

GJEL ACCIDENT  
ATTORNEYS

# CALIFORNIA CAR ACCIDENT GUIDE



Gillin, Jacobson,  
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# California Car Accident Guide

Presented by:

GJEL Accident Attorneys

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This book is for informational purposes only. This is not legal advice. Any case results in this book are based on the specific facts of those cases. Past results do not predict future successes.

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# 1. HOW TO REPORT A CAR ACCIDENT IN CALIFORNIA

Involvement in a car accident can leave victims shaken up, confused, and uncertain as to what steps to take next. If an accident seems relatively minor and no emergency medical services are necessary, you or the other driver may want to simply exchange information and be on your way. However, under [California law](#), there are some circumstances under which individuals who have been in an accident are under an obligation to report an accident to law enforcement. These circumstances include the following:

- If the crash resulted in injury to any person;
- If the accident caused any property damage, regardless of the type of property.

If you fail to properly report an accident in these situations, you can risk facing consequences including citations and fines. In addition, failing to report an accident to the authorities can hinder your ability to collect compensation for your own accident-related losses from other negligent parties.

It is understandable that drivers may be unsure of when and how to report a car accident. The information below is intended to help individuals involved in a car accident to report their accident in compliance with the relevant laws and in a way that protects their legal right to recovery. For more information or for advice regarding a specific incident, call a car accident attorney at the GJEL law firm today.

## **When Should a Driver Report a Car Accident?**

Generally speaking, it is best to report an accident as soon as possible. In addition, California law requires drivers involved in an accident that causes injury or more than \$750 in damage to report the accident to the California Department of Motor Vehicles within 10 days of the accident.

Often, evidence of negligence in a car accident can disappear in a short amount of time. Some examples of evidence may include:

- Tire marks;
- Weather conditions;
- Road conditions;
- Witnesses' memories of the events; and
- Evidence of driving under the influence of drugs or alcohol.

The sooner you report a car accident, the better chance that law enforcement will make note of certain pieces of evidence and include them in their accident reports. If you are unable to report the accident right away, ensure that you do so within the period of time required by law to avoid any unnecessary consequences.

#### **What Law Enforcement Agency Should I Call?**

The [California Vehicle Code](#) specifies that accident victims should contact the local law enforcement agency in the city in which the accident took place. If an accident occurred in an unincorporated area, drivers or passengers should contact the local California Highway Patrol office. If you are unsure of which agency to call, you should call any nearby agency and they can likely direct you to the right place.

#### **File a Written Accident Report**

In the state of California, a driver (or a third-party, if the driver is unable) is required to file a written report with either the California Highway Patrol or the police department of the city in which the accident took place. Individuals who are required to file an accident report by law and fail to do so are subject to significant criminal penalties, including jail time, fines, or driver's license suspension. Fortunately, a lawyer familiar with representing car accident victims can help individuals ensure they are in compliance with the reporting requirements set out in California law.

Filing a written accident report is not only required by law but is also helpful in memorializing your version of events in writing. The law enforcement officers may use your account to help determine what happened and who was at fault.

**Do Drivers Involved in Accidents Have to Report Accidents to Their Insurance Company?**

There is no law that requires people who are involved in accidents to report accidents to their insurance company. That being said, your insurance company may require it. Nearly every auto insurance contract has a clause requiring the insured to report accidents to the insurer within a reasonable amount of time. Failure to do so may result in denial of coverage. Therefore, it is advisable to report all accidents to your insurance company, even if California law does not require a report to the authorities. Your insurance company should have procedures for reporting and filing claims on your policy through its website or available to you with a call to the company.

## 2. THE MOST CRITICAL INFORMATION TO GATHER AFTER A CAR ACCIDENT

No one gets into their vehicle and expects to be involved in an accident. Car accidents nonetheless happen on a daily basis throughout the state of California. In many cases, people involved in car accidents sustain serious injuries that will affect them for the rest of their lives. Even in less serious accidents, victims often experience significant pain and incur thousands of dollars in property damage to their vehicles. Fortunately, when motor vehicle accidents are caused by the negligence of others, victims are often able to recover financial compensation for their losses through a California personal injury claim.

Such recovery does not happen automatically, however, and car accident claims often require a significant amount of evidence to prove negligence and accident-related losses. There are several types of information victims should gather after an accident in order to preserve potentially important evidence and protect their right to recover. The most critical information to gather after a collision is discussed below.

### **Get Information from the Other Driver or Drivers Involved in the Accident**

[California law](#) requires people who are involved in accidents to exchange information with the other drivers. In addition to being required by law, collecting information from the other drivers involved ensures that victims will be able to file a claim against the correct party or parties who were at fault for the accident. The kinds of information that should be documented include the following:

- The names of the other drivers involved in the accident;
- Driver's license numbers;
- The vehicle identification numbers (VIN) of the other vehicles involved;
- The addresses and contact numbers of the other drivers;

- Insurance company and policy information.

It is important to remember that after a car accident, most people are upset, angry, confused, and may even be in significant pain. For this reason, if you are able to ask the other drivers involved in the accident for this type of information, it is important to remain patient and give them time to regain their bearings after an accident has occurred.

### **Secure Contact Information from Anyone who may have Witnessed the Accident**

It is also important for accident victims to obtain contact information from anyone who may have witnessed the accident occur. In many cases, drivers can have significantly differing accounts of how an accident happened and eyewitness testimony can often help resolve these kinds of disputes. In addition to talking to people who may have witnessed the accident, victims should also look around and see whether any businesses or homes in the area have surveillance cameras that may have captured the accident taking place. If cameras do exist, it may be possible to obtain the footage in order to determine how exactly the accident occurred. Even if a business or homeowner is reluctant to turn over the footage, there are ways in which an experienced personal injury lawyer can compel the production of evidence relevant to a particular case. Having video footage can serve as concrete evidence of certain acts of negligence and can eliminate discrepancies between witness accounts.

