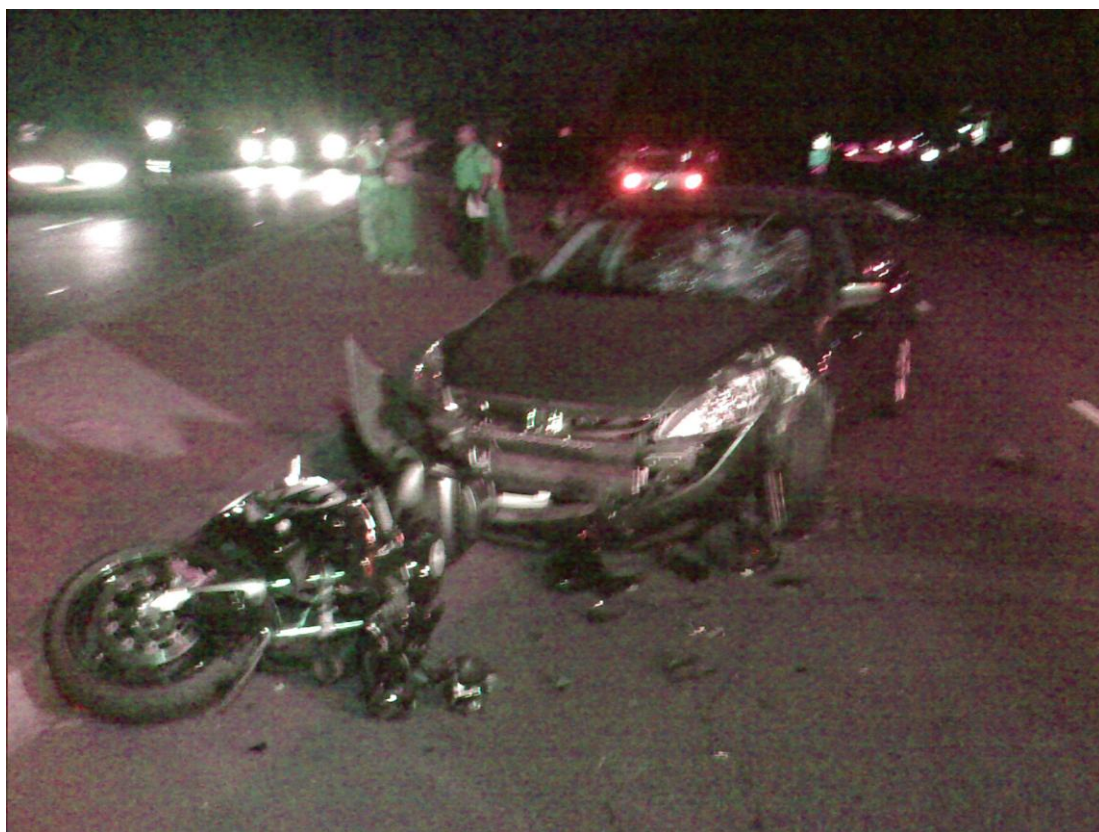


CALIFORNIA *MOTORCYCLE ACCIDENT* HANDBOOK



Edward A. Smith
Attorney at Law

CALIFORNIA MOTORCYCLE ACCIDENT HANDBOOK

www.AutoAccident.com

1-800-404-5400



Who I am and why I wrote this book

I am Ed Smith, founder and owner of the Law Offices of Edward A. Smith. As a trial lawyer in California I have been helping injured people for over thirty years. I am originally from Brooklyn, New York. After combat service in the U.S. Air Force during the Vietnam War, I settled in Sacramento, California. I attended U.C. Davis as an undergraduate and law school at McGeorge School of Law.

I am recognized as an expert in cases involving motorcycle and auto accident injury and auto insurance laws. I am often asked to speak to groups of other lawyers on these topics, and am frequently contacted and questioned by medical professionals about their patients who have been injured in accidents. I am also a member of the Million Dollar Forum, an organization of attorneys who have won multiple verdicts and settlements of over \$1,000,000.00. I have a 10.0 Superb rating from Avvo Rating, widely recognized as the premier attorney rating service.

My website, www.AutoAccident.com, is a nationally recognized personal injury site. Although it's named *Auto Accident*, we have extensive experience in most aspects of personal injury law, including accidents involving semi-trucks, watercraft, and motorcycles, as well as animal attacks and serious slips and falls.

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If you have been injured in a motorcycle accident, this book will help you understand your legal rights. Motorcycle accident insurance laws in California are complicated, and fluid. This book will not answer all of your questions; there's not room here to cover every aspect of California law, but it will answer many of them.

Please visit our web site for some examples of the settlements and jury verdicts we have obtained for our clients. I enjoy sharing my expertise with new clients, and will gladly speak with all persons who call my office. If you have found this book helpful, I would very much appreciate a positive review.

- Ed Smith

Law Offices of Edward A. Smith
1900 Point West Way, Suite 200
Sacramento, CA 95815
(916) 921-6400, 1-800-404-5400

www.AutoAccident.com
Ed@autoaccident.com

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Legal Notice

Information contained in this book is largely specific to California law, and is not intended to take the place of actual legal representation. I urge you to contact an attorney if you have specific questions pertaining to a potential claim, as the law continuously changes.

I have done my best to ensure that his book provides a clear, basic and helpful launch pad toward understanding California motorcycle accident law and insurance claims. If you would like a referral to a lawyer in another state, feel free to ask me!

GENERAL INFORMATION

You have been injured in a motorcycle accident through no fault of your own. A ton of questions are in your head:

- Will I be paid for time lost from work?
- How will my medical bills be paid?
- What do I do if the person who hit my motorcycle has little or no insurance?
- Who will repair my bike? How much will I get if it's totaled?
- What if my injuries prevent me from ever returning to my job?
- What will the insurance company offer me for my injuries?
- How will I know that the insurance settlement is fair?
- How will I know if I have a competent lawyer?

The list goes on and on and on....here are some simple answers:

For people who are involved in a motorcycle accident in California, many types of claims exist, but the two most common are motorcycle repairs and damages claims and bodily injury claims.

No big surprise here, right? Unfortunately, it soon gets a lot trickier. In both types of claims, there are issues that will need to be addressed.

In this book, I will describe the process involved in filing these claims. Here you will find answers to many of the common questions, and even a few you may not have considered. Depending on your specific situation, they can have a **huge** effect on your success.

Unfortunately, in our legal system *you get one shot*, and one shot only, at your claim. Once you accept a check and sign a release, that's it! You cannot then go back and say, "Wait a minute I forgot this," or "Oh no, I didn't think about that."

It is absolutely vital that you understand the rules and the process. Knowledge is power. Empower yourself and avoid potential problems.

If you have questions that are not answered in this book, give me a call, and I will do my best to answer them. My toll-free number is **1-800-404-5400** or in Sacramento, **(916) 921-6400**, or you can send an email to Ed@autoaccident.com. How many how-to books put the personal attention of the author at your disposal? Not many, so feel free to take advantage!

For more information, check out my website at www.AutoAccident.com.

Introduction - Some General Facts

In 2010, 4,502 motorcyclists were killed—a slight increase from the 4,469 killed in 2009. There were 82,000 motorcyclists injured during 2010, a decrease from 90,000 in 2009.

In 2010, motorcyclists accounted for 14 percent of total traffic fatalities, 16 percent of all occupant fatalities, and 4 percent of occupants injured.

Motorcycles made up 3 percent of all registered vehicles in the United States in 2010 and accounted for only 0.6 percent of all vehicle miles traveled. Per vehicle mile traveled in 2010, motorcyclists were about 30 times more likely than passenger car occupants to die in a motor vehicle traffic crash and 5 times more likely to be injured.

Per registered vehicle, the fatality rate for motorcyclists in 2010 was *6 times* the fatality rate for passenger car occupants. The injury rate for motorcyclists was *9 times* the injury rate for passenger car occupants.

