

# GUIDE FOR AUTO-CRASH INSURANCE CLAIMS

Alabama edition<sup>©</sup>



Boteler, Finley & Wolfe  
Attorneys at Law  
3290 Dauphin Street, Ste. 505  
Mobile, Alabama 36606  
251-433-7766  
[www.bfw-lawyers.com](http://www.bfw-lawyers.com)

**Boteler, Finley  
& Wolfe**

ATTORNEYS AT LAW

Advocates for Insurance Claimants



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by Mark Wolfe, Attorney at Law

*When it comes to an insurance claim you have to realize that your objective and the insurance company's objective are not the same. That is: You would prefer they pay the claim and they would prefer not to pay the claim.*

DISCLAIMER: This legal memorandum is written primarily to help insurance claimants in the State of Alabama. Any reference to legal standards contained herein are based upon the laws and regulations of Alabama. Readers are reminded insurance laws and regulations vary greatly from State to State and the information contained herein is subject to change based on case law, statutory changes or judicial interpretation. All material herein is protected by State and Federal copyright laws and reproduction of this material for monetary gain is strictly prohibited. BF&W does authorize reproduction in exemplum omnis for educational purposes only; that is, readers can copy the entire publication and share it with someone who may find it beneficial but can not copy and share only selected portions. © 2018.

## INTRODUCTION

According to a 2015 National Highway Traffic Safety Administration (NHTSA) report, the average American faces a 2% chance every year of being involved in an auto-crash. ***The term auto-crash is used generically through out this Guide and includes all motor vehicle crashes including 18- wheelers, commercial trucks, taxis, busses, motorcycles, etc.*** In the estimated 6.5 million road crashes per year 37,000 people will be killed and another 2.45 million will be hurt. Statistically this means almost 1% of our population is killed or injured every year in auto-crashes. (See NHTSA report: DOT HS 812-318). The majority of these 6.5 million crashes will involve insurance claims for property damage to vehicles and 37.7% of these crashes will also involve insurance claims related to personal injury or death.

The purpose of this Guide is to help people who are facing auto-crash insurance claims understand the various coverages available to them through their own auto-insurance carrier and through the auto-insurance carrier for an at-fault driver. It will also include some general information about the claims evaluation process and protocol used by many insurance companies. This Guide will be set forth as follows:

1. General Information About Insurance Claims,
2. Auto-Insurance Coverages in General,
3. Property Damage Claims,

4. Personal Injury and Wrongful Death Claims,
5. Understanding Computer Assisted Claim Evaluation Programs,
6. Information About Hiring an Attorney, and
7. Important Information About Recorded Statements.

## **1. GENERAL INFORMATION ABOUT INSURANCE CLAIMS.**

**A. Burden of Proof:** The first and most important thing to remember about any insurance claim is that the person making the claim (the claimant) carries the burden of proof related to that claim. The person who is handling the claim on behalf of the insurance company (the adjuster) does not have to “disprove” the legitimacy of the claim. The adjuster’s job is simply to determine if the claimant has presented adequate proof of a covered loss with proper supporting information and documentation to pay the benefits being claimed. It is important to realize, the adjuster has an obligation to the insurance company to only pay benefits that are legally owed under the policy in issue. The claim files of adjusters are periodically audited to make sure they are not paying more benefits than required by the terms of the policies and that claims are properly documented before making a payment. In some instances, insurance companies even pay bonuses to adjusters and/or agents based upon claim pay-outs, or more specifically, the lack thereof.

**B. Adversarial Process:** As nice and friendly as you think the insurance company will be to you in the claims process; understand, Alabama law defines the insurance claim process as an “adversarial process.” This does not necessarily mean the insurance adjuster is going to be mean and nasty to you during the claim process, rather it simply means you have to recognize that your objectives and the insurance company’s objectives are not the same when it comes to an insurance claim. That is: You would prefer they pay the claim and they would prefer not to pay the claim. Because the claim process is defined by law as an adversarial process, insurance companies are granted a certain amount of latitude in how they handle and adjust an insurance claim, even if it works to the detriment of the claimant. Specifically: 1) there is no obligation for an adjuster to “help” you better present your claim, 2) the adjuster does not have any obligation to tell you about critical time lines or time limitations related to your claim, 3) the adjuster does not have to tell you about other possible coverages available to you for the loss, and 4) the adjuster often can not give you advice or suggestions on how to best coordinate multiple coverages related to a loss. Simply put, because it is an adversarial process, you can not expect the insurance company to tell you how to effectively and timely present your claim or provide you with any helpful information. Because this process is considered “adversarial” a claimant does not have a right to justifiably rely on anything an adjuster says about the terms

and conditions of the policy and/or the merits of the claim! [See, *Apkan v. Farmers Insurance Exchange, Inc.* 961 So.2d 865 (Ala. Civ. App. 2007): Insurance adjuster has no duty to help or assist claimant. In fact, adjuster's duty is to protect the insurance company. *Southern Bakeries Inc. v. Knipp*, 852 So. 2d 712 (Ala. 2002): If a party owes no legal duty of disclosure to another, then material facts can be suppressed with out recourse for failure to disclose.]