### **Take Photographic Evidence of the Scene and Aftermath of the Accident**

The fact that a majority of adults now carry a phone that is also a digital camera has made documenting the aftermath of an accident significantly easier than it was in the past. If you are physically able, you should take photographs of anything you believe may be relevant to the way in which the accident occurred.

Relevant photographs may include the following:

- Your vehicle;
- The other driver's vehicle;
- Your visible injuries;
- Damage to guardrails or other objects;
- Any roadway hazards you believe may have caused or contributed to your accident;
- Tire marks; and
- The general layout of the roadway where your accident occurred.

Examining photos can not only help piece together what happened, but also paint a clearer picture of the collision for a jury should your case go to trial.

**Note any Relevant Details Regarding Your Surroundings**

While not as high-tech as using a digital camera to gather photographic evidence, anyone involved in an accident should also make notes about specific surroundings they believe may have contributed to the way in which the accident took place.

Examples of the kinds of things worth noting may include;

- The weather conditions at the time of the accident;
- Any observations regarding the other driver or drivers that may be relevant to their mental state at the time of the accident;
- Traffic conditions at the time of the accident;
- Whether there were any traffic signals in the area; and
- The road conditions at the scene.

**Obtain a Copy of the Police Report**

After law enforcement arrive on the scene and interview those involved and those who witnessed the collision, they will enter information into an official police report. The report can not only provide important

details but also may include a statement giving the officer's opinion on who was at fault in the accident. You should obtain the report and ensure it includes an accurate portrayal of what you said. If it does not, you can request to have the report amended.

### 3. THINGS TO AVOID DOING AFTER A CAR ACCIDENT

The things drivers do and say in the hours and days immediately following a car accident can have a direct impact on whether they will be able to recover compensation for their injuries. A minor car accident can cause even the most reserved driver to become irritable, angry, or unreasonable, and more serious accidents often leave victims dazed, confused, and disoriented. While it's possible an accident has left you shaken up or injured too severely to think clearly, it's important to do your best to adhere to some basic guidelines. Below is information about some things drivers should avoid doing after a car accident. For more information or for answers to specific questions regarding your case, call our office today.

#### **Don't Apologize or Admit Fault in Any Way**

After an accident, the first inclination of many drivers is to apologize for the accident and see what they can do to rectify the situation. In almost any other situation, apologizing for an incident, even if it was not entirely your fault is generally thought of as good manners and is often encouraged. Unfortunately, apologizing after an accident can often be used later as an admission of liability. Examples of the kinds of statements that could potentially be viewed as an admission of fault include the following:

- "Sorry, I received a text and looked down at my phone."
- "I knew I should have had my brakes checked."
- "I'm exhausted from work, I may have dozed off for a moment"
- "Sorry, I must have missed you in my blind spot"

Even if these statements are true, it is not necessarily the case that the conduct the speaker is admitting was the cause of the accident. For example, even if a driver was tired when an accident occurred, the accident may have actually been caused by another driver running a stop sign and not the tired driver's delayed reaction time. For this

reason, it is important to say as little as possible about the specifics of the accident and avoid apologizing to other parties involved.

**Don't Post Content on Social Media that May Call the Severity of Your Injuries into Question**

These days, sharing photos and thoughts on social media sites like Facebook and Twitter has become a daily way of life for many people. It is hard to find a Facebook news feed that's not filled with baby pictures, political rants, shared articles, or even photos of a person's Tuesday afternoon lunch. Certainly, an event as significant (and hopefully uncommon) as involvement in a car accident would be deemed by many to be social media worthy.

However, many people don't realize that social media usage can have implications for a car accident victim's ability to recover compensation. In many car accident cases, the most significant source of recovery comes from compensation for pain and suffering and the way in which injuries have limited a victim's day-to-day activities. If a car accident victim claims to be in significant pain and unable to engage in daily activities without discomfort, it contradicts those claims to post pictures of going out with friends, exercising, traveling, or engaging in other leisure activities that tend to indicate good health. As social media posts are generally considered public, an opposing attorney or the at-fault party's insurance company could use these kinds of posts as a justification to lower or even completely withdraw a settlement offer.

**Don't Discuss the Accident with the Other Party's Insurance Company or Lawyer**

It's not uncommon for people that have been involved in car accidents to receive phone calls from the other party's insurance company or attorney shortly after an accident occurs. It is important for victims to remember that the other party's attorney is ethically bound to represent his or her client's interests. In addition, insurance companies are in the business of making money and train their adjusters to

minimize the amount paid out on claims. Consequently, any attempts at communication made by anyone representing the other party to an accident should be declined. The best course of action is to refer calls from opposing counsel or an insurance company other than your own to your attorney.

### **Don't Accept the First Settlement Offer Made**

Another practice which is relatively common is for an insurance company to make a settlement offer shortly after an accident occurs but before the victim has an opportunity to fully evaluate his or her losses. In many cases, settlement offers made under these conditions are unreasonably low and are just a fraction of the total claim. Accurately determining how much a car accident claim is worth is difficult for people who are unfamiliar with California personal injury law, and victims regularly undervalue their claims by a significant amount. The kinds of losses that are often recoverable after a serious car accident include the following:

- Medical expenses
- Lost income
- Property damage
- Loss of enjoyment of life
- Physical and emotional pain and suffering

Importantly, California law allows for victims to recover both for the losses they have already realized and those they will experience in the future. For this reason, in cases where victims have incurred injuries that may prevent them from returning to work, it is often necessary to enlist the assistance of expert witnesses. These witnesses can testify to the amount of money the victim would have earned over the course of his or her career had it not been for the accident. Our law firm has developed an extensive network of experts and physicians to help our clients get the compensation to which they are legally entitled.

## 4. DETERMINING FAULT IN A CAR ACCIDENT

Car accidents happen every day on streets and highways throughout California. The [California Highway Patrol reported](#) that in a single year, more than 223,000 people were injured and an additional 3,104 people died due to traffic accidents in our state. The injuries from collisions can be severe and often leave victims facing extensive medical debt, lost income from missing work, and even permanent disabilities. Families who lose a loved one are not only left with grief, but often with lost financial contribution and support to the household. Fortunately, there are options for car accident victims in California to hold the driver who was at fault responsible for their losses.

