of money needed now in order to ensure that you can pay those bills in the future.

LOST WAGES

Lost wages can be recovered. Understand that with all damages, we have the “burden of proof.” The defendant does not have to prove anything! So, to recover lost wages, we have to be able to prove:

- **THAT YOU WERE EMPLOYED OR RECEIVING INCOME AT THE TIME OF THE WRECK;**
- **THAT, BECAUSE OF INJURIES FROM THE WRECK, YOU CAN NO LONGER RECEIVE THAT INCOME, AND;**
- **THE AMOUNT OF THE INCOME YOU LOST.**

For an hourly worker, who worked fairly regular hours, the calculation as to the amount of lost wages is relatively easy. For others, like farmers for instance, the process can be difficult, requiring testimony from accountants and farm workers to prove the cost of the farmer’s inability to work his or her farm.

PAIN AND SUFFERING

You are allowed compensation for your pain and suffering.

Some people have trouble with the notion that we provide money to offset pain and suffering.

Obviously, money cannot take away the pain and suffering in the same way it can repair the bumper on your car. We don't get new nerve fibers to replace the ones that are causing that shooting pain from your lower back, down the back of your leg, and into your lower calf. That is true. However, we can provide people with other forms of solace and comfort that help to reduce the pain or make it more bearable. And, because money is the only means we have of addressing issues in our civil courts, it is the only option available to address this part of the loss suffered.

LOSS OF NORMAL LIFE

Loss of normal life damages are also called disability damages.

A number of years ago, the courts began allowing the term "loss of normal life," because disability is too easily confused with lost wages.

While lost wages compensate you for your inability to work, loss of normal life damages compensate you for your inability to enjoy the other non-work aspects of your life. For example, if you used to love fishing, bowling, or running with your kids and now you cannot do those things, the

law provides compensation for that loss.

DISFIGUREMENT

Finally, there are damages available for disfigurement.

To receive compensation for disfigurement, you must have suffered a scar or disfiguring injury that causes you embarrassment. So, a small scar, in an area where it would not typically be seen, is not a basis for disfigurement damages, since it will not likely be a source of embarrassment.

Calculating damages with medical bills and lost wages, there are calculations – addition, subtraction, or multiplication – that can be done to determine the amount you are likely to recover.

With the remaining elements of damages- pain and suffering, loss of normal life, and disfigurement- it is more difficult. How does one value pain, the loss of normal life, or the embarrassment of a scar? There is no one answer to that question. Different juries will handle it in different ways.

In our analysis, we consider a large number of factors in advising our clients on these issues, including the county where the case may be heard, the nature of the problem, the extent of any preexisting conditions, our experience in addressing these claims, and many others.

CHAPTER 8

HOW LONG WILL MY CASE TAKE?

As with so many things in the law, it depends. As discussed in the previous chapter, many, many cases settle. If you are fortunate and yours is one of those cases, some settlements can occur very quickly. Others can take more time.

For instance, cases that settle without the necessity of filing a lawsuit can get done within months, if the client retains counsel soon after the wreck. If a lawsuit has to be filed, the settlement might take well more than a year.

If your case needs to go to trial to get fair value, it will take time. Early in my career, I would tell clients to plan on 18 months to two years to get to trial. Now, I tell clients to plan on a minimum of three years to get to trial. There is no good reason for the endless delays that arise in the pre-trial process, but it is an unfortunate reality of our current system.

Whether you win or lose at trial, you always face the possibility of appeal. An appeal can add still more time, sometimes years, to the process. The long delay, risk of appeals, and frustration with the process lead many clients to settle. That is neither fair nor right and the decision must be

made carefully with competent counsel.

In short, no one can tell you how long your case will take. All of the factors that affect the value of your case have an effect on the likelihood of settlement, the timing of settlement, and the complications that may add time to the pretrial process. Your attorney will have to be vigilant and push the process.

**DESPITE THE EFFORTS OF
COUNSEL, YOU WILL HAVE TO
BE PATIENT AND RECOGNIZE
THAT “THE WHEELS OF
JUSTICE GRIND SLOWLY.”**

CHAPTER 9

WHAT ABOUT MY CAR?

You've been in a wreck. Hopefully, you were not hurt. But the car, your beautiful car, is badly damaged. What do you do?

First, in some cases, the car itself is evidence. It may be necessary to protect and maintain the car in its post-crash condition. This is another reason it is important to consult with an attorney as soon as possible. In some cases, if the car is destroyed, repaired, or materially changed from its post-crash condition, some types of claims may be made more difficult.

As noted in the introduction, almost everything in car wreck cases is about the insurance and that includes the car. So, the information here is based upon common insurance policy provisions and a typical case. Your policy, the other driver's policy, and the circumstances of your case might not be covered by these provisions.

Check your insurance policy. Do you have "collision coverage?" Collision coverage is the part of your insurance policy that covers damage to your vehicle. If you do have collision coverage, you will likely be negotiating the cost of repairs or the "totaled" value of your car with your insurance

company adjuster.

