

AUTOMOBILE ACCIDENTS

UCSB LEGAL RESOURCE CENTER

An automobile accident can be a frightening and upsetting experience. Nevertheless, there are certain steps that you should take to comply with the law and preserve your legal rights.

First, California law requires you to stop and exchange information with the other people involved in the accident. You should obtain the following information for everyone involved in the accident: name, address, telephone number, driver's license number, vehicle license number, and insurance information. Try to learn as much as possible about the other driver's insurance, including the name of the company, the policy number, the extent of coverage, and the name of the agent.

Second, get the name, address, and telephone number of all people who witnessed the accident. You probably will want to contact them later if there is a dispute as to how the accident happened.

Third, you should make an initial assessment of any personal injuries and property damage resulting from the accident while you are still at the scene. Make a written record of these observations.

Above all, try to remain calm. It generally is advisable not to discuss liability at the scene of the accident, even though it may be tempting to do so in the heat of the moment. Because the issue of liability can be complicated, you should discuss the accident with an attorney before you admit it was your fault. The Santa Barbara police or Sheriff generally do not come to the scene of an accident or make a report unless someone is seriously injured or there is damage to public property. The people involved in the accident, however, are required to file a report of the accident (called an SR-1) with the Department of Motor Vehicles if the accident involves more than \$750.00 of property damage or any personal injuries. If the SR-1 report is filed, all parties to the accident will be required to provide proof of insurance. If you were uninsured on the date of the accident, your driver's license will be suspended for one year. If you plan to make a claim with your insurance company, you should contact your agent as soon as possible. You also should obtain two or three written estimates for the repair of any damage to your vehicle.

If you are injured, you should seek medical attention immediately. Keep the receipts for all medical treatment, including medications, and maintain a record of all losses you sustain as a result of your injuries (e.g., lost wages).

Questions asked by UCSB students:

Question: *I was involved in an auto accident (or bike accident) and was injured. I had to miss some work because I didn't feel good and also because I had to go to the doctor's office a few times. I'm still hurting, and my doctor says it may take months for me to feel better again, but I may not feel 100% ever again. What are my rights?*

Answer: If you are injured in an accident, and it wasn't your fault, you are entitled to whatever damages you suffer as a result of the accident. The damages have to be somewhat certain, and not too speculative or unsubstantiated. If your property was damaged (including car, personal belongings in the car, clothing you were wearing, etc.) then you are entitled to the fair market reimbursement for those items. If you were physically injured then you are entitled to all reasonable and necessary medical bills incurred, including doctor visits, medical supplies (crutches, special pillows, etc.), prescriptions, and any other treatments that your doctor recommends that are within reason (in other words, no new age holistic treatments probably). If you missed work because of your injury, whether to attend doctor appointments or because you were at home resting, you are entitled to lost earnings. You will need to be able to document the time you missed from work and what your hourly rate was at the time (a letter from your employer usually suffices). You are also entitled to general damages that aren't exactly tangible, such as pain and suffering. Everyone is different when they are injured from an accident, and some people suffer more than others regardless of their injuries. "Pain and suffering" includes the time you experienced pain (past, present and future), the sacrifice you made of favorite activities because of your injuries (past, present and future), the time you spent going to all of the doctor appointments (not including loss of earnings), any emotional distress (nightmares or fears arising from the accident), any loss of use or permanent disability or scarring from the accident, interruption in your academics that cause you damage, and anything else that has affected your life that you can't produce a receipt for. You have 2 years from the date of the accident before you have to

file a lawsuit against the person who caused the accident. This means you do not have to rush to settle your case with the other person or insurance company until you are good and healed from your injuries. Give yourself time to consider how the accident affected your life, and to make sure that any injury you have is stable and resolved. Above all, don't be greedy and agree to settle early because it would be nice to have the money in your pocket now. You will regret it if a few weeks later you start to feel pain again and now it's too late to go back to ask for more money.

Follow-up question: *What does signing a Release mean?*

Answer: When you settle a claim with an insurance company they will ask you to sign a release of liability. This means that when you reach a settlement amount and they pay it to you, that you agree to never sue the person who caused the accident. You waive your right to any further money from that person or the insurance company in the future, regardless of what injury may come up that is 100% related to the accident. This is why you want to make sure you do not settle or sign anything until you are certain that you are as good as you are going to be physically after the accident. Some injuries take a lot of time to heal – everyone is different. It is normal to sign a release after you reach a settlement amount for your claim, and it is normal to sign away forever your right to come back for more money from the person or the insurance company. This is standard industry practice. Just make sure you sign it when you are ready, and do not yield to pressure from the insurance company to sign it before you are healed. There is no hurry, and they can't deny your claim if you refuse to sign the release and settle your case prematurely.

