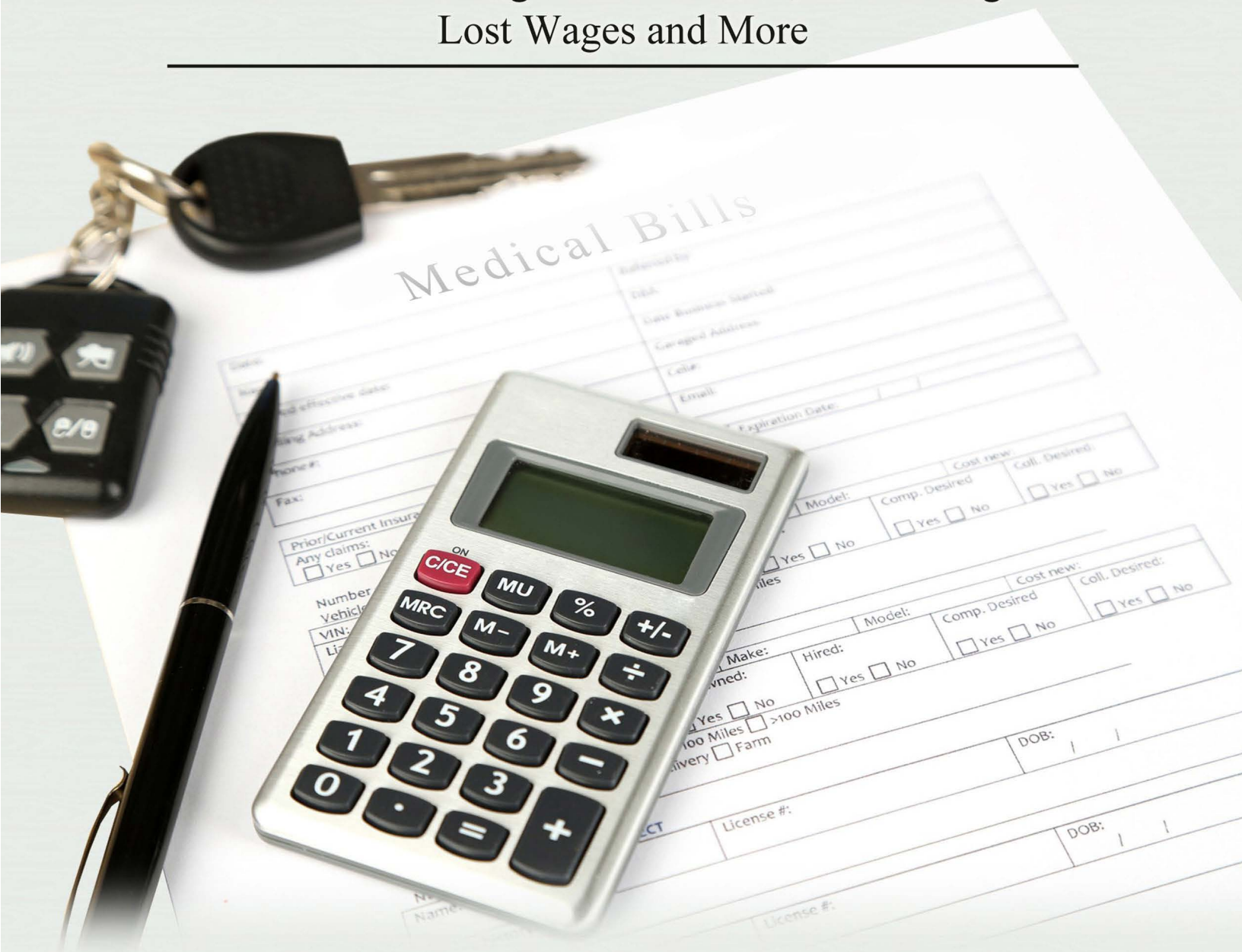


CAR ACCIDENT INJURIES

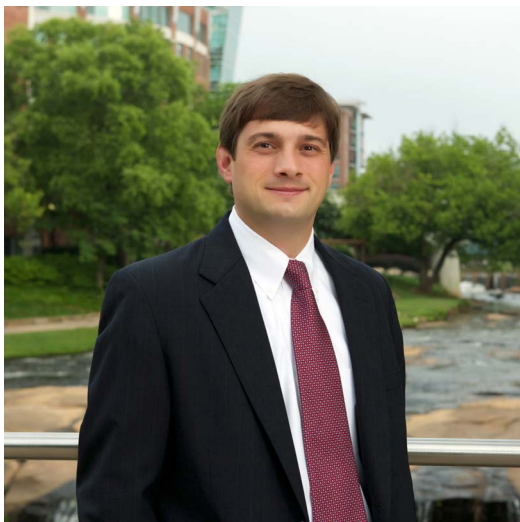
Guide to Dealing with Insurance, Recovering
Lost Wages and More



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From the desk of Russell Guest and Richard Allen,
attorneys at law for Guest & Brady

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Introduction

How much do you know about protecting yourself and your loved ones if you're in a car accident? Who handles the medical bills? Who will pay to repair your car? What happens if you're unable to return to work for an extended amount of time?

The following chapters will answer all of these questions and more. Russell Guest and Richard Allen, attorneys at law for Guest & Brady, LLC in Greenville, South Carolina, share their expertise to ensure you know how to prepare yourself in the event of a car accident.

Auto Accidents and Insurance Companies



What are the first steps that I should take after I've been involved in a car accident?

Russell: You've got to assess whether you're injured and whether those that might be in the car with you are injured. If you have children in the car, try to address them immediately. If it's a major accident where the injuries are severe, then of course you're going to have difficulty responding immediately to the circumstances.

If you're seriously injured, you're obviously going to be dealing with your immediate injuries and those of the people that are in the car with you. Getting help and treatment for the injured is of primary importance.

Injury assessment is done quickly with all kinds of methods, whether with your cell phone or witnesses. People will generally help deal with that circumstance. If it's an accident in a rural area, you've got to figure out how to best address the accident, maybe by going and knocking on doors of nearby houses.

There are also circumstances where a serious injury happens that's not so obvious at first. You've been in an accident, and you think you're okay. You want to see if you can make it and deal with your car and the investigating officer. You think, "I'll have my car towed, and then let me try to assess after that whether I need to go and get treatment."

Sometimes people tell the officer that they don't think they're injured and that they don't need any care at the moment. In those circumstances, they may go home that day, but they start to feel worse during the course of the day or when they wake up the next morning.

