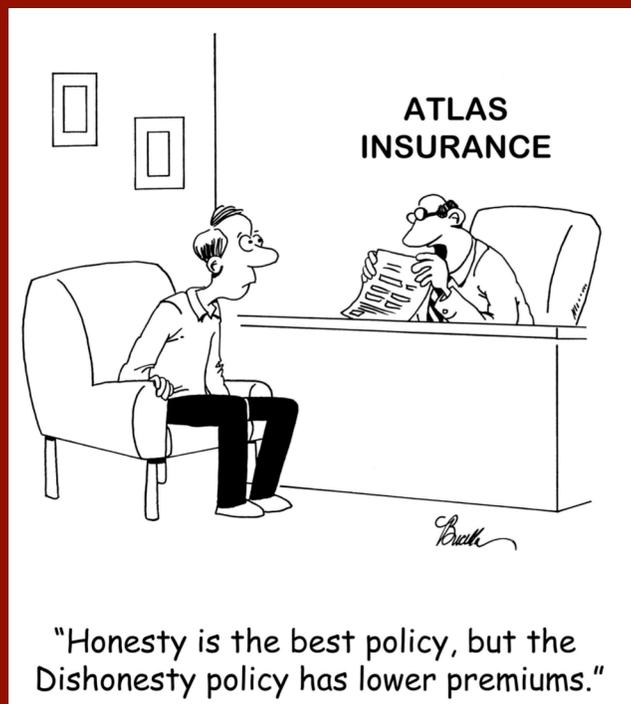


Dirty Hands and Bad Neighbors

*Protecting Yourself from the Realities of Dealing with
Insurance Companies Before and After a Car Accident*



"Honesty is the best policy, but the Dishonesty policy has lower premiums."

**By,
Anthony Mancini, JD
Attorney at Law**

About the Author

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I'm a Careful Driver. I'll Never Get into an Accident.

Most drivers have the attitude that I'm a safe driver so I don't need to worry about an accident. If you've never been involved in a car accident in your life, either you're extremely lucky or you haven't been driving for long.

According to the National Highway Traffic Safety Administration, in 2009 the United States had over 206 million licensed drivers, accounting for an amazing 2.9 trillion miles traveled.¹ In 2008, the Bureau of Transit Statistics reported 349 million passenger vehicles, commercial trucks and motorcycles registered in the United States.² Every year, more drivers and cars are added to the nation's highways. City streets, rural roads and freeways are more crowded than ever. There has also been an increase in semi-truck transportation. Thereby adding even more levels of congestion to already overly crowded roads.

An unfortunate result of our increased driving practices is the increased likelihood of an accident involving a car, truck, motorcycle, bicycle, public transportation, or pedestrian. The 2010 census reported that 10.8 million drivers were involved in some type of vehicular accident in 2009. During that same period, 33,000 people lost their lives to vehicular accidents.

The odds of being in an accident are 1 in 20, or 5 percent. With driving patterns in the increase each year that 5 percent could easily double or triple during a lifetime. It's pretty safe to say that it's not a matter of if, but when you will get into a

¹ See NHTSA research for 2009 driving patterns

² See BTS research for 2008 registered drivers.

car accident.

Do you still think it won't happen to you? After all you're a safe driver, right? If I were you I would think again. Obviously, you're not the only driver on the road. Other drivers often drive distracted or impaired. Drivers violate laws by speeding, or running red lights. Many times, other drivers just make poor driving decisions. There are also times when drivers experience medical problems causing them to lose control of their vehicles.

If you factor in other possibilities: road rage, poor weather conditions, road construction, etc. Many times, being law-abiding and driving defensively is just not enough.

One day you will be in a car accident. As a car accident victim you must be prepared to deal with the aftermath, which may include:

1. Dealing with police interviews.
2. Emergency treatment if you or your passengers are injured.
3. Follow-up medical care, physical therapy, surgeries, or long-term health issues. Mental or emotional issues
4. Loss of income do to your inability to work
5. Dealing with complex insurance matters
6. Legal matters if you're found liable for the accident, or if someone else is responsible for causing the accident.
7. Property damage issues regarding the repair of your vehicle (or other's vehicles if you're responsible for the accident).