**C. Types of Insurance Claims and Related Statutes of Limitations:** Insurance claims can be generally classified as falling into one of two types: a "Direct" claim or a "Liability" claim. The most important thing for a claimant to know is the Statute of Limitations for each of these type of claims. The Statute of Limitations is a prescribed period of time wherein a party can file a civil lawsuit seeking compensation and/or benefits. If a civil lawsuit is not brought by the aggrieved party within the Statute of Limitations prescribed by law, the case will be forever barred.

1) A **direct claim** is a claim you present directly to an insurance company from whom you have bought a policy for the covered loss. For individuals this could be a claim under a homeowner policy they purchased for their home. For a business, this could include a theft of property claim, or a business interruption loss claim, or a fidelity claim, etc. against the comprehensive coverages provided to the business. The easiest way to think about it is by "following the premium." If you or your business paid the premium for the coverage and you are now making a claim against that same coverage paid for by the premium, it would be considered a "direct claim."

In Alabama the Statute of Limitations for a contract dispute is six years from the date of the breach of contract. An insurance policy is a contract between the customer and the insurance company. This means if there is a dispute as to benefits or coverage for a direct claim, the parties have up to six years from the breach of contract (denial of the claim) to bring a lawsuit related to that matter.

2) A **liability claim** is made against another person or entity for causing a loss. The "liable" or "responsible" person then turns the claim over to his general liability carrier to adjust and pay the loss, assuming it is a covered loss. A classic example of a liability claim is if you were to run into the back of the car ahead of you that was stopped in traffic. The person you ran into may have a liability claim against you for the property damage via the liability coverage of your automobile insurance policy. Upon being notified of the claim, your auto-insurance company would assign the claim to an adjuster to determine if you were legally liable for causing the accident and damage. If so, then the adjuster would pay the property damage to the other person. [If your car was also damaged in the collision, you may have a direct claim against your auto-insurance company under the "collision" coverage for your property damage, probably less a deductible.]

Since a liability claim is made against the individual or entity that is legally responsible or liable for the loss, the Statute of Limitations in Alabama for a liability claim is generally two-years from the date of the incident that caused the damages. Depending upon the degree of fault or level of culpability the Statute of Limitations may exceed two years; however, these are rare situations and for practical purposes, you should always assume a liability claim has a two-year statute of limitations.

***IMPORTANT NOTE: There are specific notification requirements for claims against municipalities and/or other governmental agencies. Failure to comply with these notification requirements could block or prohibit a claim even within the generally prescribed Statute of Limitations. Also, readers are reminded that the above information is provided as a general guideline. Laws related to the various recognized statute of limitations are subject to being modified by legislation and/or judicial interpretation. If you are uncertain as to the statute of limitations for a specific claim, please consult with an insurance claims attorney.***

**D. Understanding “Reserves”:** By law insurance companies must hold a certain amount of money in reserve to pay all pending claims. This money can not be invested in the stock or bond market and is usually held in a safe but low yielding money market account. As soon as an adjuster determines a payable claim may exist, he or she is required to set the reserves on the claim. The reserves can be adjusted periodically but adjusters are under pressure to keep reserves set as low as possible. Insurance companies want as much money invested in the stock or bond market where it will earn a much better return than in a money market fund! Reserves that are set too low can hinder or even prevent a claimant from recovering the full amount of benefits owed.

## **2. AUTO-INSURANCE COVERAGES IN GENERAL.**

**A. Summary of Auto-Insurance Coverages:** Alabama is NOT a “no-fault” State. We look to the at-fault driver to be responsible for the damages he or she causes (liable). There are five basic types of coverage that can be found in most “full coverage” auto-insurance policies in Alabama. Liability, Collision, Comprehensive, Medical Payments and Uninsured/Underinsured Motorist Coverage. However, it is important to remember there is no legal definition in Alabama for the term “full coverage.” A company’s definition of full coverage may include other insurance such as rental and/or towing and another company may only include three or four of the five basic coverages set forth above. Premiums are assessed based upon what coverages are selected and the amount of coverage afforded for each selected coverage.