It is very common for people to experience an adrenaline rush when they're in an accident, and that can mask some of the symptoms. Sometimes the symptoms don't present themselves until hours or even a day or two later. We also have people tell us that they tried to tough it out. "It's a soft tissue injury. We'll see what happens." Now, it's a week or

two later, and they still haven't gotten care for it.

This can be an issue when filing a claim because the insurance company will want to say, "They must not have been seriously injured because they would've gone and gotten care." In reality, the person has got a pretty good tolerance to pain or they've got responsibilities they have to worry about. Their life has to continue despite the injury. Then it gets to a point where they just can't manage anymore. They feel compelled or forced to actually go to treatment.

An insurance company will use any gap in treatment against the injured party.

We always encourage people, if they start to feel badly shortly after the accident or within a day or so, to go to an emergency facility. It doesn't have to be to the hospital. It can be to the family doctor as well. The injured person just needs to go and have a medical professional assess them to see what kind of injuries they may have.

Sometimes what might not seem to be a serious injury at first can actually be a very serious injury. What might seem just to be an aggravation can end up becoming much worse than you think.

Your injuries need to be addressed very quickly. If you don't do that then you can run the risk of having a long-term injury that will cause a permanent impairment. There are number of reasons to get the treatment quickly, not just because of the insurance company's argument, but for your own health.



After the injured person has gotten treatment or has been evaluated for any injuries that they've sustained, how should they start dealing with the insurance company?

Most states have an exchange of information form. In South Carolina, it's called an FR-10 form. It's initial information that's normally taken down by an investigating officer, which could be a city policeman, a county officer, or a highway patrolman.

They write down the names of the parties involved - typically the owners of the cars, the drivers of the cars - and the insurances that are being shown to the officer. That form is provided to each of the parties, and they are then asked to provide that to their insurance agent.

There is a requirement in South Carolina that the form be turned in to the insurance agent within 15 days of the date of the collision. If the injured people don't do that, it could result in the suspension of a driver's license or registration privileges. That's pursuant to South Carolina law.

You can take it by your agent's office, if you know where that is. If it's an online insurance that you purchased, typically you would fax that form or scan that form and email it to them. You call and get in touch with your own personal insurance company first, and then also you may file a claim with the at-fault driver's insurance as well.

The FR-10 form does indicate, by the officer, who contributed to the collision. You want to look and make sure that the information

appears correct to you before the officer walks away after handing you this form.

I've encountered people before that have come into our office and they say, "The officer circled that I was contributory when clearly I was not." Yet they did not address it with the officer. They didn't see the indication on the form until after the officer left.

This is an issue that needs to be addressed immediately because that can be problematic with the insurance company. Once the insurance company receives that FR-10 form and it's also looking at who contributed, they're going to start to make their case and how they evaluate the claim based on the information provided.

It does not mean that particular information is going to be binding or will be the final end-all for the claim, but it is important to make sure it's as accurate as possible.

You're also going to want to make sure that you have all witness information. If there's anybody that has come to the scene that may have been willing to provide you with a name and telephone number, make sure you have kept that information available so you can provide it to an attorney if you decide to hire an attorney or if you talk to that person to also assess whether you contributed or the other party contributed to the accident.

As for talking to the insurance company, it's a process for filing the claim. You call the at-fault driver's insurance company that's provided on the form. Typically, you have a policy number and also a telephone number. Call that

number, and then they'll ask you a series of questions.

You'll say, "I was involved in an accident," and they'll start asking you all the information on that form. Then an adjuster will be assigned to you. They may have to call you back the next day, or they may not ever call you back. But they're supposed to call you back. When they do call you and talk to you about this particular accident, often they'll immediately say, "We're going to record this statement. Do we have your permission to record it?"

They'll make you seem like that this is a normal thing, that it's part of South Carolina law or the law of any state that you might be in.

In South Carolina, it is not mandatory that there is a recorded statement by the at-fault driver's insurance company. You have no contractual relationship with them, and there's no law that compels you to give a recorded statement. I would advise you not to do a recorded statement.

If you want to provide information, you can tell them, "I'd be willing to do a notes-only statement" in which they are hearing from you and jotting down notes as you speak about the incident, including how it occurred, that you are in fact injured, and that you're seeking treatment. If you already have sought treatment, you can share that you went to the emergency room or have sought care from your family doctor and that you're following up on treatment and dealing with your injuries.



How does a notes-only statement help to protect you versus doing a recorded statement?

Depending on how you give them, recorded statements can be admissible in court in some circumstances. Often they're not. A lot of judges in South Carolina will not allow them to be admitted into evidence.

Depending upon your state of mind and the issues that you're dealing with at the time, they might argue that they are admissible. If you make a statement within hours of the accident and you happen to be talking to the at-fault insurance company's liability adjuster, they may ask if you're injured and you might say, "No, I think I'm doing okay."

Then the next morning you wake up and you're really hurt and can hardly move. Your back is bothering you. Or your neck is in such a circumstance you can't even move your neck around, but you've already committed to the adjuster that you're not injured.

They're thinking that's the value of my claim, or the claim is going to be because the person has already stated they're not injured. They might be able to use that against you because you'll say, "I never said that," and they'll have it on a recording.

That's a problem, especially when you don't have to make a recording in the first place and there is nothing that compels you to do so.



If I'm injured in the auto accident, will my insurance or possibly the insurance of the other driver pay for my medical bills? What will

the insurance company offer me for my personal injuries?

Richard: For the at-fault driver's liability insurance carrier, there is no obligation to immediately to begin paying your medical bills. That's what the liability coverage is there for.

In South Carolina, you have what's called minimum limits coverage. The minimum limits are \$25,000.

Often a client's medical bills are going to far exceed that number.

We get the question in that situation, "Well, wait a minute, they're at fault. The other driver has caused these injuries that require medical treatment that far exceeds \$25,000. You're telling me that they're not going to pay more than that minimum limit?" If that's all that's there, that's all the insurance company is required to pay.

That's why it's important when you get into different types of coverage that you have what's called underinsurance. That is a type of coverage that you purchase yourself. Liability insurance is required. It's mandated. Then, when you're purchasing that, the insurance agent has to make what's called a meaningful offer.

A lot of times clients just don't understand what underinsurance is. They may feel like it's something the insurance companies are trying to bill fees or charge for, but it's critically important in a state where the minimum limits are \$25,000. It's very inexpensive coverage to purchase, and I think that's an important thing

for everyone to have.