In order to find other drivers liable, however, you must first determine and prove that they were actually at fault in the accident. Because there is often a substantial amount of money on the line, pointing fingers will not be enough and you often need to present sufficient evidence of fault. There are many different car accident fault rules that must be followed in these legal determinations; in addition, different parties may determine fault in different ways. Because determining fault in a California car accident can be complicated, it is important to have an experienced personal injury lawyer handling your case and assisting with your financial recovery.

### **The Role of Police in Identifying Fault**

After an accident, it is always wise to remain on the scene until law enforcement officers arrive. This is especially important if you believe the other driver was responsible for the accident. The officers should interview everyone involved in the accident and any witnesses in an attempt to compile the most accurate

account of what happened. The officers then put that account into their official report, which may or may not include their professional opinion of who was at fault in the accident. Even if a police report does include a statement regarding fault, this statement is not necessarily determinative for purposes of legal responsibility. Though the police report does not mandate who was at fault, it can be persuasive for insurance companies and courts when deciding fault.

In addition, if police officers believe that one driver violated the law, they can issue a citation, conduct further investigation, or even arrest the driver. For example, if the driver appears to be intoxicated, the police can perform roadside sobriety tests, breath tests, or blood tests to obtain more concrete evidence that the driver was unlawfully [driving under the influence \(DUI\)](#). If a driver is cited or charged with a crime, this can serve as important evidence of fault that is difficult to challenge. For these reasons, police can play an important role in determining who is at fault in a car accident.

### **Seeking an Insurance Settlement from the At-fault Driver**

In California, if you believe another driver was at fault in your accident, you can seek a settlement from that driver's insurance company. However, the insurance company will not simply agree to a settlement. Instead, it will investigate to ensure its policyholder was actually to blame. This investigation can include physically examining the scene of the accident and the vehicles involved, interviewing the parties involved in the collision, and more. Some factors insurance investigators will use to determine fault can include:

- One or more drivers admitting all or a certain degree of

fault;

- Police reports and any traffic violations cited;
- Location of vehicle damage;
- Signs of negligence on the part of either driver (discussed further below).

Often, if fault is not clear, an insurer may attempt to avoid liability by claiming its policyholder was not at fault and therefore refusing to compensate you for your losses. In addition, the insurer may claim you are also partially at fault in order to substantially decrease the amount of your settlement offer. If an insurance company does not make the correct fault determination or if its settlement offer is inadequate to cover your losses, it may be necessary to file a lawsuit against the other driver in California civil court.

### **Car Accident Fault in a Lawsuit**

Every car accident case revolves around the legal concept of “negligence.” A party can be found liable for your accident-related losses if the court finds the accident occurred due to that party's negligence. Parties that can be negligent in car accident cases can include other drivers, bicyclists, pedestrians, car manufacturers, government entities, and more.

Negligence occurs when a party fails to act with the degree of reasonable care that is legally expected of them under the specific circumstances. For instance, every driver has the legal duty to operate his or her vehicle in a reasonably safe manner to prevent injuries to others. If a driver acts in an unsafe manner and causes injury, he or she can be found to be negligent and, as a result, at fault in the car accident. There are many different forms of negligence that can lead to traffic-related crashes, some of which

include the following:

- **DUI** – This can include driving under the influence of drugs, driving over the legal limit of 0.08 percent blood alcohol content (“BAC”), or driving while under the legal limit if there are signs of impaired judgment.
- **Distracted driving** – The most common form of [distracted driving](#) in recent times is texting or otherwise using a smartphone. Yet many other activities can cause dangerous distractions including eating or drinking, taking care of children in the back seat, personal grooming, and more.
- **Aggressive driving** – Everyone knows California traffic can be frustrating. However, when impatience turns into aggression, it can lead to dangerous behaviors including tailgating, excessive speeding, cutting off other vehicles, or threatening other drivers.
- **Violating traffic laws** – The [California Vehicle Code](#) has hundreds of laws that can be violated, leading to accidents. Common violations including speeding, running red lights, failure to signal, and failure to yield.
- **Defective auto parts** – If a car manufacturer sells a vehicle or vehicle components that are defective, a malfunction can lead to a car accident and the manufacturer may be found at fault. Parts that are commonly defective include brakes, tires, and airbags.
- **Dangerous roads** – Government entities have a duty to keep the roads safe through inspection, maintenance, and repair. If potholes or other dangerous road hazards cause an accident, the government could be held liable due to its negligence.

The above are only some of many examples of negligence that can lead to a car accident. If you provide sufficient evidence of the

negligence of another party, that party will likely be found at fault for the accident and liable for your injury-related losses. Proving negligence in a lawsuit can be challenging, however, so having a skilled attorney with experience in injury litigation is critical.

### **What if You are Partially at Fault?**

Many accidents result from the simultaneous negligence of more than one driver. For example, imagine that one driver runs a red light; a second driver could have stopped in time to avoid a collision, but that second driver was looking down at his phone and not watching the road. In such a situation, both parties could be found negligent and would share the blame in the accident.

Fortunately, [courts have ruled](#) that California follows the doctrine of pure “comparative negligence.” This means you can still recover partial damages even if you were partially at fault. If the court decides the other driver was 80 percent at fault and you were 20 percent at fault, you can still recover up to 80 percent of your losses. Therefore, it is important to discuss a possible case with an attorney even if you think you were partially to blame.

## 5. SIGNS THAT YOU SHOULD HIRE AN ATTORNEY AFTER A CAR ACCIDENT

Hundreds of thousands of people are injured in car accidents each year throughout the state of California. When these accidents are caused by the negligence of another party, victims are often able to recover compensation for their losses by filing a California personal injury claim. Unfortunately, the compensation to which people are entitled is not issued automatically. Victims are often required to engage in significant negotiation and legal action in order to get the compensation they deserve.