I put this book together in order to give you a general overview of what you should know about these critical areas. The information presented in this book is for general information purposes only and is not intended as specific legal advice for your particular situation. I highly

recommend that if you are involved in an accident, IMMEDIATELY contact an attorney. Most car accident attorneys offer free consultations, and work on contingency fee basis. In other words, you will not have to pay them unless they obtain money for you. Remember, every party to an accident will consult with an attorney. The insurance companies will have them on staff to protect their interests. Do not put yourself at a disadvantage. Contact an attorney.

Car Insurance. The Cheapest Can End Up Costing You The Most.

You see it and hear it daily. The constant bombardment of commercials by various insurance companies promising to save you premium dollars on car insurance. Some will even compare rates with different companies. However, is the cheapest premium always the best idea? Individuals need to look beyond the premium cost, and take a closer look at the type of coverage that they are getting for their premium dollar, and the credibility of the company who is selling it to them.

When you purchase an automobile insurance policy there are various types of insurance coverage that can, or sometimes must be purchased. Typically, you can purchase collision coverage. Collision covers damage to your car when your car hits or is hit by another vehicle or object. The coverage pays for the damage less your deductible. Another coverage is comprehensive coverage. This covers your vehicle for losses stemming from such events as theft, flood, or fire. Comprehensive pays to repair your vehicle less the deductible. These two types of insurance coverage tend to be the most dropped coverage. Individuals who own older cars frequently drop the coverage, or individuals who own vehicles that are not subject to a loan, or not part of a lease. Before you drop comprehensive and collision coverage, ask yourself if you have the cash available to purchase another car should your car get totaled in an accident, and the accident happens to be your fault, or if a your car is destroyed by a storm. If you need the money from one car to

purchase another, you should definitely include collision or comprehensive coverage.

The area of car insurance coverage that causes tremendous confusion, is liability, uninsured motorist, and underinsured motorist coverage. Many individuals purchase this coverage, and have absolutely no idea what they are buying. This is largely due to lazy self-serving insurance agents. We will discuss that topic later in the book.

Your insurance policy should include sufficient 'liability' coverage to protect other drivers (or the general public) from your actions that may cause damage or injuries. Liability coverage also protects yourself from incurring financial liability from your personal assets. Obviously you can't predict the future and know how serious a future accident may be, so you should have enough liability insurance to protect you from liability if you cause an accident. Serious injuries and losses can occur from what seem to be the most basic of accidents. Many states have mandatory liability insurance requirements, and have very low mandatory liability limits. They are typically anywhere from \$10,000-\$20,000 per person/\$20,000-\$40,000 per accident. (commonly referred to as 10/20 or 20/40 coverage). Being insured for only the minimum coverage is not only irresponsible, but also a foolish way to protect yourself from personal obligation. A couple of nights in the hospital and someone's bill can definitely exceed \$40,000. I recommend liability limits no less than \$100,000 per person/\$300,000 per accident (commonly referred to as 100/300 coverage) but even higher limits is preferable. Anything less than these amounts may not cover your liability after you cause a serious accident. Furthermore, I also recommend property damage coverage of at least \$100,000. Property damage coverage covers the cost to repair or replace property

damaged by your car. The cost of cars has gone up tremendously over the years. There are many vehicles on the road that are valued between \$50,000 and \$100,000. You do not want to be paying someone out of pocket to fix their BMW or Lexus.