Russell: When we're talking about the responsibility of the at-fault driver to pay for the injuries and the damages they caused, they may have this insurance that Richard is talking about to cover minimum limits. Most of the drivers out on the roadway today have minimum limits because that allows them to drive legally for the least amount of premium.

But the law says that particular person who causes the accident is responsible for those injuries and for the damages they caused. That's true - they do have that responsibility.

The problem very quickly becomes that we all know how expensive medical treatment is and how quickly bills can add up. Also, lost wages can add up if you're injured and can't return to work. Then all of a sudden the amount of damages far exceeds that \$25,000.

The individual has paid the premium for that. That's their form of insuring that your damages are paid. However, they have no assets beyond that \$25,000 to be able to pay for any additional damages that you have. While they do have the legal responsibility, they have no means of practically being able to pay that.

They can be honest, hard-working people, but just have no means to pay for anything beyond the insurance that is being provided. You can sue them, and you could get a judgment against them, but there is still nothing that the court can do to require them to pay that.

All you would have at that point would be a

piece of paper saying that they owe it to you. Then if they happen to have some bank accounts sitting with a lot of money in it, you might be able to go get that. Or, if they had a piece of property that was uncovered by a mortgage, maybe you could go get that.

But most people don't have that kind of asset sitting around. You can't garnish their wages. There is nothing that allows you in the law to go do that or for a judge to force them to do that. Only the Internal Revenue Service or the government can go do that. You as an individual have a limited ability to go and get money from that individual other than through the insurance company coverage that person has purchased.

That's why we don't like it. It might not be fair, but the most important thing you can do to protect yourself and your family is to purchase underinsurance coverage.



What happens if the medical bills are piling up and I'm having a hard time getting the auto insurance company to help or to get a check from them to help pay for those medical bills. What will I do then?

Richard: If you have health insurance, you need to use your health insurance. Do not be reluctant when you do go to present for treatment to let the medical providers know that you have health insurance.

The reason is that when you begin negotiating with the insurance company to eventually settle the case, you do get to present the entire amount that you are billed for medical

providers. You'll net more dollars using the health insurance.



How will I know that the insurance settlement is fair for my injuries?

Russell: It's not always an easy question. If, however, you've had what some people call a "minor impact accident" with minor injuries - such as soft tissue injuries - you would've received conservative care. You recovered fairly quickly from your injuries, and they dissipated. You don't have any long-term effects. You don't have lost wages. This can be an easier settlement to try to resolve - there is not a lot of complexity. In those types of cases, it is possible sometimes for people to manage their own claim if they feel they're okay with the offer that is being made to them.

The problem starts when people are leaving a lot of dollars on the table because they don't understand the various coverages that they might be able to use to help them maximize the coverage. When we say that an insurance company's settlement is fair, often we are talking specifically about the liability insurance company making a payment to you.

In exchange, they want a release of all future claims. That means if you're starting to hurt or you're starting to have chronic, lasting injuries and you're going to need future care relating to that particular injury, once you receive the money from the insurance company and sign that release, you cannot go back and get any additional money from them.

So you've got to be careful about making that settlement too quickly. Understanding what is

fair might mean that you wait a little while. In most every state, there's something called the statute of limitations in which you can file a claim and recover for your damages.

In South Carolina, that's three years from the date of the collision. So if you're in an automobile accident on Jan. 1, 2015, then by Dec. 31, 2018, you need to have made that claim or filed a lawsuit to preserve that claim. So you've got to be careful if you're getting on the end of the three years and you haven't actually filed a lawsuit.

It would be tough to wait until the last month or two or three months prior to the end of that statute and then go hire an attorney. Do not wait that long. You'll be setting yourself up for failure and leaving the attorney with very few options to be able to help you. Understanding what a fair insurance settlement is depends on time, understanding your injuries, how chronic they are, and whether you require future care.

If you think that you're going to require a future care, the doctor says, "You're at maximum medical improvement for your injuries, but I think you're going to need some injections going forward. You're going to need periodic physical therapy. You're going to need some medications as well." Then you need to evaluate what the future cost of those medical treatments would be.

That can be done in different ways. The easiest way to do that is if you feel you're in that circumstance and you've got a future medical care because this is a pretty serious injury and you really need to hire somebody like an attorney who deals with these issues

every day to help you assess that and help you to maximize your claim, then you're going to be responsible for that future care.

Some people say, "Well, that's okay. I've got health insurance. I can deal with that." Nowadays, especially with ObamaCare - the Patient Protection and Affordable Care Act (PPACA) or Affordable Care Act (ACA) for short - we have to pay lots of co-pays and lots of deductibles. It can be very expensive with a lot of out-of-pocket expenses. Also, we know that the job market and then the employer providing health insurances are not a guarantee. We can't rely on that forever.

Then, if you have Medicare or Medicaid, there

is something called a "super lien," which means they have the right to be reimbursed for all treatment; that another person is responsible for what they've paid for out of the settlement that you've received. They have a lien, whether you recognize it or not. You have an obligation to pay them back.

They could cut off coverage. Medicaid or Medicare can cut off coverage for you if you fail to do and meet that obligation. Now that would be disastrous. We've got to be careful in resolving this claim on whether it's fair or not. It has so many different parts to it that you need to get it assessed by an attorney before making any settlement.

Insurance Coverage



If I'm in an auto accident, what do I do if the person who hit my car doesn't have auto insurance?

Russell: This question comes up much too often, unfortunately. It's believed that as much as 20% or so of the people are driving don't have any coverage whatsoever. Certainly that's not legal to do so. It's an obligation to purchase automobile insurance to drive legally.

There are some instances where people are driving an insured car, but they don't have permission to actually drive that car. Without someone giving you either tacit approval or direct approval to drive the car, then you can be labeled as a non-permissive driver.

If that person were to cause an accident, it's possible that an insured car could now be an uninsured driver because they didn't have permission to drive it. It causes lots of problems, and sometimes someone is outright driving an uninsured car, and they know that.

It happens all the time when people just simply can't afford the insurance or decide to spend their money on other things and not follow the law. It happens when people have had driving offenses where their license has been suspended. It could be a prior violation for driving under the influence or other traffic violations. It could even be criminal acts that cause their license to be suspended and they don't have the right to purchase insurance on their car because of the suspensions.

Also, to the high percentage of people that do in fact drive around uninsured, there are protections for those that might be injured by people that find themselves in an uninsured situation. Whenever a car is uninsured and causes an accident, there is a label for that type of coverage. This is uninsured coverage.