As in most court matters, you have the right to file a legal claim and represent yourself throughout your car accident case. While it is possible to handle a car accident case by yourself, it's advisable to have your case reviewed by an experienced attorney. Personal injury attorneys almost invariably take their cases on a contingency fee basis; this means clients do not pay anything for legal representation unless their lawyer recovers on their behalf. As a result, personal injury attorneys almost always offer a free consultation during which they will evaluate the strength of a potential client's case and either offer to represent the client or decline to take the case. Car accident victims have nothing to lose by having an attorney review their claims.

In some situations it is extremely important for a car accident victim to retain an attorney, a few of which are discussed below. For more information about your specific case, call our office today to speak with one of our highly experienced California car accident lawyers.

### **Retain an Attorney if the Other Party is Denying Fault**

Fault and legal liability are conceded in many car accident cases. For example, it would not be worth anyone's time for an insurance company to contest a claim from an accident in which a customer ran a stop light or one in which a drunk driver caused a serious accident.

There are cases, however, in which liability is not so clear. When this occurs, the party seeking to recover compensation needs to establish the legal negligence of the other party. In the context of California tort law, “negligence” has a very specific meaning –generally, negligence occurs when a person fails to conduct himself or herself with the degree of care that would ordinarily be exercised by a person in the same or similar circumstances. Examples of driver conduct that could constitute negligence include the following:

- Distracted driving
- Speeding
- Failure to yield
- Following too closely
- Failure to properly maintain a vehicle
- Driving under the influence
- Fatigued driving
- Aggressive driving
- Improper passing
- Failure to follow traffic signals

If fault is contested, it is important to have the assistance of an attorney who knows how to investigate, gather evidence, and prove negligence to help you establish fault and recover.

#### **Handle Compensation Disputes with the Help of an Attorney**

Another situation in which a car accident victim should retain an attorney is when the amount of compensation offered is in dispute. It is extremely difficult for individuals without legal training to accurately determine the value of a car accident claim. The nature of a person’s injuries will have a significant impact on how much compensation a victim will receive. Some circumstances in which determining compensation can be particularly complicated include the following:

- **Catastrophic injuries** – Catastrophic injuries are those that will have a permanent and significant impact on a victim’s life.

Examples of injuries that are often considered catastrophic include traumatic brain injuries (TBIs), spinal cord injuries (SCIs), amputations, and injuries that affect a person's sensory perception. Because these injuries can affect victims for decades and often keep them from working, the compensation they receive should reflect years of medical care, lost income, in-home care, and physical and emotional pain and suffering.

- **The Loss of Unique Property** – In some cases, individuals who are involved in a car accident will incur damage to or the loss of unique property, the value of which is difficult to ascertain. In these instances, an attorney familiar with representing car accident victims can be of significant help in ensuring that victims obtain the compensation they deserve.
- **Permanent disabilities** -- Some accident victims will sustain injuries that cause permanent disabilities. Others may suffer an impairment that permanently prevents them from working or causes a significant impact on their quality of life. Calculating lifelong impairments, lost income for the rest of a victim's work-life expectancy, and quantifying intangible lost enjoyment of life can be subjective and difficult to prove. In such cases, you should not delay in contacting an attorney.

## 6. CALIFORNIA CAR ACCIDENT STATUTE OF LIMITATIONS

If you are injured in a car accident, your immediate focus should be on seeking appropriate medical attention and following your doctor's orders for rest and recovery. In many situations, car accident injuries prevent victims from working or engaging in regular activities for a period of time while they heal. This can make it difficult to think about anything besides your injuries and your physical health.

However, as you recover and undergo treatment, your medical bills may begin to pile up and become stressful and concerning. In addition, if you cannot work, losing income can increase your financial worries. For these reasons, you may begin thinking about how to recover financially for your losses. However, if you cannot work or move around easily, you may be hesitant to call an attorney until you feel better. Many people also worry about the cost of a lawyer and, therefore, put off picking up the phone. What you may not realize is that you only have a limited amount of time to file a claim in California due to the [statutes of limitations set out in state law](#).

### **What are Statutes of Limitations?**

“Statutes of limitations” are laws that set forth the time period within which you may file a particular legal claim. Different types of legal cases have their own statutes of limitations, from personal injury to criminal to breach of contract claims. For a claim arising from a car accident, you will need to comply with the statute of limitations for either personal injury or wrongful death claims, depending on the circumstances. To complicate things further, each state has different time limits, so it is imperative that you seek assistance from an attorney who is specifically

familiar with the statute of limitations that applies to your case under California law.

### **How Long do you Have to File a Claim?**

If you are filing a claim for personal injury in California, you generally have two years from the date of the injury to file a claim, with a few exceptions. The first exception applies when the injured victim is a minor. In such cases, the statute of limitations does not begin to “run” until the minor's 18<sup>th</sup> birthday. The victim then has two years to file a claim after they turn 18. The second exception occurs when you do not discover an accident-related injury immediately after the accident. Some injuries may take days or weeks for signs or symptoms to develop; in such cases, you may have two years from the date of discovery of the injury to file a claim. However, in this situation, it may be more challenging to prove that the injury actually stemmed from the car accident and not from a subsequent event. An attorney can review your case and determine how long you have to file your personal injury claim.

If a traffic collision caused a tragic death, surviving family members generally have two years from the date of death to file a wrongful death claim. This is often a different date than the date of the accident. For example, if your loved one sustains a catastrophic injury and is in a coma for six months before succumbing to the injuries, the statute of limitations will expire two years after the death, not the accident.

Finally, if a car accident damaged your vehicle but did not result in any type of personal injury, you generally have three years from the date of the collision to file a claim for property damage in California.

## **Compensation for Future Losses**

Following a car accident, the full value of your losses may not be readily apparent. Many accidents result in injuries that have long-lasting effects and require ongoing treatment for years or even for the rest of your life. Many injured victims wonder how it is possible to file a claim within two years of the injury if they do not yet know how much the injury will ultimately cost them. Fortunately, the law allows you to seek compensation not only for the losses you have already incurred but also for the demonstrable losses you estimate you will incur in the future.