Motorcycle Involvement in Crashes

In 2010, 2,351 (51%) of all motorcycles involved in fatal crashes collided with other motor vehicles. In two-vehicle crashes, 75 percent of the motorcycles involved were struck in the front. Only 6 percent were struck from the rear.

Motorcycles are more likely to be involved in a fatal collision with a fixed object than are other vehicles. In 2010, 24 percent of the motorcycles involved in fatal crashes collided with fixed objects, compared to 18 percent for passenger cars, 13 percent for light trucks, and for large trucks, 4 percent.

In 2010, there were 1,999 two-vehicle fatal crashes involving a motorcycle and another type of vehicle. In 39 percent (770) of these crashes the other vehicle was turning left while the motorcycle was going straight, passing, or overtaking another vehicle. Both vehicles were going straight in 446 crashes (22%).

From 2001 to 2010, motorcycle accident fatalities increased by 41 percent. Among those increases, the 40 and older age group made up 39 percent of motorcyclists killed in 2001, as compared to 56 percent in 2010. Within this age group, fatalities increased by 100 percent over a

10-year period. Data has shown that the average age of motorcycle riders killed in traffic crashes was 42.

Rebar sticking up from concrete on roads and highways has become a more common occurrence. Due to no fault of their own, many motorcyclists have fallen victim to misplaced rebar.

Helmet Use and Effectiveness

NHTSA estimates that helmets saved the lives of 1,550 motorcyclists in 2010. If all riders had worn helmets, an additional 706 lives could have been saved.

Helmets are estimated to be 37-percent effective in preventing fatal injuries to motorcycle riders and 41 percent more effective for motorcycle passengers. For every 100 bare-headed motorcycle riders killed in crashes, 37 of them could have been saved had they worn helmets.

According to NHTSA's National Occupant Protection Use Survey, a nationally representative observational survey of motorcycle helmet, seat belt, and child safety seat useage, use of DOT-compliant helmets in 2010 stood at 54 percent, a decrease from 67 percent in 2009.

Reported helmet use rates for fatally injured motorcyclists in 2010 were 58 percent for riders and 49 percent for passengers, compared with 57 percent and 43 percent, respectively, in 2009.

All motorcycle helmets sold in the United States are required to meet Federal Motor Vehicle Safety Standard 218, which establishes the minimum level of protection helmets must afford each user.

In 2010, 20 States, the District of Columbia, and Puerto Rico required helmet use by all motorcyclists, whereas 27 States required helmet use only by a subset of riders (typically those under age 18). Three states (Illinois, Iowa, and New Hampshire), do not require helmet use by motorcyclists of any age. Of motorcyclists killed in these states in 2010, 66 percent were not wearing helmets, as compared to only 10 percent in States with universal helmet laws.

The failure to wear a helmet does not in an of itself devalue a strong personal injury case. The failure to wear a helmet only matters if it can be proven that the injury was caused, or significantly worsened, by such a failure. For example, if you break your leg in a motorcycle accident, clearly, whether or not you wore a helmet is inconsequential.

A total of 59 percent of motorcycle collisions was attributed to three factors: unsafe speed, improper turning, and driving under the influence of alcohol and/or drugs.

Information about the California Motorcyclist Safety Program can be found at <http://www.ca-msp.org/>

Another helpful resource is California's Motorcycle Handbook, available at: <http://www.dmv.ca.gov/pubs/pubs.htm>

Wearing the Right Gear

Your riding gear is "right" if it protects you. In any collision, you have a far better chance of avoiding serious injury when you wear:

- A motorcycle safety helmet approved by the U.S. Department of Transportation (DOT).
- Face or eye protection.
- Protective clothing; for example, leather or long sleeved jacket, long heavy pants over ankle boots, full-fingered leather gloves.

Motorcycle Insurance Facts

The financial responsibility sections of the *California Vehicle Code* apply to all two-wheel vehicle owners and their operators.

If you, as an operator, are involved in a collision which causes more than \$750 in property damage to any person, including yourself, or in which anyone, including yourself, is injured, no matter how slightly, you (or your insurance agent, broker, or legal representative) must report the collision to the DMV. The CHP or police will not make this report for you.

You must make this report within 10 days on the Report of Traffic Accident Occurring in California (SR1) form, available from any DMV or CHP office, or on the DMV's web site at www.dmv.ca.gov. Refer to the *California Driver Handbook* for more information. Check with your insurance company about your coverage before you buy or ride a motorcycle.

Having your own uninsured/under-insured motorist insurance is extremely important. Many drivers on the roads today have little or no insurance. We recommend you have at least \$100,000 per person, or more if you can afford it, in uninsured/under-insured coverage. That way, if you're an innocent party involved in an accident, you have \$100,000 available to cover medical costs, as well as lost income from lost wages. It's very important that you make sure your uninsured/under-insured coverage *includes* coverage for your bike. Some insurance policies specifically exclude coverage for motorcycles.

Lane Splitting

A common question is whether or not it is legal in California to travel between lanes of traffic, a

practice commonly referred to as “lane splitting.

Although inherently dangerous, lane splitting in California is allowed, but must be done in a safe and prudent manner.

Motorcycle Safety 2011 - California

Before you head out on the road for a ride, there are several key safety features that you need to consider. Taking a safety course, wearing protective clothing, helmets and gear are just a few. There are others.

Motorcycle Safety Course

After completing the requirements of this course, you will be issued an instruction permit to allow you to practice driving a motorcycle. You may not drive at night, on the freeway, or carry any passengers.

To apply for your motorcycle Class M1 or M2 license, you must do one of the following:

If you are under 21, to be issued a license you must complete a motorcycle rider training course approved by the California Highway Patrol (CHP) and provide a Certificate of Completion of Motorcycle Training (DL 389) to DMV. You will not be required to take the motorcycle driving test at DMV if you currently have a California Drivers License.

If you are over 21, you may choose to complete the course approved by CHP and provide the Certificate of Completion of Motorcycle Training (DL 389), OR schedule an Appointment(s) with DMV online to take the driving test. (You may also call 1-800-777-0133 between the hours of 8:00 A.M. PST and 5:00 P.M. PST Monday, Tuesday, Friday, and 9:00 A.M. PST and 5:00 P.M. PST on Wednesday to make a driving test appointment). You have three chances to pass the test.

For information about the CHP approved training course, please call 1-877-743-3411 or visit www.ca.msp.org.

CHP California Motorcyclist Safety Program

CHP California Motorcyclist Safety Program provides great information for new and existing riders.

Off Highway Information

For areas throughout the state that are designated for off highway use, check the California State Parks Off Highway Motor Vehicle Recreation website at ohv.parks.ca.gov or call (916) 324-4442.

Please visit the California State Park's website at www.parks.ca.gov for laws and safety information for off highway vehicles.

Motorcycle Safety Information

What Are the Rules on Sharing the Road with Other Vehicles?

Motorcyclists are at added risk on the road because motorcycles require exceptional handling ability and are harder for other drivers to see. Motorcyclists have the same rights and responsibilities, as automobile drivers.

How Can I Control My Speed and Balance?

Like life, motorcycling is a balancing act that requires you to learn how to control your speed and balance.

What is Expected of Me When I Ride?

Motorcycling requires you to be familiar with the motorcycle, wear the right clothing, and be a responsible rider. You are expected to be visible, to communicate your intentions to other drivers, to keep adequate space for passing and lane sharing, and be prepared to act.

For more information, see: The Motorcycle Handbook Preparing to Ride at:
www.dmv.ca.gov/pubs/dl655/mcycle_hm/preparing.htm

COMMON PERSONAL INJURY QUESTIONS

I've been in a motorcycle accident, what should I do at the scene?

Contact the police so a report can be taken. If no one is injured, sometimes the police won't come to the scene. In that case, make sure you obtain the name, address, telephone number, and insurance company of the person, or persons involved in the collision. They are required by law to provide you with this information. If they refuse, call the cops!