If you do not have collision coverage, those negotiations will take place with the other driver's insurance company, if the other driver was at fault. With collision coverage, you need to remember that your insurance company adjuster will appear friendly and on your side, only trying to help.

While they might be friendly, an insurance adjuster's job is to save their company money, not to make sure that all the necessary repairs are made to your car.

You should assume responsibility for finding a competent, trustworthy body shop in your area to make sure that all damage caused by the wreck is identified and the cost of repairs estimated. Under some policies, you may be required to obtain several estimates.

**REMEMBER, THE SHOPS
RECOMMENDED BY YOUR
INSURANCE COMPANY MAY HAVE A
RELATIONSHIP WITH THE COMPANY,
WHICH WILL NOT WORK TO YOUR
ADVANTAGE, SO CHOOSE YOUR OWN
INDEPENDENT SHOP FOR YOUR
ESTIMATE.**

Once your insurance company has paid you for the damage to your car, under the collision coverage, your insurance company will then get payment from the other driver's insurance for reimbursement, though that is not your concern or responsibility.

If you are dealing with the other driver's company, the same rules apply. You will want to obtain your own estimates for repairs and the extent of damage to your vehicle. Again, you will want to avoid relying upon body shops recommended by the adjuster.

PROPERTY DAMAGE

In many cases, the issue of property damage is resolved before clients ever come to me for advice.

Whether you're dealing with your own insurance company's adjuster or the other driver's adjuster, if you find that your estimate and their estimate are close and you are able to reach an agreement that you think is fair, there is no reason not to move forward to resolve your property damage claim.

If you choose to resolve your property damage claim before seeing an attorney, make sure the release of claims only addresses the issue of property damage and that you preserve your rights to personal injury claims.

Be sure that you confirm with the adjuster both

verbally (in person or on the phone) and in writing, even if it is an email, that you are **not** releasing your claims for personal injury.

Insist that the adjuster acknowledge **in writing** that the release is only for property damage and will not affect or waive your personal injury claim. Once you get the release, read it carefully to make sure it is only a release of claims for property damage and nothing else.

CHAPTER 10

WHAT ABOUT MY MEDICAL BILLS?

Hopefully, you have two types of insurance that will cover your medical bills. The first, is your health insurance policy. It is fine and appropriate to submit your medical bills to your health insurance. The second, is your automobile insurance policy under a provision called “medical payments coverage.”

Most policies in Illinois have medical payments coverage of \$5,000.00, sometimes less, sometimes more. When addressing your medical bills, send them to your health insurance carrier first. Use the medical payments coverage under your automobile insurance policy to pay deductibles, co-pays, and medical bills not covered by your health insurance.

In most cases, your auto policy and your health insurance policy have a provision called a “*subrogation clause*.” Under that clause, if your insurance pays medical bills for injuries that were caused by the negligence of someone else, like the other driver, the insurance company has a right to be reimbursed for the money they paid for those medical bills.

In other words, if you get money from the

other driver or their insurance company, your insurance company can come after you to get its share of the money it paid for your medical bills. This is called a *right of subrogation*. It exists in most insurance policies and exists by law for Medicare and Medicaid. In fact, Medicare and Medicaid have what is sometimes called a “super lien.”

Under the Medicare Act, the law provides that Medicare will pay your bills, but that it has the right to get its money back in the event that you recover from the negligent person, who caused your injuries. The “super lien” under Medicare and Medicaid applies not just to you, but to your attorney, the attorney for the other side, the insurance company, and anyone else who may have any control over the payment of money.

**NO MATTER WHAT YOU MAY WANT
TO DO, YOUR ATTORNEY HAS TO
MAKE SURE THAT MEDICARE AND
MEDICAID GET THEIR SHARE OF THE
SETTLEMENT OR JUDGMENT BEFORE
THEY CAN RELEASE ANY FUNDS
FROM THE SETTLEMENT TO YOU.**

With most private insurance policies and with Medicare and Medicaid, they have a legal obligation to pay their fair share of attorney’s fees. For private

insurers, this is provided for by Illinois law and is called the “common fund doctrine.” With Medicare and Medicaid, it is required by the Medicare statute.

So, for example, if Medicare paid \$100,000.00 in medical bills for your injuries, and you have a fee agreement to pay one-third of your recovery in fees, Medicare will only get to recover two-thirds, or \$66,666.66 of the \$100,000.00 it paid.

As with many of the issues in this book, there are exceptions to the obligation to pay your insurer and to the obligation of the insurer to pay its share of legal fees.

Some insurers are called **ERISA Plans**. In some circumstances, these insurers may be entitled to collect everything from the other side- even if that means that you get nothing. Some insurers may get much less for their payments if these liens are not handled properly.

Your attorney must understand the intricacies of these lien issues and be able to effectively address them in a way that allows you to recover for your injuries.

When you hire an attorney, make sure they are knowledgeable about these issues. It may make all the difference in the amount of your recovery.