In situations involving severe and lasting injuries or permanent disabilities, it is critical to have an attorney handling your case who understands how to accurately estimate and prove future losses. It is not enough to simply guess regarding future losses; instead, such determinations can involve complex calculations based on many different factors including:

- The nature and severity of your injuries;
- The amount of treatment your doctors believe you will need with costs adjusted for estimated inflation over time;
- Whether you sustained impairments that prevent you from working and whether you will ever be able to return to work;
- Your age and relative health prior to the accident;
- Your earning capacity and life expectancy;
- The income and benefits you received prior to your injuries.

Such calculations often require the help of economic, occupational, and medical experts. Your attorney should have the

resources needed to make these calculations so you can claim the full amount you deserve despite the statute of limitations.

### **Filing a Timely Insurance Claim**

Some insurance policies have time limits within which you must file a claim following an accident. You should not wait too long to file such an insurance claim, in any event. While the California statute of limitations applies to lawsuits and not to insurance claims, you should always keep these statutory time limits in mind. Insurance negotiations can take weeks or months; you want to be sure you have plenty of time to prepare and file a legal claim if insurance settlement negotiations do not result in an adequate settlement offer.

## 7. CAR ACCIDENT SETTLEMENT NEGOTIATION TIPS

When you make an insurance claim following a car accident to cover the costs of your property damage and injuries, it would of course be ideal if the insurance company automatically agrees to the amount you have claimed. Unfortunately, more often than that not, the insurance company will deny part or all of your claim and will generally offer much less than you believe you deserve.

It is highly important to realize that in this situation, you do not have to accept an inadequate settlement offer. In fact, it is always wise to discuss any offers with an experienced car accident attorney to help you determine whether a settlement offer is sufficient. In many cases, an injured victim will want to rush to accept a settlement so they can get the money as soon as possible to cover medical bills and other losses. However, once you accept a settlement, you will lose the right to negotiate or make further claims in the future stemming from the accident. Therefore, carefully consider whether you want to accept an offer or keep negotiating.

Entering into negotiations with an insurance company can be stressful and intimidating. Insurance adjusters negotiate every day as part of their job and many injured victims have little to no idea of the tactics to use to successfully stand up for their rights. If you need assistance reviewing or negotiating an insurance settlement, you should not hesitate to discuss your situation with a skilled California car accident lawyer. In addition, the following are some tips for greater success in your negotiations.

### **Time Your Negotiations Appropriately**

If you have received all the treatment you need and your injuries have healed, you should start moving forward in seeking a settlement to compensate you for your losses. However, it is important to take time to prepare for your claim in order to improve your position in the negotiations. You should gather all evidence needed to support your claim, which can include the following:

- Medical bills and records of your treatment;
- Statements from witnesses to the accident;
- Police reports;
- Property damage estimates;
- Photos, notes, or any other relevant evidence that supports the amount of losses you have incurred.

Once you've gathered the evidence, you have no reason not to move forward with your claim.

### **Start With a High Number**

In negotiations for home or auto purchases, the seller wants to start with a high sales price, the consumer wants to start with a low sales price, and they both likely hope they can meet somewhere in the middle. Insurance negotiations are similar and an adjuster will generally "lowball" your offer at the beginning. For this reason, it is important to make your initial claim for more than the amount you actually believe is reasonable. This leaves room for you to come down and meet the adjuster in the middle and still receive an adequate amount of compensation. If you need assistance deciding how much to claim, you should consult with an attorney who is experienced in auto insurance negotiations.

### **Do Not Give Up Too Early**

Sometimes, you can be fortunate and the insurance adjuster will agree to a reasonable amount in the first discussion. However, in many other cases, insurance settlement negotiations will go back and forth several times before a reasonable amount is offered. This can be especially true in cases in which certain medical expenses or property damage valuations are contested. If you believe in the amount you are requesting, keep submitting evidence in support of your claim. The adjuster may withhold their best offer for several rounds of negotiations so it can be beneficial to hang in there and not give up negotiations too soon.

### **Identify When You Receive a Final Offer**

While you should not give up too early, you should be aware when the insurance company is not going to budge and has made its final offer. Do not hesitate to ask the adjuster whether they will ever be able to increase an offer. You can request that the adjuster speak with a manager for possible authorization to go higher and, if authorization is declined, perhaps take that as a sign. Look for other clues that may indicate whether they can increase the offer, such as saying “I can't make a higher offer *right now*.” Specifying “right now” may be an important indication that the offer may be increased in a later round of negotiations.

Once you believe you've received a final offer, you must decide whether to accept the settlement or to pursue other means of compensation. If the amount is close to what you have deemed reasonable and fair, you should always feel free to accept the offer and receive the funds to cover your losses. If the amount is lower than your initial goal, you should carefully weigh your options of accepting the settlement or filing a personal injury claim in civil court. If you believe you can receive a substantially

higher amount by going to court, it is likely worth the time and energy to do so. If you do not think pursuing a legal claim will increase your recovery significantly, it may be better to accept a slightly lower amount than you had hoped for to avoid the resources needed for a court case. Discussing your options with an experienced attorney can be of significant assistance in making this decision.

## 8. HOW TO KNOW WHETHER A SETTLEMENT OFFER IS FAIR

While it may come as a surprise to people who are unfamiliar with personal injury law, the vast majority of cases that arise from car crashes and other preventable accidents are resolved long before either party sees the inside of a courtroom. In fact, in many instances, these kinds of cases are settled before a lawsuit is even filed. Of course, there are opposing interests at work in any car accident case; the insurance company of the at-fault party wants to settle for as little as possible and the victim seeks the maximum amount of compensation. By settling out of court, both parties can reduce their risk, as juries are known for making surprising decisions that often leave both plaintiffs and defendants shocked. All parties can avoid uncertainty by coming to a mutually agreeable settlement on their own terms, outside the courtroom. Thus, an overwhelming number of personal injury cases are resolved with a settlement rather than a jury verdict.