In South Carolina owner policies, you would see bodily injury liability coverage. You would see uninsured coverage. You would see another type of coverage called underinsured coverage. There are many more types of coverages.

Relevant to this question is uninsured coverage, which will protect someone for covering the injuries that they might receive from being in an accident where the at-fault driver's car is uninsured. First you have to do an investigation to understand that it is in fact the truth that their car is uninsured. Sometimes it could be that the insurance company for the car that is labeled to be uninsured failed to follow certain procedures.

If they did not follow the procedures that they should have, then we can ask that policy be reformed to include bodily injury or liability insurance. That requires investigation, and it requires a knowledge of the insurance laws and the procedures in order to understand that. It would be helpful to make sure that other car is in fact uninsured or should be covered by a liability insurance in terms of our ability to recover all that we can, especially in cases of extreme injury.

We know nowadays whenever you're injured that it doesn't take very much before an injury

costs thousands of dollars. Now, just a trip to the emergency room is often \$2,000 or \$3,000 as soon as you get a few diagnostic tests. So these are critical questions that we want to answer quickly as we can because of the extreme financial obligations that we can have once we've been in an accident that causes injury, even with the property damage.

Cars to repair nowadays can be very expensive, between \$5,000 and \$6,000, and the uninsured the vehicle is an issue in terms of property damage. You can seek recovery for both of those issues, for property and also for injury, from your own policy on an uninsured coverage for the instance where the at-fault driver is uninsured.



What does it mean when my insurance agent says that I have full coverage? Is that actually as much coverage as I can get?

Richard: I'm not sure that there is such a thing as full coverage. I don't know that you can fully cover and insure yourself and your vehicle as far as the term would lead you to believe.

There are many types of coverage. Coverages that you can purchase, for instance, include liability coverage, which protects you if you are involved in an accident and are deemed to be the at-fault driver that harms or causes bodily injury or property damage to another person. It would pay for those injuries that you cause. It covers bodily injury and property damage.

We've discussed this earlier, the minimum limit in South Carolina that a driver is required to carry is \$25,000 for bodily injury. That

would be a single injury to one person, and \$50,000 if more than one person is injured, and then \$25,000 for property damage. Those are the minimum limits. You can, of course, purchase more.

Often it's wise to purchase more if you have assets that you want to protect or if it is a serious accident where there are serious personal injuries to the other driver or drivers.

There's medical payments coverage, which is an optional coverage that you can purchase to protect yourself, other passengers in your vehicle, or other family members. Medical payments coverage helps. It's a "No-fault coverage."

When you're involved in an accident and you are injured due to the negligence of another person, this is a coverage that your insurance would pay you. It's inexpensive.

It's important to have because if, for instance, you don't have health insurance or you're going to a health care provider that may not accept your particular type of health insurance, or if you own Medicaid and that health care provider does not accept Medicaid and simply requires you to pay out of pocket to get treatment, this type of coverage would allow you the money to pay for that treatment.

It comes in various increments, \$1,000, \$5,000, \$10,000, and up. There's also another type of coverage called personal injury protection coverage. It's a coverage that you purchase. It protects you, and it helps pay for costs while you're going through the healing process. It could cover a wide range of things

like child care, lost income, or the value of lost services.



When I'm in an accident and, after I get in touch with my insurance company, the insurance company is going to send me some documents in the mail. What are those documents? Should I sign those documents that are sent by the insurance company?

Russell: There are a number of different documents during the course of an accident claim that the insurance company may send you.

Initially, they may try to resolve the claim. They may think that they have an agreement with you, and they'll send you some documents. You've got to be very careful about reviewing and accepting whatever documents that they put in front of you.

I had a case not so long ago where a person believed that the insurance company was sending them something to tie them over until they had gotten the surgery that they needed when, in fact, the insurance company was trying to extinguish their complete claim for a small amount of money.

This gentleman was significantly injured. It certainly was a bad faith attempt by the insurance company. It ended up that we were in litigation for a couple more years trying to resolve that because this person did not believe that he had accepted what the insurance company thought that he had. We ended up successfully resolving that for him.

Documents that are presented to an individual

from the insurance company need to be thoroughly examined to make sure that they are not trying to extinguish any rights that you might have. Often they'll send you medical authorization, which allows them to go and just start looking at your complete medical history in order, not necessarily to pay you to complete benefits. I hate to be skeptical about this, but I've just had too much experience where they start to then get medical records prior to the accident in order to attempt to try to say that, "Well, you're not injured because of this accident."

"You've complained about a headache in the past. Obviously, this accident didn't cause that headache, didn't cause your neck pain because one time you rolled wrong in bed and you went to doctor and complained about it." They want to say that all of this is caused by your pre-existing that was really minor in the past, and not because of that horrific accident that you were just in.

You find yourself in a battle because you've willingly given them access to all your medical history without trying to explain it. They've just made their own interpretations of it, so you have to be very careful about the documents that are sent to you.

Eventually, when you get to settle a claim and they could send you documents, releasing them from any and all obligations, lots of complications can happen. There are different ways to settle different types of claims.

Sometimes, people have a combination of an auto accident and a worker's comp claim. Those could be very tricky to try to negotiate

because you might release one particular party and not realize that you're extinguishing your right to collect from the other claim by signing the particular document that's put in front of you. Those different types of claims are not talking to one another; they're only interested in themselves and protecting themselves.

They don't recognize, even, that they may be preventing you from collecting other awards and benefits that you would be entitled to.

Even within a single automobile accident, you could be providing a particular type of release that would prevent you from then getting other insurances such as underinsurance, which would be available to you, because you signed a particular type of release.

You have to be careful about the language of those releases because there are different types of releases that allow you than to pursue other types of coverages that people are just not aware of.

The complexity of these things requires that people come and consult with an attorney to understand that they're not doing or signing something or giving away a certain right whenever documents are placed in front of them.



What does it mean when the at-fault driver's insurance says that they don't have enough money to pay for the total injuries that are sustained? I thought that they had to pay for everything. How does that work?

Richard: It goes back to the mandatory

minimum limits. It's \$25,000 just for a single injury. If that is all the coverage that the insurance company that is providing that liability coverage's insured driver has purchased, then that's all that they are obligated to pay.

However, that doesn't mean that the driver individually is not responsible. The individual driver who is negligent and causes injury and damages to another person is liable for all of those damages. At that point, you would consider whether it would be prudent to go against the personal assets of the at-fault driver.