CHAPTER 11

THE DANGERS OF SOCIAL MEDIA

Once upon a time, I had a client. She was a very lovely young girl and desperately wanted my help in assisting her with her case. She had, according to her, severe lower back pain, so severe that it kept her from work and otherwise enjoying her life. She seemed sincere.

After gathering records, police reports and other documents necessary to investigate and evaluate her claim, we ran a check on social media. The young lady's Facebook page showed her out the night before- riding a mechanical bull- apparently enjoying life very well. Needless to say, I fired her as a client.

In my story, social media allowed me to find out that a client was not being honest with me. It served a good and useful purpose, as it does when I post pictures of my dogs. But, it can also serve to crush good, valid, and appropriate claims, through careless posts and misinformation. That's why we check our clients on Facebook and other social media sites; we know defense counsel and insurance adjusters will do the same thing.

**WE ADVISE ALL OUR CLIENTS TO BE
EXCEPTIONALLY CAREFUL IN THEIR
USE OF SOCIAL MEDIA.**

All of our clients receive a client manual that explains the elements of their claim, the legal process, their responsibilities, and some dos and don'ts. In that manual, we explain several strict rules concerning social media that we ask our clients to follow. These rules include:

- **SET YOUR PRIVACY SETTINGS TO THE HIGHEST LEVEL OF SECURITY;**
- **DO NOT “FRIEND” ANYONE THAT YOU DO NOT KNOW WELL;**
- **NEVER, EVER, EVER, DISCUSS YOUR CASE, YOUR INJURIES, THE DEFENDANT, OR ANYTHING ELSE ABOUT YOUR CASE; AND**
- **NEVER DISCUSS OR POST ON CONVERSATIONS WITH YOUR ATTORNEY (THOUGH MY CLIENTS ARE ALLOWED TO LIKE MY DOG PICTURES).**

Under the law, in some places, you cannot go into your social media accounts and delete information. Some courts have determined that such deletions

can amount to the destruction of evidence. So, if there are any pictures, posts, or comments on your social media site that you would not want a judge or a jury to see, you should make sure your attorney is aware of them.

It is always better to have a candid assessment of their potential impact early on in your case, rather than later. When we know early about problems, we can address them. It could be too late if the adjuster or defense attorney finds out first.

CONCLUSION

I hope that this book has helped you in some way. Again, it is no substitute for personal legal counsel. It is meant to help you ask the right questions of the right attorney, in the event of a wreck. I hope you never need such guidance.

ABOUT THE AUTHOR

Bill Tapella practices in the area of civil litigation, including medical malpractice cases, significant personal injury cases, trucking cases, railroad crossing cases, wrongful death cases, products liability cases, and other tort litigation cases.



Bill grew up in Herrin, Illinois in Williamson County, where his parents still live. Following high school, he attended Eastern Illinois University and Southern Illinois University, Carbondale. He received his B.A. in Political Science from Southern Illinois University in 1981.

After working for ten years, In 1991, Bill returned home to Illinois and entered the University of Illinois, College of Law. While there, he received numerous academic honors, including admission to the Order of Coif and designation as a Harno Scholar. Bill graduated from the University of Illinois, College of Law in 1994, Magna Cum Laude.

In his practice, Bill has been recognized by his peers as an AV rated attorney, indicating that fellow lawyers have conferred upon him a Preeminent Rating, the highest possible rating in both legal

ability and ethical standards. He has been named a Leading Lawyer in Illinois, is a Lifetime member of the Million Dollar and Multi-million Dollar Advocates, a group that includes less than 4% of attorneys nationally. Bill has obtained numerous million dollar and multi-million dollar results for his clients, including record verdicts.

Bill is the author of “Constitutional Law/Due Process/Judicial Admonitions,” Illinois Bar Journal 81:605 and “Comparative Fault, Contribution and Joint and Several Liability: An Argument Against Reconciliation,” Illinois Bar Journal 88:694.

He is a member of the Coles-Cumberland County Bar Association, the Illinois State Bar Association, and the American Association for Justice. He is an active member of the Illinois Trial Lawyers Association where he currently serves on the Board of Managers.

Bill is married to Lela Tapella and has two children, Mia and Will. He and Lela live on a small farm just outside of Ashmore, Illinois, with their three dogs. Bill is an avid upland bird hunter and a lifetime member of Pheasants Forever, as well as other habitat and environmental organizations.

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- We work hard to make sure all of our clients feel comfortable & well-informed.
- We actively listen to discover what is important to you so that we can set realistic but justifiable expectations.
- We educate you about every aspect of your case, including the claims process, your legal options, what to expect, and how to build a successful strategy.
- We strive to give you the personal attention you need throughout your case. You're not just a case number to us; as a client, you're part of our firm's family.
- Dependability is important to us. We take the time and effort to get to know you and your family in order to understand your wants and needs, and we maintain open lines of communication so you always know where your case stands.
- We'll continue to fight no matter where it takes us. When a case becomes difficult or hits snags, we won't give up or push it toward the back of the pile. We push forward to make sure you get what you deserve

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