In addition to liability coverage, you should have 'uninsured motorist' coverage (commonly referred to as UM) and 'under-insured motorist' coverage (UIM). UM protects you and your passengers from irresponsible drivers who have no insurance. UIM protects you and your passengers from drivers who don't have enough insurance. In many states UM coverage, by law, must be included in an automobile insurance policy. However, in many states, UM coverage remains optional. In 2011, the Insurance Research Council stated that 1 in 7 cars on the road are not covered by insurance.³ Many times financially compromised drivers look to lower their insurance costs by waiving UM (when allowed by law) and UIM coverage. If you make this decision, realize that if you are in an accident, and injured by an uninsured or underinsured motorist, you could be having to pay your own medical and repair costs. This could run into thousands of dollars or more. Not to mention there would be no available coverage to compensate you for lost wages and pain and suffering. Many individuals that have been in these situations have been forced to file for bankruptcy due to the burden of their losses. You chose not to carry UM and UIM coverage, therefore, your insurance company is under no legal obligation to help you with these costs. Your only recourse is to file a civil lawsuit against the other driver. However, it's obvious that fiscally irresponsible people who don't carry insurance are not likely to have adequate assets to draw from should the court find in your

³ See USA Today, September 9, 2011

favor. I highly recommend that you include UM and UIM coverage in your automobile policy. Consider them a life preserver for your car.

Many states offer medical payments coverage. This coverage pays the medical bills of all the individuals in a vehicle that is involved in an accident. The medical payments benefit is paid out regardless of whose fault the accident may be.

Some states are no-fault insurance states that may require you to have 'Personal Injury Protection' (commonly referred to as PIP). PIP pays for medical costs, lost income and essential services regardless of who is at fault. There is usually a cost cap placed on PIP coverage, meaning your insurance company will pay PIP benefits up to the maximum amount of your PIP coverage. In no fault insurance states, typically a threshold, either by way of medical costs, or severity of an injury, must be met before any action can be taken against the at fault party's insurance company. There are not many no-fault insurance states. Each state has its own threshold requirement.

Prior to purchasing car insurance I suggest contacting an attorney in your area to discuss the legal ramifications and benefits to the various levels of coverage available on an insurance policy. An attorney can also shed some light on the dollar amount of protection that would be sufficient to protect the assets of your current estate. Make sure the attorney that you contact has experience in dealing with insurance law, and accident matters. I have consulted with many individuals on this topic, and I also do not charge them for the consultation. Shop around. You should be able to find a quality attorney who will offer this service for little or no legal fee.

Your Insurance Agent is Just Another Salesperson.

Years ago there were typically a couple of different insurance agents in your neighborhood. They may have been friends of the family, or you knew each other from Church, or various neighborhood organizations. While maybe once in a while you might compare costs, for the most part you stayed with that one agent because they always took care of you when you had a claim. They also made sure you had the right coverage.

Fast forward to the present. In the past twenty years the number of insurance companies competing for your premium dollar has almost tripled. In an attempt to offer competitive policy rates, insurance companies have dramatically made cuts in many areas in order to pour dollars into advertising so that they can market their low premiums. The advertising has gone haywire. This is evidenced by the number of television commercials that you are seeing from all the major insurance companies.

What happened to the neighborhood insurance agent? Many of them are still in existence. However, many insurance companies have switched to call centers. These centers are typically staffed with inexperienced individuals who lack sufficient knowledge to properly assist you with either the purchase of insurance or your claim. To these call centers you are just another one of the thousands of calls that they answer daily.

Even though they are still in existence, the insurance agent has come under relenting pressure, from the insurance companies that they represent, to sell more policies. Some insurance agents have lost their agencies because they could

not keep up with the increased sales demands. The response to the demand has been to go all out to get the premium dollars. Agents have begun focusing solely on having the lowest premium regardless of the effect on the coverage. Unfortunately, this type of behavior by the insurance agent is putting individuals behind the wheels of their cars with inadequate insurance coverage.

When purchasing car insurance, most individuals are driven by the premium price. They assume that the agent will provide them with adequate coverage. This assumption is clearly a mistake. Most agents fail to take the time to fully explain the various levels of coverage, and they will rarely ever suggest that you increase your coverage limits.

The goal of an insurance agent is to sell policies with low liability exposure for the insurance company. The price difference between a 100/300 liability coverage and 250/500 liability coverage is minimal. Typically the difference is \$20-\$30 dollars a policy period. An insurance agent will rarely suggest that you take the higher coverage because it's not profitable for the insurance company, and not in the agent's best interest. The insurance company is doubling its payout exposure for only a few extra premium dollars. So they discourage the agent from selling such high liability coverage by attaching performance bonuses to the agent's sales. Many times bonuses are given based on the ratio of premium dollars to insurance coverage sold. The agent's goal is maximum premium dollars with minimum payout exposure.

