

## **Maximizing Recovery In Automobile Injury Claims**

Copyright  
Robert V. Wells  
2016

### **Introduction**

Every day people are injured in automobile and truck collisions. If the collision was caused by someone else's negligence, you are entitled to receive compensation for your injuries and damage. What you receive in a settlement or trial will depend not only on the nature and extent of your damages, but also how the evidence in your case is worked up and developed. An experienced attorney can help you maximize your recovery from your automobile claim. In what follows I will provide some examples of how I have been able to turn claims that were denied or minimized into cases that received fair and generous settlements or verdicts. I am not talking here about trickery or fabricating facts, but rather I am illustrating how extra effort and diligence will pay dividends when it comes to settlements.

Preserving evidence proving how the collision occurred.

As a result of an automobile or truck collision there may be evidence at the scene showing how the collision occurred. Skid marks left in the street will provide an indication as to where the vehicles were at certain times during the collision, and what action was taken by the drivers to stop or avoid the collision. I have handled cases where the location of skid marks were used to show that the other driver's version of how the collision occurred could not be accurate because the skid marks showed that the other car was clearly in a different location than the driver claimed to be. I have handled cases where the direction and configuration of the skid marks were used to show that the path of travel was different than the other driver claimed to be traveling. I handled a case recently in which a woman pulled out of the parking lot and struck my client's vehicle as he was almost past the parking lot driveway. My client said the other driver initially told him that she was at fault and just was not paying attention. However, when the other driver's mother arrived on the scene and talked to her daughter, the woman changed her story and told the police officer that she had already pulled out of the parking lot driveway and that my client drove into her car causing

the collision. On inspecting my client's car, it was obvious that the collision could not have occurred as the other driver was claiming. My client's car was struck on the rear of the passenger's side which would indicate that my client had almost cleared the parking lot driveway before being struck, so obviously he did not run into her vehicle. Additionally, the car was hit so hard that the force of the collision pushed the car to sideways and caused it to literally tip sideways causing the rear tire on the driver's side to blow out. Finally, skid marks at the scene that were not reported in the police report showed my client's vehicle being pushed sideways. Photographs were taken of the vehicle and skid marks and once this was presented to the other driver's insurance company, the case settled.

While investigative police officers generally do very good jobs investigating and documenting how collisions occurred, there are times when important evidence showing how the collision occurred is not identified in the police report. Sometimes, officers attempt to draw the diagrams showing how the collision occurred to scale, with accurate measurements of skid marks and definite points showing where skid marks begin and end. However, sometimes important information is not included in the report. It is important to know exactly how long the skid marks are and where they start and where they end in order to determine when and where evasive action was initiated. Sometimes skid marks and gouge marks are ignored and not documented in the police report. Sometimes the nature and extent of debris on the road knocked loose from the vehicles is not fully described or located on the road. Sometimes this information may be critical in determining how the collision really occurred. I have handled a number of cases where a retained investigator or accident re-construction expert found and documented evidence not contained in the police report that we were able to document and preserve and use to obtain a fair settlement of our claims.

While investigating officers generally only take photographs of the immediate location of the collision, a visit to the scene of the collision may show curves in the road or hills and dips in the road further back from the location of the collision that may have affected how the drivers reacted to each other when the collision occurred. I once handled a case in which the other driver tried to avoid liability by saying that she turned left in front of my client because the road in front of her dipped and that my client's vehicle coming toward her from the other direction was obscured when it went down into the dip or hill in the road. The other driver stated that her view of my client's vehicle was obscured by the dip in the road, and when my client's car came up into view in front of her it was going excessively fast and hit her before she could complete her turn. The photographs taken at the time of the collision only showed the immediate area of the collision and did not show the dip in the road. When I went to

the scene of the collision I was able to stand and see that vehicles approaching in the opposite direction from where the other driver was, were never out of view when going into the dip, and thus the other driver's statement that my client's vehicle was out of view when it went down into the dip was untrue. A series of photographs taken showing that cars coming from the opposite direction were never out of sight, and that the other driver could have seen my client's vehicle at all times before the collision, were presented to the insurance company and we obtained a fair settlement for my client.

Investigative officers and insurance companies generally take photographs of the vehicles involved in the collision. However, sometimes there are areas of damage not always captured in these photographs. Sometimes additional photographs taken by someone familiar with what types of damage will be helpful in reconstruction how the collision occurred can make a significant difference in the outcome of the case.

### Identifying Witness And Obtaining Statements

Eye witness testimony as to how the collision occurred is powerful evidence at trial and may be extremely important in obtaining a settlement. Again, while police officers generally document the names and addresses of witnesses, there are occasions in which all witnesses are not identified. I have had cases where the police listed witnesses who were actually at the scene of the collision and who stopped to provide their names and statements. However, there may be witnesses who were bystanders away from the collision not interviewed or identified in the police report. I once handled an intersection collision in which the speed of the other driver prior to the collision was a significant factor in causing the collision. The other driver accused my client of suddenly and without warning pulling into his path of travel causing the collision. The other driver's insurance company completely denied her claim. There were no witnesses listed on the police report other than the two drivers. I went door to door up and down the street and found a man who had been in his yard raking leaves prior to the collision. He told me that the other driver caught his attention because he was traveling at an extremely high rate of speed which irritated him because he had children who were also out in the yard playing. He told me that the other driver was traveling at 50 to 60 miles an hour in the residential neighborhood where the speed limit was 30 miles per hour and he further told me that the driver appeared to be looking at something in the passenger seat instead of looking at the road ahead of him. Once we provided a copy of his statement to the insurance company we were able to obtain a fair settlement.