One reason many car accident cases are settled out of court is that one party often concedes liability. As a result, the only remaining issue to be decided is how much compensation the at-fault party will pay the victim. The kinds of losses that can be compensated for in a California car accident case include the following:

- Medical expenses;
- Lost income;
- Loss of enjoyment of life;
- Property damage; and
- Physical and emotional pain and suffering.

Importantly, [California law](#) allows victims to recover for future losses as well as losses they have already incurred. For this reason, car accident victims who will be unable to return to work or who will need lifelong

medical care often recover compensation well into the hundreds of thousands or even millions of dollars.

### **Determining a Fair Settlement Offer Takes into Account a Number of Factors**

Generally speaking, the parties to settlement negotiations in a personal injury case attempt to arrive at a figure that takes into the account the amount of money the plaintiff could receive through a court judgment. For this reason, it is important for victims to retain an attorney who is familiar with the way in which personal injury cases are resolved in the courts and can bring that knowledge to the negotiating table.

Some considerations that can affect the final settlement offer made by an insurance company may include the following:

- Strength or weakness of the victim's claims of negligence by the other party;
- The existence of any contributory negligence on the part of the victim that partially caused the accident;
- Whether the jurisdiction in which the case is pending tends to be plaintiff-friendly or defendant-friendly;
- The significance and anticipated duration of the victim's injuries; and
- Any caps or limits on recovery under state law (e.g. no non-economic damages for uninsured motorists).

If you receive a settlement offer that seems low to you, it may be due to a legal factor that limits the settlement possibilities. In other situations, the negligent driver may simply not be cooperating in authorizing a reasonable settlement. An experienced attorney can help you review the details of your case, your losses, and California law to help advise you whether or not a particular settlement offer is fair.

It is critical to discuss any settlement offer with an attorney since, once you accept a settlement, you waive your right to come back and ask for more money in regard to that accident. For this reason and more, you should use patience and careful consideration when determining whether or not to accept a settlement offer.

## 9. CAR ACCIDENT DEPOSITION TIPS

In many car accident cases, a victim will have to attend a deposition during which he or she is asked a series of questions under oath. These questions are usually asked by an insurance company's attorney in the presence of a court reporter. If the victim has retained legal counsel, his or her attorney will also be present and can object to certain questions and advise the victim as to his or her legal rights.

Depositions are subject to certain legal rules, and victims can take steps to prepare for their deposition in order to make sure they are not caught off guard by certain questions or say things that may improperly concede liability or otherwise jeopardize their ability to recover compensation. Some of the things car accident victims can do to ensure their deposition goes as smoothly as possible are detailed below.

### **Refresh Your Memory**

One of the most basic and important steps car accident victims should take to prepare for a deposition is to refresh their memory as to how and under what circumstances the accident took place. This can involve looking at pictures, reading the police report, talking to eyewitnesses or passengers, or simply going over the accident in their mind.

### **Anticipate the Questions You Will be Asked**

While no two car accidents are the same, there are issues that tend to pop up again and again in car accident litigation. For this reason, most lawyers and law firms have developed a set of standard questions they ask car accident victims. If you've retained an experienced lawyer, he or she can go over the standard car accident deposition questions so you'll know what to expect and can be prepared ahead of time to answer these questions.

### **Go Over Any Prior Statements You Have Made**

In many cases, car accident victims who are being deposed have already responded to written questions called interrogatories or made verbal statements to law enforcement or insurance companies investigating the accident. The attorney conducting the deposition will likely be able to access these statements. Because inconsistent statements can cast doubt on the truthfulness of a person's testimony, it is important for car accident victims to thoroughly review their prior statements in order to prevent confusion or mistakes caused by fast-paced or aggressive questioning.

### **Listen Carefully to the Questions You Are Asked**

It is impossible to accurately answer a question that you do not fully understand. For this reason, it is important to make sure you thoroughly understand a question before you begin answering it. If you do not understand a question, ask the person posing the question to rephrase it or clarify what information he or she is seeking. While the questioner may seem annoyed or impatient with requests to clarify what is being asked, it is better to ensure you are answering a question you understand rather than provide information to a question that has not been asked.

### **Take Your Time before Answering Questions**

As a car accident victim who is being deposed, you can often feel like you're being attacked and have no control in the situation. By taking your time between a question being posed and providing an answer, you can control the pace of the deposition and allow your attorney an opportunity to object to questions that are improper. Furthermore, taking your time allows you to gather your thoughts, which can help you avoid saying things that may inappropriately concede facts or indicate liability for the accident.

### **Do Not Volunteer Unnecessary Information or "Fill in the Blanks" with Conjecture**

It is important for car accident victims who are being deposed to refrain from providing more information than is required to answer a question. For example, if a questioner asks where you were going when the accident occurred, simply provide an address rather than explaining the purpose of your visit to that particular location. Relatedly, many people who are being deposed have the desire to answer all of the questions asked, even if they are not sure of the answer. If you do not know the answer to a question, simply state that you do not know – guessing or making up facts to fill in gaps in your knowledge can have a negative impact on the perceived truthfulness of the rest of your testimony.

### **Remember to Stay Calm**

The majority of attorneys who conduct depositions on behalf of insurance companies are polite and professional. That being said, they are required to represent the interests of their client and may take a sarcastic tone or make it clear through their facial expressions that they do not believe a particular piece of testimony. In addition, some questions may be phrased in such a way so as to indicate that any disagreement with the premise contained in the question would be viewed as a lie. Remember that this is not personal and the questioner is simply doing his or her job. In addition, there is a good chance that if you allow the questioner to upset you or break your concentration, you may say or do something that weakens your case. In fact, in some cases, this may be an intentional tactic. It is important to remember to stay calm and discuss any concerns you may have with your attorney.