Always remember, the insurance agent is an agent and fiduciary for the insurance company or companies that they represent. They are not your agent or representative. Their objective is to make money. They are sales people. If you feel that you need additional coverage ask the agent for the

additional coverage. If the agent tries to talk you out of the additional coverage, find a new company or agent. As I stated earlier, before purchasing insurance, discuss your coverage needs with an experienced insurance attorney.

I was Just in a Car Accident...What do I do?

Unfortunately, as safe a driver as you are, you weren't able to beat the odds, and you find yourself involved in a car accident. Hopefully, the accident will be minor, and not serious. Regardless of the accident's severity, there are a number of things that you can do to protect your rights:

- 1. If you are conscious or only injured slightly, you should check on the condition of other drivers/passengers.** Severely injured victims should not be moved unless there is an emergency situation (for example, the car has caught fire). Call 911 or the police department immediately.
- 2. If you believe you are injured, it's always important to tell the police or EMTs of your injuries or pain.** As a precaution, you may be transported to a local emergency room to be examined and treated, if necessary. If there is a possibility of injury and you decide not to go to the emergency room, you should immediately see a medical professional at an instant care clinic or your personal physician. If you do not seek medical care following an accident and have it documented, there is no evidence that you were ever injured. The insurance companies will use this against you.
- 3. Give your driver license, vehicle registration and insurance information to the investigating police officer.** The police officer will use it to complete an accident report for you and other drivers involved in

the accident. In some jurisdictions, as a cost saving measure, dispatchers will not send police unless the accident involves injuries. If this is the case, you should make sure you write down all vital information and information from the other drivers, including:

- Full name
- Address
- Phone numbers(s)
- Insurance company
- Insurance policy number (and agent's name if listed)
- Registration information (name on registration, license number, make and model)
- Exact location of the accident
- Time of the accident

Document the accident scene by taking video or photographs, using your cell phone or other camera. Try to not only shoot photos of your damaged vehicle, but also all damage to the other vehicles involved in the accident. In addition, photograph/videotape the entire accident scene.

4. If anyone witnessed the accident, it is important that you gather their information, such as name, phone numbers, address, and a brief synopsis of what they witnessed. If possible either at the scene of the accident or shortly thereafter, have the witness write a statement of their version of the accident, and have them sign it.

- 5. Contact your insurance company as soon as possible.** Notify a claims adjustor about the accident. Do not contact or give a recorded statement to the adverse insurance company until you have received legal counsel from a personal injury attorney. It is not uncommon that the adverse insurance company will use a verbal mistake or misstatement to harm or deny any future accident claim. Many times after an accident individuals are shaken, stressed out, and upset. These emotions can manifest themselves negatively when you are communicating to an adverse party. Resist the attempt to blow up at the adverse insurance. In doing so you may seriously harm your chances at a successful claim.

If you were injured and not at fault for the accident (or if you were a passenger in an accident caused by your driver) you may have a case for financial compensation, including the cost of medical treatment and lost income you endured as part of your recovery. You may also have a claim for general damages for your pain and suffering, as well as future medical care and lingering injuries. Remember that you have the right to competent, aggressive legal representation to help you deal with the insurance company and to receive a fair settlement. Do not wait to seek legal help. Often, insurance adjusters will push you to make statements or sign documents that will prejudice your claim. It is always smart to contact an experienced personal injury attorney as soon as possible following an accident so that your case will be as strong as possible and to prevent inadvertent mistakes.