Take pictures of the damage to all vehicles involved, as well as pictures of the accident scene -- in particular any skid marks or debris on the road. If you choose to retain an attorney, the attorney may hire an accident reconstruction expert to determine who was at fault.

If the traffic collision report of your accident finds you to be at fault, you may still have a claim. Sometimes collision reports contain errors, and unfortunately for cyclists, there's a general bias against motorcyclists involved in accidents. The traffic collision report, and the testimony of a reporting police officer who did not witness the accident, isn't the last word when determining who's at fault. Particularly in this instance, an accident reconstructionist can be helpful.

I've been injured, what should I do first?

See a doctor! This may seem obvious, but you'd be surprised how many people call me from home, writhing in pain, wondering what to do.

If you feel that you've suffered an injury, your first and foremost concern should be your health. Your pursuit of a claim against the negligent party is less important than seeking the medical care which may be necessary to protect you against further, long-term health problems. Get the medical care you need and get it promptly!

Next, let all involved insurance companies know you've been in an accident so they can open their files and report the incident to the DMV, if necessary. You'll be assigned a "property damage" or "collision coverage" adjuster who'll help you through the claims process. Giving a recorded statement to an insurer may not be advisable until you have discussed the matter with a personal injury attorney.

If you're wondering which insurance company can best help you fix your motorcycle, refer to the Motorcycle Damage Claims section in this book.

How do I know if I have a claim worth pursuing?

When a person is injured due to the negligence of another person or persons, the injured party

may pursue a claim against the people/corporations/government entity or entities that caused the injuries. In addition to the injured person, a spouse may have a valid loss of consortium claim against the negligent party, and in the case of a wrongful death, the injured person's legal heirs may have valid claims.

All person(s) making a claim for compensation will need to show acceptable proof of their injuries and losses (damages), as well as proof of the negligent party's or parties' responsibility. The laws and rules that govern personal injury cases in California are many and varied. They are found in the California Codes, Rules of Court, and California case law (court decisions interpreting established law).

To find out if the facts of your situation constitute a valid claim, consult with an experienced personal injury attorney. Don't be discouraged if the first attorney you consult declines to represent you in your claim -- every attorney will have different levels of experience and areas of expertise, and one attorney may see a claim worth pursuing while another may not.

What factors affect the value of a claim?

Determining the value of a personal injury claim is part science and part art, and requires persuasive and organizational skills. All three areas must be fully developed in order to maximize the settlement value of a claim.

The primary factor is the specific nature of the injuries and economic losses sustained. This is the science part of the equation, and it involves:

- * A thorough examination of the injured person's medical records and medical history.
- * Collecting medical reports on the injuries that have been diagnosed, the treatments that have been used, and the probable outcome.
- * Interviewing the treating physicians and/or requesting formal medical reports from them – only if necessary – it is expensive. However, a personal injury attorney will usually advance to the client the costs for these reports, as an investment.

The "art" portion consists in:

- * Honestly maximizing the value of facts to increase the value of the claim; and
- * Honestly minimizing the impact of facts which devalue the claim.

Clearly, no two claimant situations are exactly alike, just as no two claimants are alike.

Representation that excels at this aspect separates average attorneys from the above average. All this information must be put forward in a persuasive argument to an insurance claims adjuster, an insurance defense attorney, an arbitrator, or to a jury at trial. The personal injury attorney who has handled a great many claims will have developed professional working relationships with many insurance adjusters and defense attorneys. This can smooth the road to a satisfactory result.

Do I have a time limit in which to bring a claim?

There are vitally important timelines in California to observe to ensure your claim will not be rejected outright.

Typically, in California, a lawsuit must be filed within two years of the date of the accident in order to preserve your right to recover damages from a personal injury claim - this is known as a "Statute of Limitations." If the injured person is a child or a person with a profound mental disability, this period may be extended.

For a claim against a government entity, the law requires that you file a claim within six (6) months of the accident. I have several times encountered severely injured people who have been barred from pursuing a claim against a government entity because they failed to file the necessary paperwork within the time allowed. There are circumstances where a late claim can be filed but it's a difficult and time-consuming process.

Suits against government entities filed after the initial claim is rejected have their own time limits.

If you have any questions about your own timeline under the Statute of Limitations, or the claims statute in general, I highly recommend that you contact an attorney immediately. Answers about Statutes of Limitation are general statements. There are many exceptions. Your attorney can best advise you concerning your particular claim, the applicable timeline and any available exceptions.

What if the at-fault party did not have insurance at the time of the accident?

Unless the at-fault party possesses significant personal assets, you may not be able to recover damages from that individual. This is why possessing your own under-insured/uninsured motorist coverage is vital. It's recommended that you have at least \$100,000 in uninsured/under-insured motorist coverage so you can be sure you have at least that much at your disposal. You may also consider buying an Umbrella Insurance Policy, which can provide a significant amount of financial protection for a relatively low price. Make sure the uninsured/underinsured coverage you obtain covers your own motorcycle. A number of

insurance companies who provide high limits when an automobile is being used will restrict those limits for motorcycle riders. Check the policy and make sure your agent understands your needs.

If you had uninsured motorist coverage at the time of the accident -- or if you were covered by your own insurance or a household family member's insurance policy had uninsured motorist coverage at the time of the accident, you may still recover compensation for your personal injuries. Many policies include language that covers family members or roommates who reside with policy holders. If in any doubt, ask the insurer for a copy of the policy and check the language. Remember, you have only two (2) years on an uninsured motorist claim to demand arbitration in writing (via certified mail), or to file suit against the uninsured motorist.

What if the at-fault party has very little or minimum insurance coverage?

In many cases there's only minimal, inadequate, insurance coverage available from the at-fault party. No matter how horrible the injuries or how big the medical bills, if they have only \$15,000.00 in bodily injury insurance coverage, then that is what's available. It is unlikely that substantial assets will exist.

Do yourself a favor: carry at least \$100,000 (or more if you can afford it) in under-insured/uninsured motorist coverage through your own motorcycle insurer.

What is a wrongful death claim?

Damages for wrongful death may be available for the wife, husband, parent, and child of the deceased person, and for the deceased's estate. The claim is made against the at-fault party. If the other driver and/or owner of the car did not have insurance, an Uninsured Motorist Claim can be filed, if this coverage exists.

Family members of the decedent's family can sue for the loss of companionship, of services, income, and other losses. Typically, the settlement is shared by members of the family; the distribution agreed upon by the family members or decided by the judge.

Do I have to go to court to receive a settlement for my injuries?

Probably not. Many cases are settled with the insurance company without the necessity of a lawsuit.

Do I need to pay back my health insurance after my case is settled?

In many instances, yes. If you are insured through your employer, or you receive Medi-Care or Medi-Cal benefits, you may have to pay back Medi-Care, Medi-Cal, workmen's compensation, or your private insurer. Credit may be given for some of the attorneys' fees and costs required to

obtain the recovery. In uninsured/ under-insured claims there may be no payback obligation. There is almost never a payback provision if a wrongful death claim is pursued.

Your attorney must understand the law and case decisions that regulate the amount you are required to pay back under the law and contractual guidelines. A competent attorney will work to reduce -- maybe even eliminate, your reimbursement obligations. A competent attorney may save you enough money -- in health insurance reimbursement requirements alone -- to pay their own fee. The attorney you choose must be on the cutting edge of this topic because laws, regulations, and court decisions frequently alter insureds' reimbursement requirements; yesterday's rules on these issues may no longer be accurate. If your attorney isn't up on the latest developments, it can cost you...plenty!

MOTORCYCLE DAMAGE CLAIMS

Who pays to get my bike fixed?

Who will pay depends on what coverage the other driver or drivers have, your own collision coverage, if any, and whether or not the vehicle is a total loss, among other factors.