Often we found that most people don't have the ability or assets available to satisfy damages for someone who's been seriously injured and has incurred substantial medical bills who may require additional, future life care.

It goes back to the importance of protecting yourself. You do that by purchasing the underinsurance coverage. Often it's expensive. Once the insurance company has paid its limits and you're in a situation where you've got additional medical bills and damages, it can be a costly and timely process to pursue a claim against an individual and to understand that they have assets.

Even if they do have assets, not all assets are available to satisfy additional damages. For instance, if someone has a house, you can't force them to sell their primary residence to pay for the medical bills and damages. There are also other exemptions.

Russell: I recently had a horrible situation where a gentleman in his 50s with a family he's supporting was killed in an auto accident. He's just driving along the road, and a car crossed a median and struck him head on. He died there at the scene. The at-fault driver's car only has \$25,000 in coverage.

Here's a man who got a son who's in college. He's got a son who's in high school, and he has a wife of many years who works with him. Now she's struggling with the idea of being able to continue the business and then also to provide for those two children. The at-fault driver was driving legally on the roadway with \$25,000 in coverage.

This gentleman and his family have suffered an enormous loss that far exceeds any amount of money that they could possibly get. When we're going into the subject of underinsured and other ways that you might protect yourself and your family, it's important to realize that these circumstances happen quickly, unexpectedly, everyday to anybody who finds themselves on the roadway.



What is underinsurance? Why does it matter?

Richard: Underinsurance is insurance coverage that your insurance agent in South Carolina is required to offer you. It is coverage that you, again, purchase to protect yourself. It kicks in when you've been involved in an accident and the at-fault driver does not have enough liability coverage to satisfy all of your damages and medical bills.

For instance, the at-fault driver carries only minimum limits such as the \$25,000 we've

been discussing. Let's say that your medical bills and damages are \$100,000. The at-fault driver's carrier and liabilities would pay their \$25,000 limits, but you still got \$75,000 worth of medical bills and damages that you need to be compensated for.

Having underinsurance coverage in place would then allow you to submit the \$75,000 difference in medical bills and damages to your carrier for payment.

There are different limits that you can purchase. It's very inexpensive. You could purchase underinsurance coverage for as little as \$30 for six months. It's a very important coverage to have. It might be one of the most important coverages that you can purchase.

Just to get back to the full coverage, again, it can be misleading. That's why it's important to protect yourself and your family. One of the most important ways that you can do so is by purchasing underinsurance coverage.

Russell: The underinsurance is one that we run into almost every day in regard to seeing people who either have rejected it or don't have enough coverage. It strikes people as just simply unfair that we have to have or purchase underinsurance because the other at-fault parties should be responsible for all the damages. It is true, absolutely.

In that story that I was telling earlier, in trying to understand the assets of the party that was at fault, they have very little. They live like many people, paycheck-to-paycheck. They have no ability to pay for the total amount of losses that this family has suffered.

The state courts and civil courts cannot garnish people's wages. This happened to be a teenage driver who caused the accident. Trying to make the parents responsible for the actions of a minor is not always easy. It depends on certain factors.

Even if you could do that, the court is not going to garnish your wages. The only people that can do that are the Internal Revenue Service and the government entities can do that. You and I, as individuals, can't force the court to do that. The court doesn't have the authority to do that. We have to protect ourselves in other ways, and underinsurance is the way to do that.

It's important, though, that when we get into these situations, even in this example of this family that has suffered this loss of a death of a father and a husband, is that that's certainly a wrongful death claim. There are other types of claims in insurances that we can look to and different types of policies.

If somebody finds themselves in this situation and limited insurances are available, they need to consult with an attorney so that they understand the possibilities of full recovery for them and to help them along the way.

The underinsurance is an insurance that you can reject, but it has to be done in a particular fashion. If the insurance agent is not getting you to reject it in a particular fashion, you have to make a knowing and intelligent rejection of that offer, typically done by way of a form. There are things that an attorney can do to make sure that happened or did not happen.

If it did not happen, then we can ask the insurance company, or the court-force the insurance company, to reform the policy to include the underinsurance that should have been included in the policy because a knowing and intelligent offer was not offered.

Again, often, insurance issues and questions can be pretty complex except to those who actually are working in it in a daily basis. Anytime people are involved in accidents, they need to go and get it evaluated. Most attorneys doing a personal injury type of

practice are going to give you a free consultation. You need to take advantage of that. Go talk to them and understand where you are.

Even if you decide not to hire the attorney, you need to talk to them because you don't want to get yourself in trouble in terms of the past questions that we had about documents that are presented to you, types of coverages that you might not be aware of. My exhortation to people is not to try to do it alone, but get some advice along the way.

Lost Wages



What are lost wages?

Richard: Lost wages can take on many forms. In the realm of an automobile accident, if you've been involved in an accident and sustain injuries that have either impacted your ability to work or have put you out of work so that you're not able to earn income and wages, that could be an element of your damages that you would ask to be compensated for in a claim against an at-fault driver.



So if I'm injured in an auto accident, will I be paid for lost wages? if so, who pays that?

Russell: Yes. Typically, the insurance company pays, but let's take a moment to understand what that means. We're talking about a situation in which a person is in an accident, but the other person is the at-fault person who caused the accident.

The way it works is that particular person who is the person who owes you the responsibility to pay for your damages, including lost wages.

What they can do is insure themselves against such an accident by paying a premium to an insurance company. So we'll often talk about filing a claim with an insurance company, but really you're filing a claim against the individual who's responsible for that. Then the insurance company is picking it up and helping to pay for those damages that the insured has caused.

Now, from the perspective of the at-fault party's insurance company, they will not pay for damages along the way. If you're losing income on a weekly basis and are not able to work, a lot of people mistakenly believe that that other insurance company will pay as you're experiencing these lost wages. That's just not the way it works in South Carolina.

That insurance company wants to wait until all of the elements of your damages or your claim are known to them or you present that to them and you're willing to settle before they actually make an offer to you for any of those damages, including the lost wages.

Now, that's not really fair, but that's what the insurance company sometimes will use as leverage against you because they know that you're suffering and you need to go ahead and resolve this claim to get some money coming in to put food on the table for the family or to pay the bills that are adding up.

There are other types of coverages, however, that you might be able to rely on to help you while the at-fault driver's insurance company is not paying. For example, there is a personal injury protection (PIP) coverage that is not a mandatory coverage, but is an optional coverage that many insurance companies have. That coverage includes not only medical payments, but also a lost wage component. These can often be very useful in times like this.