When to seek medical help. A question we often hear is “I

wasn't hurt enough to need an ambulance trip to the emergency room, but I do have a few aches and pains. Isn't it better to wait a few days to see if I get better?" The answer is simple: No! Following your accident, if you have any discomfort, it is smart to be examined by your doctor or a medical clinic. This is especially true if you have a number of soft tissue injuries – such as back pain, whiplash or headaches – which are very common in car accidents. As a general rule, soft tissue pain can get progressively worse and become chronic if left untreated. There is also the possibility that you may have an underlying structural issue that may be serious, and cause significant damage if left untreated. If you are unsure who to see, your attorney may be able to recommend a nearby qualified medical professional who is experienced in treating auto accident injuries.

But The Adjuster Said Don't Worry?

Usually within a couple of days after the accident, you will get a call from an insurance adjuster assigned to your claim. This adjuster's job is to make you feel at ease, and comfortable. The adjuster will ask you if you are injured. Be careful! Some people tell the adjuster no only to begin feeling pain after the conversation. At that time you already admitted that you were not injured, and have thereby seriously hurt your chances at getting your claim paid.

The adjuster many times will offer you a nominal amount in order to quickly settle your claim. That amount could be \$500 or \$1000. Again, be careful if you accept that money you will likely have waived your right to file suit against the responsible person or entity.

The adjuster might want to take a recorded statement from you. This is an interrogation designed to pin down the facts of the accidents as well as your injury. Before agreeing to participate in a recorded statement with the adjuster, remember, that adjuster has done hundreds maybe thousands of these statements. You have probably have done zero recorded statements. The adjuster is trained in asking tricky and confusing questions that can cause you to respond in ways that could be detrimental to your case. Meanwhile you are still in some state of shock over the accident, and likely not thinking straight. Who will benefit from the recorded statement?

Keep in mind, the objective of the insurance company is to pay out on a claim as little as possible, and the adjuster is their chief messenger. The adjuster has an enormous amount of resources at their disposal. Large amounts of money, and all the legal resources that are needed to make sure they have as much negotiating edge as possible. Many insurance

companies use computer software designed to obtain the absolute minimum value of a claim. This is what you are going up against when you try and take on the insurance companies alone.

The adjuster will many times try and dissuade you from hiring an attorney. They may tell you “ you don’t need an attorney, we will take care of this for you”, or “ why hire an attorney?”, “it’s wasted money”. Many jurisdictions have come down on this type of discourse by insurance adjusters. In fact, in some states, an adjuster telling you that you do not need an attorney is deemed as giving legal advice, and since an adjuster is unlikely to be a licensed attorney, they are guilty of practicing law without a license. That’s a felony in most states. If an adjuster suggests that you do not need a lawyer, ask for their supervisor, and inform them of their tactics.

Now it comes down to settling your claim. You sent your medical bills and expenses to the adjuster. The adjuster low balls you and then points you to something you said in your recorded statement. The adjuster also decides that this is a good time to inform you that since your health insurance picked up some of your medical bills, that they health insurance company now has a “subrogation lien” on the proceeds of your insurance claim. In other words since they paid your medical bills and you are using those bills to obtain a settlement, the health insurance company is entitled to their money back if you collect a settlement from a third party. Confused yet? You have no idea how to approach resolving this. All you know is that it sounds like you are getting less and less money by the minute. The adjuster has no interest in advising you how to proceed. The adjuster is trying to convince you to take the settlement offer.

Remember, as I alluded to earlier, no matter how nice and sweet and kind the adjuster initially comes across, they are not on your friend. Their objective is to make their employer insurance company money, and they will do whatever necessary in order to accomplish that objective.

Hire a Personal Injury Attorney

Would you perform surgery on yourself? Drill your own tooth? I doubt it. Then why would you represent yourself against an insurance company? Is it the expense of an attorney? A quality personal injury attorney will accept your case on a contingency basis. They do not get paid unless they recover money for you. A quality personal injury attorney will not only obtain top dollar for your claim, but they will also negotiate and resolve all the ancillary matters surrounding your claim. An example of this would be the subrogation lien mentioned in the prior chapter. Do not be penny wise and dollar foolish. A quality personal injury attorney is a good investment in your case.

A wise judge once told me he who represents himself has a fool for a client. Hire a quality personal injury attorney. There is no reason to go at this alone.