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When a Crash Happens

Fortunately, many people will live an entire lifetime without becoming involved in a motor vehicle crash. Most of us assume that we will read or hear about other people who have car accidents, but we will not be in a crash ourselves because we are safe drivers. Our own psychological defense mechanism (denial) prevents us from believing that we will carelessly cause a crash and hurt another person, or that a crash will occur which hurts us.

To the extent that we are willing to concede that a crash just might happen regardless of our good driving and good intentions, we tend to assume that when the crash occurs, somebody will be there to tell us what to do and how to do it. What follows is a "how to" and "what to do" list compiled by Hill, Peterson, Carper, Bee & Deitzler, PLLC for your consideration. Please do not construe this as legal advice and do not rule out the fact that other, better alternatives may be available in a particular circumstance. This information is provided based upon our observations and experiences representing or advising people for over 25 years regarding thousands of unexpected crashes and injuries, insurance claims, and related lawsuits caused by insurance companies who refuse to pay valid claims.

This is a basic outline describing general principles. It is provided as a public service to you. If you need advice concerning a specific crash or other situation, please call one of our attorneys. You may read the information below to have a general idea of what can or should happen if an accident occurs. You will be better prepared to deal with a crash if you have some basic knowledge before misfortune strikes you. You should not assume that each or any step of this outline will apply in every case or any particular case. By their very nature, our suggestions are general and not specific.

What To Do

1. Remove Everyone from the Zone of Danger

Crashes occur on roads and highways. Just because a crash occurs at a particular place and time does not mean that the world around the crash will also come to a stop. If the involved vehicles were going fast enough that they were unable to avoid each other, certainly another person driving on the roadway may be faced with the same surprise. If you are on a high speed limited access highway, there may be only seconds to react and save lives. Get people and vehicles off any major highway without delay. No matter where the crash occurs, make assessment of the danger (if any) of oncoming traffic and take action to remove cars and people from areas which are exposed to risk, or make certain that something is done to alert, warn, and slow down approaching vehicles so that additional injuries or fatalities do not occur.

2. Provide or Seek Emergency Medical Help

If you are able, immediately check on the condition of your passengers and the people in other involved vehicles. Nothing about the crash is any more important than making sure that every person is safe or saved. If there is any indication of a serious medical condition, make a decision to help treat the condition or call for help without delay. To the extent that you know what you are doing, help if you can. An injured person can bleed to death very quickly so there are some situations where you simply must act. On the other hand, a person with a neck or back injury also faces serious risk if an inexperienced person attempts to move or manipulate him. Keep that in mind with regard to yourself also. If you have reason to believe that your neck or back may have been seriously injured in the crash, do not risk permanent injury by moving around before experienced medical personnel can arrive and stabilize your spine or neck.

3. Contact Authorities

Prevention of additional injuries and providing of necessary medical attention are the most important priorities which should concern you immediately when a crash occurs. They are the only things for which you may not be able to take corrective action later in the event something really bad occurs. After addressing all concerns of imminent danger, summons emergency personnel or take other action to notify the local investigative agency. In West Virginia, municipal police officers will investigate accidents which occur within incorporated areas. The sheriff's department and state police have concurrent (joint) authority and usually investigate outside of municipalities on a first arrival basis. The police investigation should occur before any accident vehicles are moved (except for vehicles which are necessarily moved due to safety or traffic flow concerns).

4. Identify Witnesses

After attending to health, safety, and reporting issues, make an effort to identify persons who were present at the time of the crash. Be sure to obtain sufficient information which will enable investigators to find each person in the event future information is needed about anything relevant to the crash. Most people will volunteer their names and contact information at the scene of an emergency. However, many people will leave the scene of the crash very quickly.

When a collision occurs, you have no way to know whether or not a witness' information will be important to all involved parties. Although circumstances sometimes seem quite simple, the other driver may substantially change his or her story by the time insurance adjusters complete their work and therefore it is important to locate as many impartial witnesses as may be present. In addition, it is important to make note of the occupants in each involved motor vehicle. (If such persons do not readily supply identification, make note of their description. Usually such people can be identified and interviewed later by investigators.)