***Consumer Note: When shopping for auto-insurance coverage it is important to know what types of coverage you will need and what limits you want so that you can compare policies with similar benefits.***

**B. Liability Insurance Coverage:** This coverage protects you if you cause an auto-crash and damage someone's car and/or hurt another driver or their passengers. Since 2000, Alabama has been a mandatory auto-liability insurance State. Meaning all drivers of a vehicle on a public road are required to have specific liability coverage for property damage and personal injuries they may cause. (See Ala Code §32-7A-4) The minimum liability limits are commonly expressed as 25/50, 25. With 25/50 representing a required minimum of \$25,000 per injury and \$50,000 for all injuries and \$25,000 for all property damage caused per accident. Please keep in mind that even though Alabama is a mandatory liability insurance State, 25% of the drivers on our roads do not comply with this law. Also, of the remaining 75% driving with liability insurance, almost half of those drivers are only carrying the required minimum coverage amounts described above. So if you are a victim in an accident there is a strong likelihood the at-fault driver may not have insurance or may not have enough insurance to cover your damages.

**C. Collision Insurance Coverage:** This coverage protects you if your vehicle is damaged in an accident. The collision coverage will protect you up to the selected amount less the selected deductible. This type of coverage is not mandatory; however, many banks or finance companies require you to carry an appropriate amount of collision coverage so as to protect the collateral of the loan. This coverage can also be used if the at-fault driver does not have enough property damage liability coverage or there is a dispute as to who was at-fault in causing the accident.

**D. Comprehensive Insurance Coverage:** Similar to collision coverage this coverage protects you if the vehicle is damaged in some other way than an accident. This includes, theft, fire, flood, hailstorm, etc. It is not mandatory in Alabama and is also subject to the selected coverage and deductible amounts.

**E. Medical Payments Insurance Coverage:** Commonly referred to as “med-pay”, this coverage pays for medical bills incurred by you and/or your passengers as a result of an accident. It is a no-fault coverage meaning it is available to you and/or your passengers regardless of who caused the accident. In Alabama the typical med-pay limits range from \$1000 to \$5000 per claimant. It is not a mandatory coverage and is considered a “non-rated” claim. Meaning a med-pay claim by you or your passengers will not be used to increase your auto-insurance premiums. Note, many health insurance policies and Government sponsored health benefit plans now require med-pay benefits to be used first if the injuries are from a car accident.

**F. Uninsured/Underinsured Motorist Insurance Benefits\*:** This is a required coverage for all auto-insurance policies sold in Alabama (See Ala Code §32-7-23); however, this coverage can be expressly rejected by a customer. Usually a signed waiver or e-signature is required to reject UM/UIM coverage. This coverage allows you and/or a person injured in an accident caused by someone else, to collect all

personal injury damages allowed by law if the at-fault driver does not have liability insurance or does not have enough liability insurance for the injuries and damages he or she caused.

**\* IMPORTANT NOTE:** *There are specific notification requirements related to this coverage and certain conditions that must be met to secure these benefits. If you have a potential uninsured or underinsured motorist injury claim, you are strongly encouraged to consult with an attorney or in the very least read the policy for all notification requirements and conditions related to this type of claim. Failure to comply can result in the coverage being voided!*

**G. Miscellaneous Auto-Insurance Coverages:** There are several other coverages available to consumers under auto-insurance policies. These are not mandatory but are still subject to the legal issues discussed in Section 1A and 1B above. These can include rental car coverage, towing and/or road side assistance, new part replacement, new vehicle replacement guarantees, uninsured motorist property damage coverage, deductible waivers, etc. There really is no limit to the various types of additional coverages a company may offer; however, just as with the five main types of coverages discussed above, you will pay a certain premium amount for the miscellaneous coverages you select.

**H. Subrogation:** Almost all insurance policies, including auto-insurance policies, have a subrogation clause. This allows, and requires, them to be repaid for any benefits they provide you and for which you make a recovery from another insurance company. E.g., You are in a crash and the at-fault driver's insurance company is taking too long to fix your car. You decide to use your collision coverage and then down the road the at-fault driver's company decides to pay. You get to keep your deductible but your insurance company is entitled to their money back. This is known as subrogation. Failing to repay duplicate proceeds or hindering your insurance company's subrogation rights can void benefits and coverage!

### **3. PROPERTY DAMAGE CLAIMS.**

In Alabama, the measure of damages for personal property is the difference in value of the property before the accident and after the accident. Generally this means that if a vehicle can be repaired it must be returned to its pre-accident condition. Also included in a liability claim for damaged property are all damages or expenses that are reasonably related to the damaged property. This typically encompasses rental car expenses incurred while the vehicle is inoperable or being repaired. A liability claim may also include a claim for diminished value.