It's an optional premium that you're paying, so you get to enjoy that insurance company paying you that lost wage back, but also, later on, presenting the same lost wages to the at-fault insurance company and having them to pay that to you.

The at-fault company doesn't get the benefit of saying, "Well, no. You've already been getting paid for that because you chose to pay an extra premium for that coverage." The at-fault insurance company still has to pay that loss that you experienced. Your own coverage will

not ask for it to be reimbursed to them. That's a good coverage to have. We'd recommend that. It's not very expensive either.

I've had clients use that to their benefit. One particular lady I recall had a serious accident where a car came through an intersection, ran a red light, and fractured her hip in multiple places. She was an assembly person on a manufacturing line. She was not able to get back to that job.

She had been paying for this PIP coverage with the lost wage component to it for probably 10 years, wondering whether she would ever use it. Here it was. She was able to use it, and it really saved her. It was \$20,000 in wages that she was able to recover from that.

It helped her to overcome the period of time that she was recovering from her injuries and allowed her not to be able to settle, or be forced to settle, very quickly with the at-fault coverage. The at-fault insurance company said that she was able to make a much better settlement with that at-fault carrier because of that coverage that she was protecting herself with.

There's also short-term disability that often is offered by a company, or you can purchase it as an individual. That comes paid for, either directly by your employer or it might be paid out of a salary or paycheck deduction. Either way, you can use that.

Often, though, those are difficult because they require you to reimburse them for every dollar that they've paid out of it, dependent upon the types of policy that it is, such as whether it's

an individual policy. It really just depends on the circumstances, but it will help bridge the gap. So I understand completely when people use them. You have to be careful about what it will mean to you later on when you do.

Sometimes people are injured in an automobile accident while they're working. They have two claims. They have a worker's compensation claim that will pay for them while they're out of work, including paying for lost wages that they're experiencing, and then they have their automobile accident claim, which we call a third-party claim.

Those are two separate claims. They can both be worked. In instances where you have that, you really do need to have an attorney helping you. In South Carolina, the worker's compensation carrier would have a right to be reimbursed what they paid out once you resolve the automobile accident claim.

There's also an order in which we would want to resolve the claims. You don't want to resolve one without having discussions and notifying the worker's compensation carrier about your intentions to do so. If you did resolve the claim without notifying them, you could lose some options for payment. The insurance carrier could deny payment of your claim because you have elected your remedy without talking to the worker's compensation carrier about your settlement.

Richard: If you have a loan on your car and it's close to the value of the car, then you can get something called gap insurance. It is a good insurance to have.

Let's say you're involved in an accident, and the value of your car is \$10,000, but you got a loan out there that is \$9,000. Then the car is wrecked, and they come back and say that the car is only worth \$7,000 even though you paid \$10,000, and now you've got a loan for \$9,000.

You had a car that was functioning fine, and you're paying for it, but now it's completely totaled. The at-fault driver's insurance company only wants to pay you \$7,000. Now you still owe a debt on that car that you can't even use. You've got that loan of \$2,000 even after getting paid for that car.

There's something that can step in at that point called gap insurance that will pay off that \$2,000 so that you at least don't have that particular obligation existing after the car is totaled. You might want to think about that, depending upon your circumstances, in regard to your learn-to-value ratio of your car.



What is the difference between lost income and lost compensation?

There are different ways that we get paid. We have benefits that we receive from our employer. The employer might pay for a substantial part or all of the health insurance premium, or the employer might be paying for all of the long-term or short-term disability premiums. You may also receive vacation time or PTO time.

There are different forms of compensation, other than being paid an hourly wage or a salary. If you're receiving a salary and the employer continues to pay you, they'll often

want you to use your PTO time or your vacation time. In so doing, they're still paying you your wage at the same level, but you're using things that you were trying to save for your own personal time off, like taking a child to the doctor or going on a vacation with your family.

You should not have to suffer the loss of these forms of compensation just because you've been in an accident. You should be fully compensated for those benefits.

Some people will say to me, "Well, I did get paid for it. The company just continued to pay for it." That's true, but you wouldn't have taken that time, and now you don't have it, so you should be compensated for it. Once they begin to understand that then they'll understand that they need to be compensated for that time.

Also, the premiums, for health care coverage, if they're out on short-term or long-term disability, that premium is deducted from that check so that you are able to continue your health insurance. Your employer is not contributing that amount. Because you're out of work and have no other means of paying for it, you're getting a reduced amount from your disability check. It's not fair for the at-fault insurance company not to have to compensate you for that lost compensation.



What information do I need in order to file a wage loss claim with my insurance company? Do I need to provide some proof of lost wages from my doctor or my employer?

Richard: It all ties into the treatment component of the claim. You certainly need to

be treating with the doctor. You need to have a doctor saying that your symptoms or injuries are related to the accident and are preventing you from working. If you're a salaried or W-2 employee then, obviously, you need to collect pay stubs and a W-2 form.

Russell: I just want to stress that a disability note or out-of-work statement is critical for the evaluation of an insurance company. If you don't have an out-of-work statement from the doctor or a disability note, our experience is that insurance companies will completely discount your lost wages.

You'll say, "Gosh, I had a broken leg. I couldn't work." They will come back and say, "We don't know that they weren't paying you along the way and that you weren't still receiving your income. We don't know that the doctor didn't say that you could do some light duty and that you just refused to go in there and do your light duty."

The insurance company, I promise you, will take a cynical approach and try to deny you from receiving whatever compensation that they can. Remember, they make money by denying the types of coverages or damages that you might be able to fairly claim.

Having that disability note from the doctor will help protect you, and protect the claim, so make sure that you grab that or make sure that the doctor is making that a part of their medical note.

The other part that is critical is making sure that the doctor is relating your injury to the accident. I can't tell you how many times we

might have somebody going into the office of a doctor, a complaining about a particular injury that they have. They've said something about their accident, and how it occurred because they are out of the accident, yet the doctor's notes reveal nothing about that.

What doctors focus on is what kind of injury you have and they can treat that injury to make you better. They're providing health care. But from a claim standpoint, you need to specifically ask that the doctor include in the medical records that the injury is related to an auto accident that happened on whatever day that was. Including the lost wage claim and disability note is an important aspect of any type of claim that you're making.



Can you still file a claim if you're self-employed?