5. Preserve Evidence

To the extent possible, make note of everything about the accident scene and vehicles. If you have a cell phone or camera, take pictures showing the condition of the vehicles and their relative locations at the scene. (There is no such thing as having too many photos of the crash and the vehicles involved.) If you hear anyone say anything about the accident or the persons involved in the accident, make note of who said what, and when.

6. Police Investigation

Do not assume that the investigating officer will investigate the crash to the degree necessary to protect your interests in the event that a claim is later made against you (or in the event that you are forced to later make an insurance claim for yourself or your family). Officers are called upon to respond to accidents almost every day. Some will respond to several crashes in the same day. Sometimes accident response becomes routine to the point that the officer simply fills out the preprinted form. Ordinarily the officer will not feel compelled to locate all witnesses or look for evidence which is not required on the Uniform Traffic Crash Report. In that regard, some or all of the information described in topics 4 and 5 above may be significantly overlooked by the officer. If you fail to identify the witnesses or preserve the evidence, both may be lost forever.

7. Statement to Police

If you are involved in a crash, the investigating officer will ordinarily interview you at the scene (or later at the hospital). During such interviews, it is very important to stick to the facts that you know to be true. Do not draw conclusions, guess, or speculate to fill in what you do not know. What you say will go on a written permanent police report and must be scrupulously accurate. If it is wrong, you may be confronted with your incorrect statement at a later date.

8. Do Not Decide What Happened

Do not reach conclusions as to fault: yours or that of someone else. It is rare that either party knows all of the facts immediately after an accident. If it was that easy, the crash probably would not have occurred in the first place. You may think that the other person was at fault, only to discover that you overlooked something about your own driving. Or you may initially believe that the crash was due to something that you overlooked in your driving, only to discover that your oversight had nothing to do with causing the accident. Nobody will know for sure until all of the witnesses have been interviewed. You should not conclude that you or anyone else was at

fault. The fault issue cannot be won or lost at the site of the crash.

9. Medical Conclusions

Do not make statements about your medical condition unless you are absolutely certain that your statement is accurate. There is much adrenaline running through your body immediately after a crash. You may think that you are hurt when you are not, or you may feel no pain in spite of a serious injury. It is important that you do not immediately assume that you are hurt, or not hurt.

If you feel pain, report it. Do not say "I am fine" or "I am okay" spontaneously or in response to someone's question unless you are sure that statement is correct. If it turns out that you have a latent injury which was not painfully obvious at the time of the crash, insurance companies will confront you with the policeman's checked "no injuries" box every time, even if you have accident related surgery the next day.

10. Call Your Insurance Agent

Every motor vehicle insurance policy sold in the United States has a requirement that the accident must be reported to the insurance company. If you fail to promptly report the fact that you have been involved in a crash, you risk losing part or all of the coverage that you purchased, depending upon the terms of the policy and the detrimental effect which your failure to report may have upon the insurance company's ability to defend itself or you. Report the crash by contacting your insurance agent who sold you the policy. Request the agent to confirm your report by letter, fax, or email. Also, while you have the insurance agent on the line, verify that the agent will file the necessary state report on your behalf.

11. Be Careful Regarding Statements to Your Insurance Company

Calling and reporting the crash is an entirely different matter from giving a statement to the insurance company about the circumstances of the crash. In reporting to the insurance agent, you need only provide the basic information as required by the policy section which mandates the report. Usually, that means that you will provide the date and time of the crash and the names and applicable insurance (if available) of the involved parties. The insurance agent will report that basic information to the insurance company which will, in turn, assign an adjuster to follow up with investigation and call you for a statement.

12. Reasons Why Your Insurance Company Will Contact You

There is a big difference between an adjuster and an agent. The agent wants your friendship and business. The adjuster's job is to protect the insurance company's money. There are 3 primary types of coverage about which an adjuster from your own company may contact you.