## 10. CAR ACCIDENT WITHOUT INJUIRES: DO I NEED A LAWYER?

Many people in motor vehicle accidents not involving physical injuries wonder whether they need to retain an attorney. As is often the case with legal issues, the decision to hire a lawyer to handle your case after a car accident depends on a number of factors. Generally speaking, people who are involved in relatively simple car accidents in which liability is conceded and damages are easily ascertainable can recover compensation without the assistance of an attorney. In many cases, however, victims are unaware of issues that could entitle them to significantly more compensation than an insurance company is offering. Therefore, it is often advisable for people involved in a car accident to have their case reviewed by a lawyer before accepting any settlement offer made by an insurance company.

### **There is No Cost Associated with Having Your Car Accident Case Reviewed by an Experienced Attorney**

At GJEL, we take all of our car accident cases on a contingency-fee basis. This means our lawyers do not charge any legal fees unless and until we successfully recover compensation for our clients. As a result, car accident victims can meet with an attorney and have their case thoroughly evaluated by an attorney at no cost to them. Some of the reasons a person involved in a car accident that did not result in injuries would need an attorney include the following:

- **Liability is Disputed** – One of the most common reasons a person who was involved in an injury-free car accident would retain a lawyer is if the other party refuses to concede liability. In order to be able to recover for the damages they have sustained, a car accident victim needs to be able to establish that the accident was caused by someone else's negligence. If liability is disputed, there is a good chance that a particular case

may go to trial, in which case it is crucial to be represented by an experienced lawyer.

- **Damages are Disputed** – Another reason it might be advisable for a person involved in a car accident to talk to an attorney is if the amount of compensation that will be paid is in dispute. Generally, in an injury-free accident, the only damages a plaintiff will claim are those for the property damage to his or her vehicle. There may be some cases in which these damages are disputed, such as when a vehicle is particularly unique and difficult to accurately value or if the at-fault party claims that repairs could be done more cheaply than the plaintiff is claiming.

### **Injuries May Not be Symptomatic for a Significant Period of Time After an Accident**

In some car accident cases, the fact that victims have suffered an injury may not be apparent for days or even weeks after the crash occurred. This is particularly true for soft-tissue injuries such as whiplash, which has the potential to be extremely painful and could become a chronic condition. Failing to retain legal counsel and preserve evidence regarding potential injuries you may have sustained has the potential to result in an inability to recover compensation for medical expenses, lost income, loss of quality of life, physical and emotional pain and suffering, as well as other losses that may be associated with car accident injuries.

### **Psychological Injuries May Entitle Car Accident Victims to Compensation**

Many car accidents that do not result in physical injuries nonetheless leave victims with significant psychological injuries that may entitle them to compensation. In many cases, a car accident is an extremely traumatic and violent event, and victims can develop psychological and emotional problems that could affect them for years. Some of the kinds of psychological injuries that can occur after a car accident include the following:

- Anxiety
- Depression
- Post-traumatic stress disorder (PTSD)
- Phobias
- Insomnia

These kinds of injuries are often difficult to establish, but an experienced attorney can help victims gather evidence and develop an official record that supports their claim of psychological and emotional injuries after a car accident.

## 11. CAN I SUE FOR PAIN AND SUFFERING AFTER A CAR ACCIDENT?

Car accident victims can face many different types of losses which they can recover from a negligent party. Some of these losses are relatively straightforward and tangible as they are based on purely economic losses. These can include losses for property damage, lost wages and benefits from missed work, and the costs of all recommended medical treatment. However, the losses of car accident victims can go well beyond these tangible economic losses and can include many non-economic and subjective losses. One of the most important categories of non-economic losses is that of “pain and suffering.”

### **What Counts as Pain and Suffering?**

In addition to the financial strain of injuries, victims can also experience severe physical and emotional pain following a car accident. Some injuries can cause physical agony for a period of time that causes the victim to remain in a state of suffering. In addition, emotional and mental conditions may develop as a result of the physical pain of any scarring or disfigurement that occurred, or from the trauma of the accident itself. In addition, if an injury causes the inability to work due to long-term or permanent disabilities, a person may lose self-worth, self-esteem, and enjoyment of life. All of these losses can be considered under the umbrella of “pain and suffering” for the purposes of a car accident claim, and California law allows victims to seek compensation for pain and suffering in many situations.

### **Determining the Value of Pain and Suffering**

Because pain and suffering are not quantifiable, it can be difficult to decide how much compensation to request and also to prove that you deserve that amount for your pain and suffering. While there is no set formula for determining what your pain and suffering are worth, it is important not to over-estimate the value of your pain and suffering. If you sprained your wrist, for example, you should not be requesting the same amount for pain and suffering as someone who sustained a catastrophic brain injury. The longer the effects of your injury last and the more severe the symptoms, the more compensation you are likely entitled to.

The following can be helpful tools in determining and proving the value of a claim for pain and suffering in a car accident case:

- Medical experts who can attest to typical symptoms and pain that result from your injury;
- Your own physician who can testify regarding any records of pain levels you claimed during treatment;
- Psychological or psychiatric experts who can evaluate your mental and emotional state and testify to any mental health issues as a result of the accident;
- Any journals or notes you took recording your pain levels or general feelings on a regular basis;
- Testimony by friends and family members regarding your changed mood, abilities, or activities;
- The type and amount of medication you require for pain management;
- Videos that document “A Day in Your Life” that can demonstrate the limitations you have and the effects those limitations have on your well-being.

There can be many different creative ways to demonstrate both physical and emotional pain and suffering following a collision. An

experienced car accident lawyer can help design an effective legal strategy in your case.

### **Limits on Pain and Suffering Damages**

In California, there are some limits on collecting compensation for pain and suffering after a car accident. The main exception is that motorists who are not properly insured generally do not have the right to receive any non-economic damages, including those for pain and suffering. However, if an uninsured driver is hit by another driver who is under the influence of drugs or alcohol, and the intoxicated driver later receives a conviction for DUI stemming from the collision, the uninsured driver may then be eligible to seek compensation for pain and suffering and other non-economic losses.