## Using Expert Accident Reconstruction Experts

Engineers with proper training are able to reconstruct how an automobile collision occurred. They are able to use skid marks, measurements of the scene of the collision, damage to the vehicles along with the drivers' accounts of how the collision occurred to determine how fast a driver was traveling prior to the collision. By virtue of their training they are able to use the evidence gathered after the collision to reconstruct how the collision occurred. By hiring these "accident reconstruction experts" I have been able to obtain generous settlements in several cases in which my clients claims were initially completely denied by the other driver's insurance company before they retained my services because the other driver gave an inaccurate account of how the collision occurred in order to avoid liability. In one case I was able to demonstrate that it was the other driver and not my client that initially drove across the centerline of the road. In another case, I was able to show that while my client did pull through a stop sign into the path of the other vehicle, she did so because the other vehicle was traveling at double the speed limit in a residential area and closed the distance on my client faster than my client thought it would because it was traveling so fast. We were able to prove that when my client pulled through the intersection that the other driver was far enough away from the intersection that had he been traveling at the speed limit that my client would have had more than enough time to get safely through the intersection, but that the collision occurred because of the excessive speed of the other driver. In another case, I was able to demonstrate that while my client did rear end the driver in front of him, that he did so because the other driver had suddenly slowed her vehicle to slow to a speed well below the minimum speed limit on the interstate highway, causing the collision. We were able to show that the other driver violated the law by suddenly and without warning reducing her speed to below the minimum limit on the interstate.

## Developing The Medical Evidence Of Injury

I can't tell you how many times I have had a new client come into my office, and in the process of signing up the new client, the relative with the new client says something to the effect of, "I wish I had you 5 years ago when I had an injury claim." When asking what was meant by such statement, I have been told many times that they settled their case for a small amount, only to find out later that their injuries persisted and that they were hurt worse than they thought they were at the time of their settlement, and received an inadequate settlement. What I have learned from these statements, is that clients must understand that once their case is settled that they cannot go back and get more money if they find out later that their injuries are worse

than they thought they were. Over the years I have learned to advise my clients that if they are injured they have to get adequate medical evaluation and treatment that will document those injuries. Again, I want to be very clear that I am not talking about manufacturing false injuries. What I am talking about is exercising due diligence in making sure clients understand how injury claims work. In the minds of the insurance adjustors, if an injury is not documented in the medical records, it does not exist. When people suffer back injuries and subsequently have pain, numbness and tingling that radiates from their lower backs into their legs, they may have herniated or ruptured a disc as a result of the injury. This is a serious injury and would entitle a claimant to a significant settlement. However, as a rule x-rays do not show these conditions. Sometimes, CT scans will show these injuries, but MRI's are the most likely to diagnose such an injury. The reality of injury claims is that unless a herniated or ruptured disc is diagnosed by an MRI or other test, that is, unless it is proven objectively, the claimant will not be compensated for that injury. It is worth saying again--if injuries are not evaluated and diagnosed by physicians and documented in the medical records, as far as insurance companies are concerned they do not exist and are not subject to compensation. I have handled a number of cases in which clients went to doctors who gave them cursory evaluations and told them they were fine. After hearing for a period of time that they were experiencing symptoms consistent with a herniated disc or rotator cuff tear, I explained to them that unless these conditions were documented that, while I would be able to obtain a settlement for them that I would be unable to get fair compensation for them by way of settlement. In many of these cases, after receiving this advice the clients became more pro-active and in obtaining tests and in fact went on to find out that they did in fact have a herniated disc or a rotator cuff tear and were able to obtain the treatment they needed to help with their condition and to then obtain fair settlements.

In putting together a settlement demand, how the evidence is organized and developed makes a difference. I have had many cases in which I ordered all prior records for my client in order to show that prior to the collision my clients were not experiencing any of the symptoms or problems that they were now experiencing as a result of their injuries. I have had a number of cases in which I have requested and obtained reports from my client's treating physicians that contained clear descriptions of their evaluation and treatment, and additionally provided the physician's opinions as to the nature and extent, and permanency of the injuries. Such reports have helped maximize settlements.

## Conclusion

How your injury claim is developed and handled will determine the amount you get from your settlement. A skillful lawyer, experienced in handling injuries cases will be able to help you maximize your settlement.

Find out more about Robert Wells Law at our website!

<https://www.robertwellslaw.com/>

### DISCLAIMER

The information you obtain at this site is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This disclosure is required by rule of the Supreme Court of Missouri.