We recommend that you negotiate the repairs or total loss of your vehicle with your own insurance carrier under any collision/comprehensive coverage you may have. It is often better, and faster, to go forward with your own carrier because your carrier won't care who's at-fault. The focus will be on repairing the motorcycle, instead of worrying about liability. Under California law, your carrier has an obligation to act in good faith. The other insurance carrier will no doubt try to reduce your reward.

If you don't have your own insurance, you can ask the at-fault party's insurance to repair your motorcycle. This may be your only choice. In this case, the other party's insurance will likely want to determine fault. The taking of statements from the parties and witnesses involved to determine fault may delay the repair for several days or weeks.

Can I get my motorcycle repaired at any body shop?

Yes. A list of quality/reputable shops is available through our office. All you have to do is ask! Here's a link to an example of an appraiser's report completed by our friends at [Chrome Dreams](http://www.chromedreams.com/index.html): Appraisal Report: www.chromedreams.com/index.html.

My motorcycle's totaled...what will I be paid?

That is determined by your vehicle's fair market value (or "actual cash value"), not what you paid for the vehicle, or what you owe on a loan. The motorcycle's worth if totaled is what an identical motorcycle could be sold for in today's market.

Blue Book does not give you complete information. We recommend using Cycle Trader to search for the asking price of similar motorcycles in your area. This will give you something to go on.

You can also contact dealerships to find out what price they'd put on a motorcycle similar to yours. If the insurance company's offer is similar to what your own comparables research finds, then we'd recommend that you accept the offer. If not, we can try to negotiate the value up by showing the comparables to the carrier and negotiating a fair price.

If the motorcycle is a total loss does the insurance company pay the whole value?

Yes, but if there's a lien on the vehicle (e.g., a bank loan), the insurance carrier will pay the loan

first; any remainder goes to the registered owner.

A motorcycle loan balance may be more than the fair market value of a motorcycle. This often happens with clients who get into an accident with a fully financed, brand new motorcycle. With a high-end bike, once you leave the lot, the fair market value drops sharply! Consequently, the vehicle owner can end up still owing for a motorcycle they can no longer ride.

If you believe you're at risk for such a situation, you may consider buying "gap insurance" to cover the balance of the loan. Talk to your insurance representative about this, particularly if you plan to purchase a brand new vehicle with little or no money down.

Can I get a rental?

The negligent party who caused you to lose the ability to drive your own vehicle is legally responsible to (1) provide a rental car or motorcycle during the period of time it takes to resolve the total loss of the vehicle; or (2) pay the reasonable rental value (known as "loss of use") for each day that your bike is not fixed, as long as that period of time is reasonable.

Even if you decide to drive a private vehicle while your motorcycle is being repaired, you're entitled to reimbursement for the lost use of your bike while waiting. We have been successful in getting clients hundreds (and in some cases, thousands) of extra dollars in situations where resolving the property damage claims takes extra time.

We recommend that if you have it, you use your own rental car coverage. You can ask your carrier to set up a "direct billing" with the rental car company. The advantage? There is no out-of-pocket cost! You can follow this method, or you may choose not to rent a vehicle, and claim "loss of use."

Loss of Use

If the at-fault party's insurance company refuses to pay for a rental vehicle while your vehicle's being repaired, you're entitled to "loss of use" damages: the reasonable cost of providing a replacement vehicle in the interim.

The loss of use period runs from the date of the accident up to the date the vehicle owner receives a settlement check (a few more days may be allowed for the purchase of another motorcycle), or until the repair is complete.

The carrier may assert that the "loss of use" period runs only from the date of loss to the date of their first settlement offer. Don't believe a word of it: you -- the vehicle owner -- can't replace the motorcycle until you've received the replacement funds.

What if the other driver's insurance company and I disagree on property damage issues?

Your claim is against the other driver, not his insurance company. If the driver's carrier is being unreasonable, taking too long, treating you unfairly, refusing to perform an inspection, refusing a rental car, if it will not reimburse tow billings, storage charges, etc., then your only remedy is to file suit against the responsible party.

You may have better luck, if you are seeking damages of \$7,500 or less, with the at-fault party's insurer if you advise them that you intend to file your claim in a small claims court. Before taking this route, however, be sure to consult with an experienced attorney, as such a suit may preclude your recovery for your bodily injuries.

Can I keep my motorcycle, even if it's totaled?

Yes, if you "retain salvage" you may keep the motorcycle but you'll (1) have to accept a lesser settlement offer based on the salvage value of the motorcycle -- if the carrier believes the salvage value is, say, \$500.00, they will deduct that amount from the actual cash value settlement -- and (2) you, or the carrier, have an obligation to notify DMV that the motorcycle has been salvaged. The pink slip on the motorcycle will say "salvaged title" (in effect, the motorcycle's not worth much even if it was fixed).

The accident was my fault.

If you are fault, either wholly or in part, then you will be looking to your own insurance carrier to defend any claims made against you.

If you have "Property Damage Liability Protection," your carrier will defend you against claims made for damage to others' cars. If you have "Comprehensive" or "Collision" coverage then you would look to your own carrier to replace or repair your vehicle. If you have neither, you may have to either repair or replace the vehicles involved at your own expense, or defend yourself in an action that may be filed against you for reimbursement. The legal minimum in California is \$10,000.00 in property damage coverage, but we advise our clients to carry at least \$100,000/\$300,000 in liability and uninsured/under-insured motorist coverage.

We would recommend that you purchase as much property damage liability protection as you can afford. A minor accident, say if it involves an expensive vehicle, could easily wipe out minimal coverage: multiple vehicle impacts occur every day where one car is blamed for damage to several other vehicles. If you have only \$10,000 coverage and the total damages equal \$90,000, you will be responsible for the difference.

Even if you're partly at fault for an accident, you still may be able to pursue and obtain a settlement. Under California law, a concept known as "comparative fault" may come to your aid.

It provides that even if your are partially responsible, you can still file a claim.

DO YOU EVEN NEED A LAWYER?

Depending on the type of claim you have may not need an attorney to represent you. For small, uncomplicated claims, an attorney won't be of economic benefit to you, and a good attorney will confirm this.

Why hire a personal injury attorney? Because 1) the attorney's skill, experience, and knowledge can increase the value of your claim (the net recovery you ultimately receive), and 2) the attorney can handle all the insurance and legal meetings, paperwork, telephone calls, negotiating, court appearances, etc., necessary to resolve your case, as well as any medical liens you have, thus saving you a lot of time and hassle. An experienced attorney will handle all the insurance and legal requirements necessary to resolve your claim while avoiding the numerous stumbling blocks thrown up to slow the process.

If your claim is fairly complicated, handling it yourself is like performing an at-home appendectomy. It won't threaten your life – only your money. A simple personal injury case is known as a "hangnail" claim, and the average person is capable of "clipping" it.

Your personal injury attorney can maximize the value of your claim by presenting every relevant medical and legal fact that strengthens your position. Maybe the driver who struck your motorcycle was drunk and upon investigation was found to have a history of drunk driving convictions -- could this increase the value of your claim? Your doctor may feel that the collision caused only a relatively minor strain injury to your neck, but you believe that it's caused a flare-up in the arthritis you've been suffering with for years -- can you be compensated for this? A good personal injury attorney will track down every one of these legal and medical facts and present them in a way that will maximize the value of your claim.

A good personal injury attorney will work closely with you as your case moves toward resolution. They will listen carefully to you and to your family members and friends to learn the many ways an injury has impacted the various aspects of your life. Make sure you feel comfortable working with the attorney you hire.

Studies have shown that, on average, individuals represented by an attorney receive three times the reward won by those who are unrepresented.

NOT ALL ATTORNEYS ARE CREATED EQUAL

The fact that Attorney Ernie drafted a will for your uncle or that Lawyer Linda handled your cousin's divorce case does not qualify them to pursue a motorcycle accident case. Many attorneys who claim to be specialists in motorcycle accident cases are unfamiliar with the

intricacies of these laws.