An adjuster may contact you to get facts which will be used in the event that the insurance company needs to defend you under your liability coverage. In that event, the adjuster is looking for something favorable to you because that information protects the insurance company's money. An adjuster may also contact you about information related to your medical payments' coverage or about information related to your uninsured/underinsured motorist coverage. In that event, the adjuster may be seeking information which is unfavorable to you.

With regard to medical payments coverage, the insurance company would like to minimize the amount which it pays for accident related medical treatment. As for uninsured/underinsured motorist coverage, the adjuster will be seeking information which is favorable to the opposing driver because your own insurance policy will take over where the opposing driver's insurance leaves off. That means that the adjuster who takes a statement from you with regard to your uninsured or underinsured motorist coverage is looking for evidence from you which will harm your case.

It is important to determine and get a commitment from the adjuster regarding which coverage is implicated by the call. In two out of the three situations described above, the adjuster may be adverse to your interests.

13. Contact From the Other Person's Insurance Company

There is only one reason for the insurance company of the other party to contact you. It seeks evidence which will allow the other person's insurance company to avoid payment for your loss. Insurance companies are

stockholder owned corporations and they do not return a profit to their shareholders by looking for ways to actually pay claims. Insurance company profits depend upon sale of insurance to policy-holders and denial of insurance claims made by their policy-holder or persons harmed by the policy-holder.

Insurance adjusters are highly trained specialists. They have the benefit of specific training (including psychology and hundreds of focus groups) which provides them with a significant advantage over you during any interview. Allstate even taught its adjusters to approach you by claiming to be "your claim adjuster," thereby masking the fact that their true purpose was to represent the other side in a collision.

You are not required to speak with any adjuster for the other person's insurance company. The adjuster already has a copy of the accident report and already knows what you said in your factual statement when the police officers interviewed you at the scene of the crash. The only purpose for the adjuster to contact you further is to find fault with what you said or to suggest some alternative more favorable to the adjuster's insured client.

14. Attorneys

Before speaking with anyone about the crash, contact an attorney who has significant experience with motor vehicle collision cases. If the attorney is reputable, he or she will not charge you to review your case and offer suggestions, even if you do not hire that attorney. If it appears that the services of the attorney will not benefit you, an honest attorney will share that information with you and will decline representation.

Choose the attorney based on the attorney's actual experience and reputation with regard to motor vehicle collision injury cases, not based on television or yellow page advertising. A good attorney will not be offended if you ask for references or documentation to confirm the attorney's qualifications to handle your case. If you expect reliable advice and representation, you will need an attorney who handles cases like yours every day, not a general practice attorney who does a little bit of everything (such as divorces, employment law, business law, real estate, bankruptcies, workers comp and so forth). Find an attorney whose primary field of practice is personal injury law. Avoid attorneys who represent or defend insurance companies. Such attorneys are hesitant to reveal their secrets or take on the industry which feeds them.

15. Attorney Fees and Expenses

Regardless of your choice of attorney, the attorney who accepts your case should do so on a contingent fee basis. That means that attorney fees are paid only as a percentage of the amount recovered. If there is no recovery, the attorney receives no fee. Experienced attorneys ordinarily advance expenses on the same basis. The expenses are reimbursed in addition to the contingent fee only if the case is successful. If there is no recovery on the case, most attorney fee contracts provide that there will be no repayment of expenses either.

The fee and expense arrangements must be in a written agreement, signed by both you and the attorney. Do not allow an attorney to represent you unless a written fee agreement is signed. Also, beware of attorneys who expect you to advance expenses from your own pocket. The rationale behind contingent fee agreements is that the attorney accepts the risk of loss so that you do not have to take a chance of being in worse financial shape at the conclusion of the case than you were when you started.

Hill, Peterson, Carper, Bee & Deitzler, PLLC accepts motor vehicle accident cases on a contingent fee basis and all fee arrangements are provided to clients in written form. Please contact us for additional information or a free consultation.