Richard: Yes, but you've got to be able to document a lost income, have the doctor relate it, and continue to treat it. If you continue to have symptoms, articulate those. We've had clients who are not salaried or W-2 employees. For instance, they may be building contractors. An important point is that you need to have documents. It's important to keep written records.

An insurance company will often do all they can to poke holes in a particular claim. If you've got documentation or evidence that can corroborate the damages that you're claiming, for instance if you lost a particular job because of an accident that's put you out of work, then you would certainly want to be able to document that and that loss.

Tax returns also come into play, but those often frighten clients. Those can be used, though. If litigation is required, that's something that would have to be produced or discovered. You might need to be prepared to present if you're trying to substantiate your claim and don't necessarily have the pay stub or W-2.



What if I don't make a full recovery and I can't return to my work?

Russell: This is a very difficult circumstance. We want to be careful in how we deal with that. In this instance, a lot of factors come into play, including whether we have pre-existing conditions. The insurance companies will often try to use those against us. Is the injury or the pre-existing injury the main cause of our inability to continue work? How much did the accident contribute to the inability to continue work? The insurance company will want to point to that pre-existing injury.

Of course, what often happens in those circumstances is that we've been dealing with whatever pre-existing injury or condition that we might have, managing our way through it. Then we got in an accident that aggravates or accelerates the condition and makes it so much worse that now we're not able to continue. The law clearly allows for us to recognize that's possible and to recover on that aggravation or acceleration of that condition. But we have to be able to prove it.

It can be more challenging, but we need to be getting medical treatment. Hopefully we've had medical treatment for the condition that existed prior. If we have some evidence of the

condition before the accident and after the accident, we can talk to the medical providers, and we can use them to help our expert witnesses to understand the differences and explain how this accident made the condition worse.

There are diagnostic tests that will help us show that. They are very objective tests. There's an MRI that shows a structural change in a spinal condition or to a hip condition or a neck condition, and there are nerve conduction studies. There are different types of tests that would help us with that.

We have the evidence of the clinical studies before and after the accident. We have the diagnostic tests. These things help us to prove that you have a condition that was caused by the actual accident that prevents you from working. Buy anything the insurance company can do to point to something else other than the accident, they will do. This is part of the issue that we need to understand.

Also, it's important to understand the amount of lost wages that you have going into the future. Now, in complex cases where you've got a serious injury, maybe paralysis or a brain

injury, we might have to do some extensive testing to understand why they can't actually perform their former work and hire the experts to be able to testify to that. But we've also got to sometimes hire an economist to look through the records and to understand the self-employed person's business. We analyze what kind of income that person was able to get off of that business, separate that from the business expenses, and project out into the future the type of income that that particular person has lost and will lose. We then make that a part of the evidence that we present to the insurance company in making a full recovery for the damages that we have lost.

Now, full recovery is not just lost wages. In that instance, we might need medical care going forward, so there's the future medical care aspect. Then there could be home care that we might need. There might be home modifications that we need.

There are a lot of elements that go into if you can't return to work and you're now in a different stage of your life because of this accident. We really need to understand that and address all the issues of how your life has been modified or changed by this accident.

Protecting Your Family



If I'm in an auto accident and I have insurance, will my car be repaired?

Richard: If somebody's been in a horrific accident, I'll have them come and talk to me about their experience. They wonder how

they're going to get their car repaired and whether it will ever be the same. It's interesting that despite the broken leg they might have, they're thinking about their car.

There are different types of coverages that

will aid in the repair of the car. There are certain expenses that should immediately start to incur whenever you're in an accident regarding property damage. Those include the towing bill. And when the tow truck company often tows that truck to their own particular yard or building, there's a storage fee, at least in South Carolina. I'm not aware of a single place that doesn't start to charge storage fees instantly.

It costs \$25 or \$30 a day for each day the car sits there. People are not always aware of that. It's some months later and their storage bills are enormous. It's not always the responsibility of the other person who was at fault to pay for those bills. The law in South Carolina also places an obligation on you to mitigate your damages. Mitigating your damages means to lessen them as much as you can.

It is the impression of the legislature here in South Carolina that you should have the ability to go and check and see what your obligation is in regard to storage fees and to have that vehicle either towed to another facility or be working that issue out with the insurance company earlier on. Of course, people are dealing with their injuries or dealing with the trauma of the actual accident. They're not thinking in terms of this unknown fee that's stacking up.

Insurance companies will often call you after an accident if you're not the at-fault person, and they'll ask you to allow them to take your car, for you to release it from the tow company, so that they can transport it to a facility that doesn't charge storage fees.

That is something that is often done and is appropriate to do so as well.

They will also work to begin to evaluate the car to understand what the damages are and whether it's repairable or not. In South Carolina, the rule is that if the repairs are 75 percent or more of the value of the car, the insurance company can make the decision to total a car. The value of the car is a question, and the actual value of the repairs is a question.

If you really want to keep your car, then you have to start to understand values and repair costs. Sometimes you have to challenge what their estimates are. But once you do agree that the repairs are 75 percent of the value and you agree that it should be totaled, your car then becomes a salvaged car.

They'll pay you for the value of the car. They'll pay you for taxes and tags that are also a part of the total value of that car, or you might be able to keep the car, but in that instance, your car has some scrap value. It has a salvage value, and they will want to reduce the value that they pay you for that car based on their salvage value.

You can sometimes make some arguments with them about that to waive those costs, but you'll want to consult with somebody who is experienced in these types of claims before making decisions about whether you should accept that. If the value of the repairs is not 75 percent of the value, but is less, then they will begin to attempt to repair it. In those cases, they will have to give you a rental car for the

period that the car is being repaired.

The value of that rental car, though, is a problem too because that might not be the equivalent car that you had. They'll say that their policy only allows for \$20 or \$25 a day, and you'll say, "Gosh, I was in this big SUV, and that costs \$40 to \$45 a day." The insurance company will say, "Too bad." That's when you've got to argue with them about what you need the particular vehicle for.

Are you using it for business that requires you to travel with items in your vehicle that the smaller compact car is just simply not going to do? There are a lot of things that you can argue with there in terms of getting the appropriate car to allow you transportation in the event that your car is in the repair shop.

At the end of the actual time where it's been repaired and they want to send the car back to you, you're entitled to depreciation on that car. They're not going to freely offer to you that you are entitled to depreciation, but you should be aware that you're entitled to that.

There's no formula for understanding depreciation. There are different ways that you can argue that particular number, but that's another coverage or benefit that you're entitled to.