While many lawyers will offer to represent you, it is important to choose a lawyer who has extensive experience with serious motor vehicle accident injury cases. An inexperienced attorney may fail to effectively deal with your case. This could cause you to lose your benefits and your opportunity to obtain a settlement.

The 7 mistakes in selecting a motorcycle accident lawyer can be found here:

www.autoaccident.com/lawyer-attorney-1236325.html

So how should you go about finding a personal injury attorney who is experienced, compassionate and capable?

To start, visit our page on AVVO, the premier web site in the United states for finding a good lawyer in any field. Type in the specialty you are looking for (auto or motorcycle accidents or dog bites, etc.), and fill in the city and state where the accident happened.

Hitting the search button will result in a list of lawyers rated from 1.0 to 10.0 by Avvo's editors. They take into account the experience of the attorney, their reputation in the legal community, feedback from clients, the judgments and settlements won and whether or not there has been prior disciplinary action.

A personal injury attorney who is unrated or has an Avvo rating of less than 8.0 should be rejected.

At the Million Dollar Forum web site at www.milliondollaradvocates.com you will find attorneys near you who have won multiple Million Dollar Verdicts or Settlements. Your case may not be worth that much, but you will want a knowledgeable attorney who has a proven track record.

If the attorney you like is rated over 8.0 on Avvo and has a proven track record on the Million Dollar Forum, you're well on your way to finding the right lawyer.

Next, schedule a free consultation with that attorney. When you come into the office take a few minutes to look around, get a feel for it. Are you welcomed in with courtesy, offered coffee or tea, do you see the attorney promptly or are you kept waiting? What is the office decor like? Is it rundown and shabby or does it look well-kept and professional? A personal injury case can cost an attorney \$100,000 or more, especially if it goes to trial. If the attorney can't afford to furnish his office professionally, perhaps not enough funds will be available to try your case

effectively.

Is your chosen attorney friendly, professional and caring? If not, think carefully before choosing. In a serious case, you may be interacting with this attorney and the office staff for a long time. Make sure your questions are answered. If not, just go on to the next good attorney on your short list.

Finally, check out any past verdicts or settlements listed on the attorney's website. You will want to know about past results. If there is no track record, you need to know that as well.

Ask if the attorney has published or lectured in her field. Find out if she has a philosophy that she brings to her interactions with clients. Some attorneys want to look down on you from a lofty chair and spend the time telling you exactly how they will handle your case, about their expertise and reputation, on and on...clearly, they care little or nothing about you. Your case to them is just another file.

Other attorneys take the time to really get to know you and your family. They'll ask questions to find out what your life is really about. A good attorney may know more about your past medical history than your doctor; she may probe areas of your life hidden even from your spouse and/or children. Why? Because a good attorney wants to humanize you. She can't sell your case unless she truly gets to know you well.

Does the attorney see accidents as tragic mishaps with no redeeming value or does she encourage her clients to use this accident to improve their lives? In my office we have a saying: "From breakdowns to breakthroughs." We try hard to be a catalyst for our clients in gaining some positives from what appear to be serious setbacks.

We encourage our clients to join trauma support groups, and offer them the opportunity to attend workshops at our expense. These workshops deal with how to deal with chronic pain, anxiety and the stress to relationships that can happen in a serious accident, among other things.

We provide DVD's from a teaching company (www.thegreatcourses.com) so that we can work with our clients who are homebound, depressed, etc., towards a quick rebound.

Your only duty as a client is to concentrate on healing, to communicate honestly and fully with your attorney and to try to use this accident to add more positives than negatives to your life.

Results

With any business, the bottom line is important. That's what you're looking for when you or a

family member have been seriously injured due to the negligence of someone else.

Your attorney should readily offer you proof of their successes.

I do, and you can see a list of some of the settled cases at:
www.autoaccident.com/lawyer-attorney-1152378.html

Your attorney should readily spend money on your case, and be willing to commit to you and your case as an investment. A good attorney will advance necessary costs. If you're asked to cover the costs, beware. You should not have to worry about costs while you are trying to heal.

How are personal injury attorneys paid?

The general industry standard is 33 1/3% of the gross settlement if the claim is settled without a lawsuit, 40% of the gross settlement if a lawsuit is filed. An attorney who considers your interests first will not take more in fees than you net.

The Players - People and Parties Involved in a Personal Injury Claim

The Parties:

The "parties" to the case are the persons who were actually injured and any others who have a right to bring a personal injury claim. Prior to the filing of a lawsuit, these people are referred to as the "claimants;" they become the "plaintiffs" if and when a lawsuit is filed.

On the other side are the persons who directly caused the injuries, possibly such persons' employers, those who owned the vehicles that caused injury, or who owned or controlled the property where the injuries occurred. They are generally referred to as the "insureds" in an insurance claim -- that is, they are the people and entities against whom the claim is being submitted. If a lawsuit is filed in court, they will become the "defendants."

Identifying all the potential parties is part of your attorney's role. If a claimant is left out, their right to recover may be permanently lost. If a defendant is left out, then a potential source of settlement funds may be lost.

The Adjusters and Attorneys:

As soon as an accident injury is reported to an insurance company, an "adjuster" (also called a "claims adjuster"), will be assigned to handle the claim. The adjuster is usually, but not always, a direct employee of the insurance company. If more than one insurance company is involved in a single incident, each insurance company will have at least one adjuster assigned to the matter.

An attorney formally retained by the injured party becomes the legal representative of the claimant(s). If it becomes necessary to file a lawsuit in court and the defendants are served with the legal papers, they or their insurance company will hire a "defense attorney" (also known as an "insurance defense attorney") to represent them.

Over the years, we have found that some insurers have little interest in resolving claims fairly. This web site portrays a sad history that it is worth reviewing: Consumer Affairs Insurance Company Complaints at www.consumeraffairs.com/insurance/insurance.htm. If any of these companies are involved in your case, you can expect a difficult fight -- you will need a very experienced personal injury lawyer on your side.

Often a computer program decides what your claim is worth -- there's no human involvement at all. One such program, used by dozens of insurance companies, is ominously called: *Colossus*. Insurance adjusters input various variables to determine the value of your claim. Unfortunately, these limited number of variables don't always tell the story...*your story*.

The Legal Team:

No attorney can handle every aspect of a client's case, and no attorney is an expert in everything. A good legal team will frequently include private investigators to search out witnesses and physical facts, paralegals to handle the day-to-day paperwork and legal details in a case, and consultants and experts to sort out complicated medical, engineering, and economic information.

Since every claim is unique, the specific members of the added legal team will vary from case to case. Selecting those team members who will best serve a particular client's interests is a primary duty of the personal injury attorney.

YOU'VE HIRED AN ATTORNEY...WHAT'S NEXT?

Early Stages

Early in the process, you should engage in an extensive and detailed interview with your attorney. Please be forthright with your medical history, employment history, and driving history. The clearer the picture you provide, and the more questions your attorneys asks, the better. A good interview will allow your attorney to more effectively represent you.

Your attorney will then inform the requisite insurance companies that you're represented by counsel. This does two things: (1. it begins the dialogue between your attorney and insurance representatives; and (2. it prevents insurance adjusters from pestering you for information that is protected by your right of privacy.

Whether you're pursuing a claim against the at-fault party's insurance company or your own (as in the case of an under-insured/uninsured motorist claim), insurance companies will vigorously try to get you to settle quickly. If you agree, likely you'll devalue your claim. Also, you have one shot and one shot only at settling your case. Think carefully about this, because once you settle and accept a settlement check, that's it -- there no going back and re-opening your claim.

Nor should your attorney aggressively pressure you to settle before your medical treatment is completed. Your attorney should be patient and willing to let your medical treatment resolve before negotiating a settlement. If you do not have medical insurance coverage and need care, your attorney may know of resources that can assist you.

