

## EASY GUIDE FOR SETTLING YOUR OWN AUTO CASE

### I. Why not hire a lawyer?

Some automobile accident cases can, and should, be settled without hiring a lawyer. A lawyer will generally charge 1/3 of your recovery as a fee. Sometimes you lose money by hiring a lawyer.

### II. What kind of cases can you settle yourself without a lawyer?

It's the smaller case that probably doesn't require a lawyer, the case having a value of \$5,000 or less. If the injuries are not serious or long lasting, treatment lasts three months or less, there is a full recovery and the wage loss is less than a week, the case probably falls into this category.

### III. How long do I have to settle my case (statute of limitations)?

The statute of limitations was changed as of January 1, 2003. It is now two years for a personal injury case.

A lawsuit must be filed within two years of the date of the accident. If the two years passes without a lawsuit being filed, you will probably lose all right to make a claim. (A longer period applies for children under 18). What this means is that you have two years to gather the necessary information and settle your claim with the insurance company. Remember, even if you are negotiating, if there is no lawsuit filed within two years you will be out of luck. For claims against the government (city, county, school district, etc.) there is a six-month deadline. A special "claim" must be filed and denied before a lawsuit can be filed. You should get legal advice if you have such a situation.

### IV. How do I do it?

- Step I: Get the insurance information from the at-fault driver at the scene.
- Step II: Get a copy of the police report or CHP report of the accident if there is one. Simply call the agency and they'll tell you how to get a copy. There may be a nominal charge.
- Step III: Write to the insurance company of the at-fault driver and advise that you wish to make a claim. (The insurance company is identified in the police report or CHP report). Remember this does not take the place of the requirement that you file a lawsuit within one year. If there is no insurance, call your own insurance company and learn how to file an uninsured motorist's claim.

- Step IV: Collect your medical records and bills. Just call the doctor's office or hospital medical records department and ask how to get them. You have a right to copies of your own medical records. If possible, ask your doctor for a summary report.
- Step V: Obtain wage loss information from your employer including proof of what you earn and proof of the number of hours or days off (it doesn't matter if you were paid sick leave or other replacement pay; you can still claim the full value of your lost time). A letter from your employer would help.
- Step VI: Wait until you and your doctor agree that you are fully recovered. (But don't wait beyond the statute of limitations).
- Step VII: Write the insurance company a letter telling them how much you will accept to settle your case. Enclose the medical records, medical bills, and wage loss information. Even if medical insurance or your own medical payments covered some or all of your medical bills you are still able to recover the full amount paid. You should also include any property damage or car rental bills your own insurance did not cover.
- Step VIII: Negotiate. Your offer to settle should be at least 50% greater than the amount you are willing to accept. You can be sure that the insurance company's first offer is not its best offer. You may exchange multiple offers before you settle. Remember, a settlement is final and forever. You cannot re-open the case after you settle even if some new injury develops.

V. How do I know how much my case is worth?

This is a tough one because every case is unique and everyone is different. You are permitted to be compensated for:

- (1) your medical bills whether or not paid by insurance
- (2) your wage loss whether or not you had an actual out-of-pocket loss
- (3) your pain, inconvenience, worry, anxiety, etc., caused by the accident - the non-economic consequence of the accident

- (4) property damage not covered by your own insurance.

Some people have suggested the formula: 3 X medical bills + wage loss + out-of-pocket property damage.

In some cases that formula might be appropriate. However, factors such as the degree of impact measured by physical damage to the vehicles, the nature of the injury, the reputation of the treating doctor and the kind of medical care obtained can affect the insurance company's view of the value of the claim. Also, there is a difference among insurance companies as to how fair they are willing to be to a claimant. All companies to one degree or another have a motive and policy to pay the least they can get you to accept.

How much you should accept will depend on a number of factors:

- (1) are you convinced that the insurance company has made its last best offer?
- (2) how motivated are you to put the aggravation of dealing with this claim behind you?
- (3) are you really willing to hire a lawyer to file a lawsuit if the insurance company won't pay what you think is fair? (If you're not, never tell the insurance company this)
- (4) has your own auto insurance company or health insurance company advised you that they are seeking reimbursement from your lawsuit proceeds for the amount of medical bills they paid? (Try negotiating with them, too). If Medi-Cal or Medicare or similar programs paid your medical bills, you have to notify them you are making a claim and pay them back.
- (5) how much money will you put in your pocket from the settlement and would hiring a lawyer likely put more or less money in your pocket if you have to pay 1/3 of your settlement to the attorney?

#### VI. Things to avoid or watch out for

1. Don't give written or recorded statements to the adverse insurance company; don't give them signed authorizations to obtain your medical/wage records.

2. The adjuster, who may be very pleasant, is not your friend.
3. Be aware of the possible need to reimburse your own auto insurance company or health insurance company or government benefit program for medical bills paid on your behalf.
4. Remember the statute of limitations (or the 6 month claim period if you are making a claim against the government.) See section III above.

## VII. Finally

Some people will want a lawyer to handle their claim either because they don't want to bother with the whole process or they want to be sure they are getting the full value of their claim from the insurance company. Claims involving substantial or long lasting injuries, death, or disputes about fault will almost always require the assistance of a lawyer.

## VIII: Choosing a lawyer

If you are considering hiring a lawyer, keep these questions in mind:

- (1) Am I going to get the lawyer I'm talking to or is my case going to be handled by someone else, perhaps a non-lawyer?
- (2) Does the lawyer have the experience and the reputation for trying cases that insures maximum value for the case?
- (3) Do you think you will get along well with the lawyer? Does he or she seem to listen to you and answer your questions?

## IX: Questions?

Please do not hesitate to e-mail us at [james@jgeaganlaw.com](mailto:james@jgeaganlaw.com) if you have questions. No charge. No obligation.

## X. Just to prove I really am a lawyer, here is the disclaimer

This guide cannot provide precise and completely relevant advice for every claim. It is intended as a general guideline. This guide should not be interpreted as advice not to seek formal legal representation, but only as information helpful in making your own

decision about hiring a lawyer. While I would like to, it is impossible for me to guarantee the best possible results in every case if this guideline is used. Every case is different.