In addition, while victims are not legally prohibited from receiving damages for pain and suffering following a minor accident, it can be significantly harder to do so. Minor accidents that result in minor injuries and involve low levels of trauma can often make it difficult for someone to prove extensive physical or mental pain and suffering. It is not impossible, however, especially if your injuries are relatively serious in comparison to the minor accident.

## 12. CAR ACCIDENT CLAIMS AND BAD FAITH INSURANCE PRACTICES

Following a car accident, one of your main concerns will likely be how to obtain compensation for your losses. These can include; medical bills, lost income, property damage, and more. While you have different options in how to seek compensation, the first step is generally to make an insurance claim.

If another driver was at fault in your accident, you can file a claim with the auto insurance agency that covers that driver. If that driver was not insured or was underinsured, you may need to file a claim with your own uninsured motorist policy. Even if you were at fault in the accident, you will still have to deal with your own insurance company for your financial recovery. In short, seeking compensation for losses in an accident generally starts with an insurance company.

When a policyholder selects a policy and pays their premiums as required, the insurer should provide the coverage promised in the policy. Unfortunately, insurance companies are corporate entities and, like any other corporation, their main concern is often their profits and bottom line. This can lead many insurance companies to be stingy when reviewing claims and to deny part or all of a claim whenever possible. In some circumstances, insurance companies may even engage in bad faith insurance practices to avoid paying out on valid claims.

### **Examples of Bad Faith in Insurance Claims**

Sometimes you may feel like your insurance company is treating you unfairly, but you may be uncertain whether their actions

constitute bad faith. Simply put, “bad faith” is a failure to live up to the expectations and obligations set out in the insurance policy contract. In addition, bad faith may exist when an insurance company violates the [California Insurance Code](#) in some way. Insurance contracts and laws can be complicated, however, so it is not always easy to identify when an act of bad faith has occurred.

Some common examples of insurance bad faith can include the following:

- Unnecessarily delaying payment on a valid claim;
- Refusal to pay for part or all of a valid claim;
- Refusing to approve necessary and reasonable medical treatment;
- Failure to make a decision on a claim in a timely manner;
- Failure to thoroughly investigate a claim prior to a denial;
- Ignoring obvious circumstances or facts that support a valid claim;
- Requiring the completion of unnecessary and undue paperwork during the claims process;
- Requiring an unreasonable amount of evidence to support a claim;
- Losing or claiming to have never received paperwork or evidence in support of a claim;
- Misinterpreting a policy or misrepresenting facts to the detriment of the insured;
- Failing to provide a valid reason for the denial of part or all of a claim;
- Refusing to settle a claim if a settlement would be appropriate in the situation;
- Otherwise unreasonably withholding benefits to which the insured is entitled under the policy;
- Violating the [California Fair Claims Settlement Practices Regulations](#).

One of the key factors in bad faith insurance practices is unreasonableness.

### **What are Your Rights if Your Insurer Acts in Bad Faith?**

Insurance policies are based on contracts and, like every contract, you have legal rights and remedies if the insurance company does not live up to its end of the bargain. If you bring a claim for breach of contract against the insurance policy, you can seek contract damages including the benefits you deserve under your policy for your valid claim and any applicable interest.

Furthermore, California law treats insurance bad faith cases differently than other contract cases. California recognizes there is often a significant disparity between you and your insurer regarding an understanding of insurance law and requirements. For this reason, it can be all too easy for an insurance company to take advantage of policyholders by acting in bad faith. In order to provide extra protection for policyholders, California law gives you additional ways to recover.

In addition to traditional contract damages, California allows you to also pursue damages under “tort” law. Tort law allows you to seek compensation for various harms you suffered as a result of the insurance company's negligent or intentional bad faith acts. This compensation may include:

- Consequential financial losses;
- Emotional distress;

- Punitive damages if the bad faith was intentional and involved fraud or malice.

If you believe you have a case involving insurance bad faith, it is crucial to consult with an attorney who has experience with auto insurance claims and lawsuits. These cases can be extremely complicated and can involve many different California laws and regulations. In addition, you are already facing losses incurred in your auto accident and it is important that you recover for those losses as soon as possible to avoid any further financial issues. An insurance bad faith claim can complicate how you handle your injuries, property damage, and other losses stemming from your car accident. Therefore, it is important to contact an attorney as soon as you suspect any bad faith has occurred.

## ABOUT GJEL ACCIDENT ATTORNEYS

With over \$850 million recovered for its clients, GJEL Accident Attorneys is one of California's preeminent auto accident and personal injury law firms. The one-on-one relationship between attorney and client is truly important to GJEL. Unlike many other law firms, our discipline is to maintain a constant emphasis on quality over quantity.

If you've been involved in an auto accident in California we encourage you to contact us for a free case evaluation. You can reach us by calling our office at 1-866-218-3776 or by visiting our website: [www.gjel.com/contact.html](http://www.gjel.com/contact.html)

# CALIFORNIA CAR ACCIDENT GUIDE

This guide was written by the experienced California auto accident attorneys at Gillin, Jacobson, Ellis, Larsen & Lucey. If you've been injured in a car accident, we encourage you to contact our firm for a free case evaluation.



*GILLIN, JACOBSON, ELLIS, LARSEN & LUCEY*

## **Some facts about GJEL Accident Attorneys:**

- Over 99% success rate.
- Over \$850 Million recovered for our clients from insurance companies and corporate defendants.
- Ranked among the top law firms nationwide by our peers.
- Respected and seen as a formidable opponent by insurance companies.
- Known for helping our clients with their medical, vehicle repair and replacement, rental car and other bills from day one.
- Our attorneys attended Stanford, the University of California, the University of Chicago, and other major universities.
- Experts in accident reconstruction.
- An authority for other firms and lawyers-noted for the speed and skill with which we resolve our clients' cases.
- Free Consultations whenever and wherever is most convenient for our clients.
- Paid only upon the successful resolution of our clients' cases-no up-front fees.



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