Once the involved insurance companies have been informed of your representation, your lawyer will begin collecting property damage photos, repair shop estimates, traffic collision reports, witness information and/or statements – any existing evidence that supports your claim that the collision wasn't your fault; and that it caused you harm.

As your medical care continues, your lawyer should regularly contact you to ask how you feel, if there are any new medical complaints, the doctors you are seeing and if your medical treatment is adequate. Your attorney should fully and consistently document your medical care to ensure that all vital bits of information are there.

It is vital that your attorney be aware of your past medical history, of any past accidents or insurance claims, or of any criminal history. You attorney cannot do an effective job unless there's trust and honesty on both sides.

When your health has stabilized and your treatment is complete, your attorney will obtain all the

requisite medical records and billings to ensure that your care and costs are fully represented. Your attorney will also obtain documentation of any time you've lost from work so a claim for lost income can be made.

Pre-Lawsuit Settlement Negotiations

Once the necessary documentation has been gathered, a "Demand Package" is prepared. A Demand Package is sent to the at-fault party's insurance company asking for a specific total amount in settlement of all your claims. The ideal Demand Package will present your total picture. Details of the motorcycle accident and collected evidence as described above will be attached as exhibits, along with medical and billing records from all your providers. If appropriate, your Demand Package should indicate you'll require future medical care. Payroll records, pay stubs and the like should be included to detail the amount of work you've missed.

The Demand Package lets the insurance company know what you've been through as a result of the motorcycle accident, and what it'll take to fairly compensate you for your losses. It's important that your attorney fully describe the effect of your injuries on you and on your loved ones, in order to maximize the general damages (pain and suffering) you will receive.

After the insurance company has had a chance to review your Demand Package, your attorney should receive a settlement offer from the insurance company. This is an amount that the insurance company is willing to pay to completely resolve your claims. You can then decide to: (1. accept the amount, (2. instruct your attorney to negotiate with the insurance company to raise the offer; (3. decline the offer, or (4. file a lawsuit. Your attorney will advise you of the pros and cons of each option, but ultimately the choice is yours.

Filing a lawsuit is a hardball tactic. Many people hate the very thought, because litigation can be risky, time consuming and costly. Even so, a good attorney will file if it will ensure you're treated fairly. With many injuries, filing suit is not only the best way to obtain a fair resolution of the case, but the *only* way. The evaluation of cases by computer (see Colossus, above) has resulted in many unfair offers and has left many claimants no choice but to file lawsuits.

Filing a Lawsuit - The Litigation Process

Once you and your attorney have decided that your best option is litigation, a Summons and Complaint is filed on your behalf, within two years of the accident, or you may be prohibited from pursuing a claim. If you're involved in an accident involving a public entity, you must file certain paperwork within six (6) months of the incident. It's crucial you keep these very important dates in mind. Other states may have different timelines.

Now you are on the court's time. Before it sets your case for trial, the court, depending on the county where you've decided to file your complaint (generally the county in which the accident occurred, or where the defendant lives), will require you to complete specific steps in the litigation process in an effort to resolve your case. (Different counties may have varying time requirements and rules).

Most courts allow a certain amount of time at the commencement of a lawsuit, for *discovery*. Discovery is a formal process between your attorney and the at-fault party's attorney (defense counsel) for the parties to exchange information regarding the case. The point of this process is to inform defense counsel of every claim you included in your Demand Package or intend to present at trial.

From defense counsel and through your attorney, you will likely be served with *Form Interrogatories* (pertinent questions), *Requests for Production of Documents* (requests for documented evidence to substantiate your claims), as well as a *Notice of Deposition* (your required appearance in front of defense counsel to answer questions about your claims, under oath).

Defense counsel may also require that you appear for a *Defense Medical Examination*, especially if you are still having medical problems and/or expect to receive treatment throughout the litigation process. In that case, California law allows defense counsel to require you to submit to an examination by a doctor of their choice.

Most courts will require your attorney to be present in court within a few months of filing a lawsuit to formally meet with the judge assigned to your case. There, your anticipated course of action and time requirements will be established.

An arbitration -- like a trial but without a jury, in front of a court-ordered arbitrator -- may be scheduled, or perhaps a mediation (a meeting between the parties and a court-ordered mediator to try to settle your case). Cases can be set for binding or non-binding arbitration. In binding arbitration, the arbitrator gives an award which becomes the judgment, and the case ends. In non-binding arbitration, either party can reject the arbitrator's award.

If the case fails to settle following arbitration or mediation, a date will be set for trial.

Trial - The End of the Line

Most courts make an effort to get cases to trial within 18 months of the date the lawsuit is filed, but due to backlog, often it takes longer. Your attorney may ask the court to delay your trial date if your injuries have not yet stabilized.

At trial, your attorney will present your claim in front of a jury. You'll testify, witnesses to the accident, and your doctor(s) will likely testify about your injuries. The defendant may testify, as well as any opposing experts.

After testimony is complete and all the evidence is submitted for the jury, it's their duty to provide a verdict (i.e., what they believe to be the value of your case). The jury's verdict then becomes a judgment, and in most cases your case is done and (fingers crossed) you and your attorney are pleased with the result.

Unless appealed, the trial is the last stop.

This is a only a brief summary of the process. For brevity I'm left out many details. But at least you should now have some understanding of the process. At my website, www.AutoAccident.com, I provide more information and a timeline graphic detailing the process from the date a lawsuit is filed, through arbitration or mediation, and then, if arbitration or mediation fails, to trial:

The Claim and Case Timeline can be found here: www.autoaccident.com/photos/timeline.jpg

PERSONAL INJURY DAMAGES - What you're able to recover.

California law entitles you to recover from your own carrier various types of damages, including:

- **Pain and Suffering (also known as General Damages):** The most important element of your bodily injury claim is the right to compensation for physical pain and mental anguish you have suffered and will endure in the future. These general damages are in addition to, and may amount to far more than the award for your lost earnings and medical expenses.

There's no specific measurement to determine the value of pain and suffering in any given case. As every case is different and involves numerous variables, the value of pain and suffering also varies. For example, the pain and suffering endured by a person who has lost a limb is far greater than for one who has broken a toe.

The attorney's role here is to identify and interview lay witnesses (i.e., friends and family members who can testify on your behalf), as well as illustrations that demonstrate your injuries and medical treatment. For example, in a case where someone's pain has affected their social interaction, analysis tools such as the Keirsey Temperament Sorter (www.keirsey.com) may be used.

- **Medical Expenses:** Reasonable and necessary medical expenses incurred, and that are certain to be incurred in the future, are recoverable, along with care and treatment, including hospital, medical, therapy, nursing, diagnostic testing, surgery, physical therapy and the like. An attorney may employ the services of an expert known as a "Life Care Planner", such as Vocational Economics, Inc., in order to determine the cost of reasonable and necessary future medical needs. An example of a Life Care Plan can be seen here: www.vocecon.com/pdfs/sci.pdf. Life Care Planners are typically nurses, or medical trained personnel to forecast an individual's future medical needs.

An attorney's role is to determine whether a life care planner will benefit the case and to understand the medical information and communicate it clearly to the life care planner.

- **Loss of Earnings:** You are entitled to recover the loss of earnings caused by your injuries. Wages, commissions, bonuses and all other earnings and fringe benefits are recoverable. More on this topic in a separate section of this book.
- **Future Loss of Earnings:** If your injuries permanently limit your ability to earn, you can recover the monetary loss due to a reduction in wages over the remainder of your working life. (more information in a separate section of this book). An expert known as a Vocational

Rehabilitation Specialist may be employed to determine how an injured person's limitations will effect their working and wage earning capabilities over the course of their life. An attorney needs to be familiar with the work such an expert does and how to utilize this specialist's services for use in a client's case.

An example of a vocational rehabilitation case study can be seen here:
www.vector1.com/Case/PDFs/CS351.pdf, provided by our friends at Vector, Experts in Vocational Analysis & Disability Research.