I've heard of a situation where a family doctor perhaps will not see their patient who was in an auto accident without paying cash out of pocket even though they have health insurance. Is that a real situation? Why would something like that happen?

Richard: That is a reality. This would be an instance where the medical payments coverage would help you. Again, that's a coverage that you would purchase to help you pay these out-of-pocket expenses if you are faced with that situation because treatment is critical.

It's not that you're not injured. It's not that the injuries aren't related to the accident caused by the at-fault driver. It's to do away with any of those arguments that injuries aren't related. If you have health insurance though, you need to use it. There is often a misconception that it may result in a higher premium for whatever reason. We've found that the clients can be reluctant to use their health insurance. If you have it, if the provider will accept it, you need to use it. It will help down the road with negotiating the settlements in your medical bills and reimbursement of those medical bills, and it will net result in more dollars from a settlement perspective and higher reimbursements to medical providers for their liens for treatment.



Is the doctor in that situation afraid that if they accept your health insurance that somehow they're not going to get reimbursed from the insurance company?

Russell: Yes, but it's a misperception by the medical provider.

Typically these are the family practices that are making an internal policy that, if they file a claim where there has been an automobile accident and a third party ultimately is responsible, meaning the automobile insurance at-fault company is responsible

for paying, they won't get reimbursed for that claim. That's just not going to happen.

However, it's impossible for us sitting in the attorneys' offices and also for the injured client and patient to force the medical practice to understand that they will get paid. We often will call the health insurance company and set up these subrogation liens. In so doing, we are asking and communicating with the medical providers and also the insurance company. The insurance company is assuring the medical provider that they will in fact pay, so this way we're hoping that the family practice will begin to treat the actual injured patient.

Sometimes, however, this process takes too long, and then the injured person is just not getting the treatment that they need to. The family practice wants the individual to pay cash out of pocket for the care, and most people can't afford that.

What we have to do is begin to seek alternative care for these individuals, for doctors and facilities that will wait on payment, if people are represented by attorneys so that we can make sure that the medical provider does get paid whenever the claim resolves. Fortunately, there are practices out there that will work with people, but only if they're represented by attorneys. That will help them to recover their fee at the end.

In talking about health insurance and reimbursement, one reason that people don't present their health insurance is that they feel like it's the at-fault party and their insurance company that should be paying bills and not the health insurance company and

injured person's health insurance company. And that's true. However, you're paying as the injured person the premiums, and you're needing treatment. Almost all health insurance companies have in their plan and their plan documents a right to be reimbursed whenever a third party is at fault.

They may send you letters asking you about your accident and what type of insurances that are available, including the automobile insurance. They will seek to be reimbursed at a later day. They have these terms and these departments that are set up for exactly this kind of situation. They know that they're going to pay and pursue, and that's what they call it: pay and pursue.

This is true whether it's a government benefit like a Medicare or Medicaid and also for private health insurance companies. An individual who is injured really should not be concerned about using their health insurance because there are mechanisms to make sure that the health insurance company is reimbursed for the money they're paying out in an appropriate way.



What are some ways in general that I can protect myself and my family, either before I'm involved in an auto accident or after?

Richard: I cannot stress enough the importance of purchasing the uninsured motorist coverage just for the reasons we've discussed: the underinsurance coverage. Also, if you are involved in an accident and you are injured, whether or not you're transported from the scene of the accident to the hospital, it is important to not try to tough it out or ignore

injuries that you're experiencing. It is important to get treatment immediately not only for your own personal health, but also to protect your rights and interest in a potential case. Don't ignore it. Don't try to tough it out. This will eliminate these gap in treatment arguments that insurance companies like to use to debunk legitimate claims and injuries.

Russell: There other types of insurance coverages as well. Once you're involved in an accident, you can't get back and add underinsurance if you've rejected it. However, we might be able to see whether you were appropriately offered that. Just because somebody says you don't have these types of coverages, don't accept that.

Please come and consult an attorney, to make sure that there's nothing that can be done to help you recover. Go and seek treatment immediately because we don't want to have gaps in treatment. That's a critical issue, and the insurance company, I promise you, will use it against you if you're not going out there and

seeking the treatment.

Get evaluated. It's reasonable to do so. There's an obligation for the at-fault party to pay for your evaluation. Then you at least have documented that you are experiencing a pain. If it's a month later and it's still chronic and you're still experiencing difficulty in your daily activities, then you'll be able to then go and have a follow-up visit to say, "Hey, this is still problem for me, and now we need to address it further."

But if you didn't go that initial time, you got another month in between, and the insurance company is going to go, "How do we know that you didn't injure yourself doing something else in that month?" or "You never complained about it at the time of the accident, so it really must not have been a problem to you. You're just trying to come back."

They will make themselves the victim because they feel you're trying to take advantage of them.

Conclusion

Although we never plan for them, car accidents can happen to anyone. One great way to protect yourself and your family before an accident ever occurs is to ensure you have the right kind of insurance coverage. Whether it's to protect any lost wages due to your inability to return to work or to protect the value of your car, you should be fully educated on the kinds of insurance that will protect you and your future.

If you have been involved in an accident, it is important to know what steps to take immediately following an incident. First and foremost, be sure to receive medical attention right away. Any gaps between when the accident occurred and when you sought medical treatment can be used against you by the at-fault driver's insurance company. The next step would be to contact an attorney to

ensure you are making the right choices when it comes to deciding how to settle any litigations resultant from the car accident.

Being educated on the right steps to take before and after an accident can alter your future for the better. Do not wait for someone to guide you through the process. Knowledge is power, and in this case, it is also the difference between a healthy outcome and one fraught with pain and suffering.

About Us



Guest & Brady Personal Injury Lawyers

From its founding in 2005, the Guest & Brady **law firm in Greenville, South Carolina**, has been focused on helping families who are coping with personal injury or loss. Our experienced team can help you with a wide variety of legal needs on any type of personal injury case, such as motorcycle accidents, automobile accidents, and tractor trailer accidents, workers' compensation cases, serious brain injuries, and even wrongful death cases.

Kevin Brady and Russell Guest, along with Richard Allen and the entire Guest & Brady team, take pride in providing legal support – and getting results – while maintaining a personal relationship with clients. They frequently make personal visits to kitchen tables and hospital rooms and are gratified for the chance to help their clients focus on recovery.

Our team is focused on the human side of the story and can help you navigate the confusion and stress of a personal injury – which is often a life-altering event – allowing the injured person and their family to focus on recovery.

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