Follow-up Question: *When/why should I hire a lawyer, and what should I look for?*

Answer: Hiring a lawyer depends largely on the complexity of your case or extensiveness of your injuries. If your case is complicated because there are a few cars involved in the accident, and liability is a question then it may be a good idea to hire a lawyer to fight for your rights. If you were significantly injured, and had to see quite a few doctors to help with your healing process, and/or were hospitalized as a result of the accident then you may want to consider hiring an attorney because the details of your case will become complicated even if the facts aren't. Everyone has different reasons for why they hire attorneys to help them with their cases. You are not guaranteed that you will get more money if you hire an attorney, but attorneys know how insurance companies work, and know the right issues to raise and argue. This improves your odds for getting the best settlement you can get. Personal injury attorneys work on a contingency fee basis. This means that you will not be charged for the hours they spend on your case. Instead, they will take a percentage from your total settlement for their fee, plus any costs they incurred on your behalf. The standard industry fee is 33% before your case has to go into a lawsuit, and if it's not settled and has to become a lawsuit the fee increases to 40% plus costs, which can be substantial. There is no law that requires the fees to be set at this rate, therefore, you are free to negotiate the fee with the attorney.

When hiring an attorney it is important to consider finding one that is familiar with personal injury cases (although it is not essential that this is the primary practice area), is in the county where the accident happened (the attorney will have better knowledge of the judges in the area, and will not have to travel far for court or other appearances which would end up costing you more money), and is one you feel comfortable with. Meet with the attorney in person (don't just hire over the phone no matter how highly recommended the attorney is) to make sure this is the attorney for you. Not all attorneys are the same, and you may feel more relaxed and confident in one attorney over another. Do not be swayed by a nicely decorated office with diplomas and certificates displayed everywhere. You are not hiring the furniture. If you hire someone that you don't feel comfortable with (perhaps you felt pressured into hiring one), then you will always doubt whether that attorney did the best they could do for you or really understood all that you went through. This is your choice – not your parents. And don't just pick the attorney that will offer you the cheapest fee. Sometimes what you pay is what you get.

Question: *I was in an accident a few weeks ago, and my car was badly damaged. The other driver is insured, although I am not, and his insurance company is paying to repair my car. I just received a notice from the Department of Motor Vehicles that my driver's license has been suspended for one year, even though the accident wasn't my fault. Can they do this?*

Answer: California law requires everyone who drives or owns a car to have liability insurance. Liability insurance pays for the damage you cause to another person if you are at fault in an accident. The minimum amount of liability insurance mandated by California law is \$15,000 per person and \$30,000 per accident (e.g., if several people are injured) in bodily injury coverage and \$5,000 for property damage. Liability insurance is different from collision or comprehensive insurance that pays for the damage to your own car.

(If you finance the purchase of a car with a loan, the lender generally requires you to buy collision and comprehensive insurance; this **does not** satisfy the legal requirement to have liability insurance.) If you are in an accident involving any bodily injury or more than \$750 in property damage, you are required to file an accident report with the Department of Motor Vehicles. The accident report, called an SR-1, asks for your insurance information. If you do not have the requisite liability insurance, then your driver's license is suspended for one year, even if you are not at fault in the accident. You may apply to the DMV for a restricted license, which allows you to drive only to school or work and costs \$250. At the end of the one year suspension or restriction, you must show proof of insurance in order to have your license reinstated. In addition, you must show proof of liability insurance in order to register your car each year.

Question: *I loaned my car to my boyfriend, and he was in an accident. It was his fault, and the person he hit has hired a lawyer. The lawyer has told me that I'm responsible for paying for the other person's damages. Is this true?*

Answer: Unfortunately, the registered owner of a vehicle is liable for damage caused by anyone who is driving the vehicle with the owner's permission. However, the owner's liability is limited by law to \$15,000 per person and \$30,000 per accident for bodily injury and \$5,000 for property damage (which, you may have noticed, are the same amounts as the requisite minimum liability insurance). If you have insurance, you should contact your insurance company immediately and let it handle the claim, particularly since the other driver has a lawyer. Whoever ends up paying the other side, either you or your insurance company, has the right to seek reimbursement from your boyfriend.

Question: *Last week, I was hit by someone who ran a red light. My car was totaled, and I am badly injured. I am fully insured, but the woman who hit me is uninsured. What is the best way for me to get the money I need for a new car and to pay for my medical bills? My insurance agent says I should recover under my "uninsured motorist" coverage.*

Answer: Your insurance agent is right. From your description of the accident, it sounds like the other driver is responsible for the accident and, accordingly, all of your damages. Without insurance, however, most people have a difficult time paying these damages. Fortunately, because you have uninsured motorist insurance ("UMI"), you do not have to worry about trying to collect from the other driver. UMI coverage is part of your own insurance, but it pays what the other driver should be paying you for your damages. There is both bodily injury and property damage UMI coverage and, as you are "fully insured," you should have both types. The property damage coverage will pay for the damage to your car. Since your car is deemed "totaled," the cost to repair it exceeds its fair market value. Your insurance will pay you the fair market value of your car and, in most cases, the cost of a rental car while the claim is being processed. The bodily injury coverage will pay for all of your medical costs and lost wages due to the injury. It also will cover "pain and suffering" damages. The amount the insurance company will pay for "pain and suffering" varies with each case, but it is based on the severity and duration of the injury as well as the amount of the medical costs.

The information contained in this article is of a general nature. If you have a similar problem, you should consult with an attorney. Currently registered UCSB students are encouraged to call Legal Resource Center to make an appointment (805.893.4246). Appointment hours are available Monday through Friday.