- **Disfigurement:** If your injury causes scarring and/or other unsightly marks, you are entitled to recover for the humiliation/embarrassment associated with the disfigurement, plus the costs of any necessary surgery.
- **Damage to the Marital Relationship:** Serious injuries may damage the marital relationship. If this occurs, you and/or your spouse are entitled to recover for the loss of society, affection, assistance, conjugal fellowship and loss or impairment of sexual relations. These "Loss of Consortium" claims are discussed further in a separate section of this book.
- **Punitive Damages:** In some cases - where the accident was caused by "criminal negligence" - for example, driving while under the influence of alcohol - you may be entitled to punitive damages above and beyond other damages.
- **Death:** Damages for "wrongful death" may be available for the wife, husband, parent and child of the deceased person, including: economic loss, mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance and/or education. Damages may be available for the deceased's estate as well.

LOST INCOME AND LOSS OF EARNING CAPACITY
A Closer Look

Can I recover for lost wages?

Yes. Wage/income loss means your loss of income from the date of accident to the day you return to work -- in total and tax free..

Your employer must verify that you were not able to work. Your medical provider will give you a "prescription" in the form of a work release to allow you to take time off work. If you do not present the release, the insurer may contest your ability to work.

You will need to provide proof of the amount in wages you lost as a direct result of the injury. Besides the work release verification you will need a letter on your employer's letterhead, and/or copies of your pay stubs indicating how much time was taken plus the amount of your gross pay. If you used sick or vacation days, these are also recoverable, because you would not have been forced to use these up had you not been injured.

Can I recover from income I lose in the future?

Yes, if you can prove the reasonable value of that loss. It is not necessary that you have a work history. This is known as a "loss of earning capacity" claim. Earning capacity is the *ability to earn* income, as opposed to the loss of income itself. You don't have to be employed at the time of the accident.

For example, let's say you are 45 years old and your injuries are so severe that you cannot return to work. If your normal work life expectancy was 20 more working years, you can claim damages for those years.

You must be able to show that your demand is reasonable based on your potential earning ability. You cannot recover income lost from an inability to play professional tennis unless you can reasonably show you would have played in professional tennis tournaments had you not been injured.

If possible, you have a duty to mitigate, or minimize, the income lost as a result of being injured. A professional tennis player may not be able to enter tournaments and compete because the left eye is injured, but could perhaps earn a wage instructing others how to play.

You are required to take reasonable steps to care for injuries to prevent further aggravation. If

mitigating damages through other work worsens your injuries, you should not be expected to undertake such employment, or any employment beyond the physical limitations established by your doctor.

How can vocational experts help determine my loss?

Forensic economists are vocational experts who look at such factors as age, physical or mental impairments, employment history, job skills, education, and earnings history, among other things, to calculate a future earning capacity loss. The experts construct a profile of past and present economic facts to formulate the future income loss using work-life expectancy tables, earnings of others with your education and experience levels, inflation, social security and other benefits, plus other statistical data.

Can I be compensated for lost income if I am self-employed?

Yes. Self-employed people are entitled to claim income loss due to injuries. A self-employed person may obtain reimbursement for costs incurred because they are forced to hire additional and/or substitute workers to maintain the business for the injured individual.

Self-employed claims are more complicated than wage loss claims, often requiring a forensic economist (a specialist in determining economic losses) consultant, especially if your claimed losses are substantial.

Damages to which you are entitled if self-employed include lost income, loss of earning capacity, lost profits, lost business opportunities, and loss of good will.

How is lost income calculated for the self-employed?

Previous tax records are commonly used to calculate past and present losses. You may have to show past income tax records -- the more years, the better -- to prove what you've earned in the past. If you don't have copies of your previous tax returns, you can request them from the IRS website at: www.irs.gov.

Your calendar of appointments and letters from potential future employers can strengthen any future lost income claim. While difficult to prove lost opportunities, letters from potential clients and/or partners may be helpful.

What if my doctor releases me to return to work, but I'm still in too much pain?

Compensation for the additional time off after a doctor has released you to return to work largely depends on whether or not you can prove that the additional time off was *reasonable and necessary* -- the standard.

Suppose you were rear-ended on your motorcycle and suffered a moderate whiplash. After a couple of weeks your doctor tells you to return to work when you feel up to it. You still feel stiff and sore. You decide to stay home a few more days and take over-the-counter medication. Was it reasonable to take off those additional days? Probably. Was it necessary? That's a more difficult question, but negotiations by you, or your attorney, may prove fruitful.

Suppose you took no pain medications and went water skiing while you were "recuperating" from your neck injury. Is that reasonable? Probably not. Nor is it necessary.

Determining past wages is a matter of reasonableness and proof. Determining loss of earning capacity in the future is more difficult and may require input from a Vocational Rehabilitation Expert and an Economist.

LOSS OF CONSORTIUM DAMAGES
Your spouse may be entitled to damages as well.

California law allows husbands and wives to recover damages for "loss of consortium."

In the typical action for loss of consortium, the uninjured spouse sues the defendant for damages resulting from their inability to enjoy the same level of love, affection and companionship that they did prior to the spouse's injury.

Loss of consortium damages entails those losses suffered as a result of decreased or limited sexual activity between spouses and more. These damages compensate the uninjured spouse for the injury's effects on other previously existing spousal functions, such as:

- * Services, e.g., household chores, caring for/transporting children;
- * Love and affection;
- * Society;
- * Companionship;
- * Emotional support and care;
- * Comfort.

Loss of consortium damages are considered "non-economic" damages. They do not involve an exact monetary loss nor an objective cash value. In a trial setting, an award for loss of consortium is usually left to the discretion of the judge or jury. According to legal experts, these damages are most often awarded in cases involving severe injuries.

A marriage license valid at the time of the injury is a prerequisite to any claim for loss of consortium.

Juries and Damages for Loss of Consortium

In injury cases involving a married individual who has suffered only minor injuries, lawyers may not ask for loss of consortium damages for fear of a backlash against the uninjured spouse.

MEDICAL BILLS, INSURANCE COVERAGE & RELATED ISSUES

Can I recover for my medical expenses?

Yes. All related medical bills that are reasonable and necessary are recoverable. These medical bills include emergency hospital visits, hospitalization, medical treatment and prescriptions; regular treatment from a chiropractor, physical therapist or doctor of osteopathic medicine; surgeries; medication, medical appliances such as a wheelchair, walker, brace, etc., and transportation to your medical appointments.

At least in theory, the negligent party is responsible for paying all of your reasonable and necessary medical expenses. But as a practical matter in the absence of substantial assets, the total monies available are limited to the amount of insurance coverage the other party possesses. The minimum bodily injury insurance coverage required by California law is \$15,000.00 per person/\$30,000.00 per incident.

What is Med-Pay Coverage and what are the benefits?

The negligent party's insurance carrier will not pay for your medical expenses until you have completed your medical care and treatment and have agreed to settle the case, forever. The treating doctor may not want to wait that long to be paid, particularly if you don't have health insurance. Med-Pay can help to pay your bills so you aren't forced to settle prematurely.

Med-Pay insurance coverage will pay your medical expenses as they're incurred, up to a certain amount and generally within a specific time frame. This coverage is available to the insured driver and any passengers in their vehicle for injuries sustained, regardless of who is at fault.

If you already have medical insurance you may see Med-Pay as an unnecessary addition. But if your own policy restricts you to certain doctors, Med-Pay will give you the flexibility to obtain treatment with a doctor outside the restricted list. Typically, Med Pay policies provide \$5,000.00 in coverage, but they can range from \$1,000.00 to as high as \$100,000.00. We recommend a minimum of \$10,000.00 in medical payments coverage.

How long can I receive Med-Pay benefits?

It's important to note that medical payments coverage is provided for a limited period of time, typically one to three years from the date of injury. Insurance companies impose time limits on medical payments because: (1) the insurer wants to know what the total payments will be in a reasonable amount of time, and (2) after a number of years, it may become difficult to determine whether the treatment requested is for the covered injury or for a later injury that is not covered.

Med-Pay is coverage that you purchase. It is not required by law, and you do not automatically have Med-Pay coverage simply by virtue of your having a liability policy.

If I don't have health insurance or Med-Pay insurance, how do I pay for my medical treatment prior to settling my claim?

In that case, other options are available to cover medical expenses prior to receiving a settlement.

- **Self Pay:** Out of pocket payment for medical care. Given the high costs involved, this option is usually not realistic for most people.
- **Doctors' Liens.** Some doctors will treat a patient and allow the deferral of payment of the medical care until you recover money from the liable driver. This is called rendering treatment on a "lien". The doctor will require you and your attorney to sign a statement granting them a lien on all proceeds received in settlement or by verdict from the liable driver's insurance company. A lien is a legal agreement setting out the terms under which they will wait for payment rather than pursuing collections against you. In return, you promise that when you receive a settlement, you will pay them first, before you pocket a penny. In this case you will be required to pay the doctor at the end of your case *even if there is no recovery on your claim*. This technical process requires cooperation between a doctor's office and an attorney.

TIP: A good attorney will know which doctors in your community could be willing to provide you medical treatment on a "lien". When considering an attorney, ask about their familiarity with local doctors. If the attorney isn't well acquainted with doctors in the area, consider taking your case elsewhere.

Uninsured/Under-insured Motorist Protection (UM/UIM)

These vital benefits provide coverage to protect you and/or those who are passengers in your vehicle and provide for payment of damages incurred as a result of a negligent driver who has no liability insurance, hit-and-run drivers, or any driver who fails to carry enough insurance to pay for your expenses.

The two types of coverage are:

Uninsured Motorist Coverage

This optional insurance is offered by your motorcycle insurance carrier. It covers if you are involved in a hit-and-run accident or if the other party does not have insurance or enough insurance.

How much must I get?

California does not require drivers to purchase this coverage, but it is always best to have it. You and your insurance company will negotiate the amount of your coverage. If you purchased uninsured benefits in the amount of \$15,000, you can collect only up to that amount, whatever the amount of your medical bills. We recommend you minimally carry \$100,000 per individual/\$300,000 or more per incident..

How long can I get uninsured benefits?

There are no limits on the time your coverage is available under your uninsured policy benefits, but you must file suit or demand arbitration proceedings with your own carrier no later than two years after the date of the accident. If this is not done, you may be forever barred from pursuing the claim. If you sustain a life-threatening injury requiring emergency care and extensive critical care or hospitalization you could quickly exhaust your uninsured benefits. An injury requiring a lengthy rehabilitative program could bring you benefits for an indefinite period of time, but only up to the policy maxim.

How do I file my claims under uninsured benefits? The claim must be submitted to your own insurance company (see Insurance Code Section 11580). Again, there are time limits in which you must file suit.

Under-insured Motorist Coverage. This coverage goes hand-in-hand with your uninsured motorist coverage. In the event that the responsible party does not have enough insurance coverage to compensate you for your injuries, you may be entitled to additional coverage under your own policy. For example, if the person responsible has a liability limit of only \$25,000, that is the most you can claim from their insurance carrier is \$25,000.00 per person. If you sustained serious injuries and significant medical expenses, the value of your case could well exceed \$25,000.00. If you have \$100,000/\$300,000 uninsured coverage, you will be able to pursue an additional \$75,000.00 from you own under-insured motorist insurance to cover the difference. A Personal Umbrella Insurance Policy can also help.

How do I file my claims for uninsured/underinsured benefits?

The claim must be submitted to your own insurance company within two years and in compliance with Insurance Code Section 11580.

NOTE: You cannot purchase uninsured/under-insured coverage in an amount greater than the amount of your liability coverage. Your liability coverage is the principal basis for uninsured/ underinsured insurance. Thus, if you maintain the state mandated minimum liability policy of \$15,000, you cannot obtain more than

\$15,000 in coverage for uninsured/under-insured coverage.

Other Sources

Other sources exist to pay for your medical expenses, prior to settling a personal injury claim. You may be eligible under certain state and federal programs.

The major sources are explored below:

- **Medi-Cal.** If you are eligible to receive Medicaid benefits, Medi-Cal will pay for your treatment pursuant to its guidelines.
- **Medicare.** If you are a Medicare recipient, your expenses will be paid according to the Medicare rules and regulations.

Important to note: If you are successful in obtaining a settlement or verdict from the negligent person, you will have to reimburse Medi-Care, minus credit for attorneys' fees and costs. Again, *it is vital* that your attorney is aware of and understands the law and case decisions that regulate the amount you are required to pay back. If your attorney isn't up on the latest developments, it can cost you!

- **ERISA Regulated Medical Insurance Coverage.** If your medical insurance is regulated by ERISA (Employee Retirement Income Security Act), as most employer's health insurance plans are, your insurer may demand that you reimburse them for your medical expenses according to contractual and/or ERISA's rules and regulations. Many HMO's and PPO's, e.g., Kaiser Permanente, Blue Shield, Western Health Advantage, Aetna, Health Net and others, are regulated by ERISA. Many attorneys are not aware of recent case law that limit ERISA's right to recover because the client/patient is not "made whole." Make sure your attorney understands this.

VERY IMPORTANT: If your attorney is aware of and understands the law and case decisions that regulate the amount you are required to pay to your insurer pursuant to ERISA and contractual guidelines, she can help to reduce or possibly eliminate your reimbursement obligations. The amount she can save you in health insurance reimbursement requirements alone could pay her fee.

It is vital your attorney is informed and on the cutting edge of this topic because changes in laws, regulations, and court decisions can alter insured's reimbursement requirements. Yesterday's rules on these issues may no longer be accurate. If your attorney isn't up on the latest developments, *it can cost you...plenty!*

- **Worker's Compensation Plans.** If you were involved in an accident while you were on the job, your employer's workers' compensation plan will extend benefits for your medical bills and loss of earnings. It is very important to speak with an attorney as soon as possible, as coordination of your rights between your worker's compensation case and your personal injury case is essential. Worker's Compensation plans also have a right to reimbursement, which may greatly affect the amount of money available to you.

Out of Pocket Expenses.

Keep receipts from any prescriptions or medications that you have paid for and any other out-of-pocket expenses. Also keep track of mileage for transportation to medical providers, particularly if you are required to travel significant distances. Some of these expenses may be reimbursable at the time of settlement.

In-Home Nursing Care/Attendant Care

In-home nursing care/attendant care costs are recoverable. You must prove that such care is reasonable, necessary, and resulting from injuries sustained in the motorcycle accident.

Household Chores/Replacement Services

Services the injured person once performed but cannot any longer due to injuries sustained, such as cooking, vacuuming, dusting, cleaning, laundry, or cutting the grass, etc., are recoverable.

Home Modifications and Accommodations

In some cases, construction or reconstruction of one's living quarters will be necessary as a result of injuries incurred. If you are paralyzed as a result of an accident and confined to a wheelchair, steps or stairs may have to be eliminated or doors widened. Special bathroom facilities or kitchens may need reconstruction, or you may need a special bed. These expenditures may be recoverable.

Conclusion

If you've ridden a bike for more than a few months, you've no doubt developed acute on-the-road *situational awareness*, meaning you have increased sensitivity to what's going on around you.

The aim of this book is to increase your overall sensitivity so that you can survive and be treated fairly during the legal process.

If you've been in an accident, please contact an experienced motorcycle attorney who's familiar with the guidelines in this book, or call me for free, friendly advice.

- Ed Smith

Law Offices of Edward A. Smith
1900 Point West Way, Suite 200
Sacramento, CA 95815
(916) 921-6400, 1-800-404-5400

www.AutoAccident.com
Ed@autoaccident.com