**A. Total Loss Laws:** Under Alabama law when the cost of repair for a vehicle is 75% or more of its fair retail value then the vehicle is deemed a total loss. Ala Code Sec. 32-8-87(d) In such a situation the insurance carrier buys the vehicle from the



claimant for the fair retail value of the vehicle and then applies to the State for a Salvage Title.

**CONSUMER TIP:** *If you think the adjuster's valuation of your vehicle is low, ask the adjuster to provide you with the valuation report. Most reputable insurance companies will allow their adjusters to provide a copy of this report to claimants. Review the valuation report to make sure information about your vehicle was correctly entered. Mistakes in details such as mileage, options, transmission type, and/or engine size can make a difference in the reported fair retail value of your vehicle.*

In a total loss situation some claimants find themselves owing more on the car than the fair retail value of the vehicle. This means they may still owe money on a car that they no longer have or can use. The insurance company is not responsible for money owed on a vehicle in excess of its fair retail value. If you think you might be in this situation, then immediately check with the bank or finance company that provided the car loan to see if you purchased GAP Insurance when you financed the vehicle. GAP Insurance pays the difference between the fair retail value and the balance owed on the vehicle. The finance company can provide you with information and claim material for this type of claim.

**CONSUMER TIP:** *GAP Insurance should be purchased if there is little or no equity in the vehicle; however, check with the dealer and/or finance company to make sure you can drop the GAP coverage once the equity and fair retail value of the vehicle equals or exceeds the finance price. In other words once the "GAP" is gone there is no longer a need for GAP Insurance.*

**B. New Parts or Used Parts:** There is no requirement under Alabama law that an insurance company replace damaged parts on a vehicle with brand new parts. Used or after-market parts may be used for repairs as long as the parts to be used are comparable to the parts being replaced and return the vehicle to its pre-accident value.

#### **4. PERSONAL INJURY AND WRONGFUL DEATH CLAIMS.**

**Important Note:** *Under Alabama Insurance Regulations, property damage claims and personal injury/wrongful death claims are considered separate claims. This means you can resolve or settle the property damage claim for your vehicle even if you are still under medical care for injuries. Many insurance companies will have you sign a "Property Damage Release" when the property damage claim is resolved. As long as you are not signing a "General Release of All Claims" this will not hinder the injury or wrongful death claim. Because they are separate claims, an insurance company can still come back and deny the injury claim even if they have paid the property damage claim.*

**A. Personal Injury Claims:** If you are injured through the fault of another driver then under Alabama law, a claim for personal injury may include compensation for

the following damages: 1) medical bills, 2) lost wages, 3) future medical bills, 4) future lost wages, 5) diminishment in earning capacity/future lost wages, 6) permanent injury and/or scarring, 7) pain and suffering, 8) mental anguish and emotional distress, 9) future pain and suffering and 10) future mental anguish and emotional distress.

**B. Burden of Proof:** The claimant carries the burden of proof as to each and every element of the damages claimed. For example claimed medical bills must be shown to be medically necessary, with reasonable and customary charges and caused by the accident in issue (causation). If these three elements are not proven, then the insurance company is not liable for paying the claimed bills. Under Alabama law, medical causation must be established to a reasonable degree of medical certainty. This means that medical bills that “might be” or “may be” caused by the accident in issue are generally not going to be compensable. To claim future damages it must be shown that the damages are reasonably certain to be incurred or suffered.

**C. Standards of Proof:** All insurance companies have an established protocol or process for determining whether or not the claimant has adequately met the burden of proof so as to justify paying the above compensable damages for an injury. For payment of medical bills, this process often involves a detailed review of the claimant’s medical records as well as a review of the claimant’s past medical history. For claimed lost wages, this process will usually involve a review of the claimants past tax returns and verification from the claimant’s employer. Also, most insurance companies have guidelines as to how and when damages such as pain and suffering may be authorized.

**D. Lump Sum Settlement of an Injury Claim:** When the time comes to settle an injury claim it is generally done in one lump sum payment that encompasses all of the claimable damages set forth in paragraph 4A above. Simply put the negotiation and settlement of an injury claim is done in total and the amount discussed is not the claimant’s net recovery. Some insurance companies require that payments be made directly to hospitals or health insurance companies from the overall lump sum settlement and this is sometimes not disclosed until after the settlement has been negotiated. The insurance company will require the claimant to sign a General Release of All Claims - Known and Unknown when accepting that lump sum settlement. Alabama law strictly construes the execution of a Release and it is practically impossible to undo a Release and seek additional money from an insurance company.

**IMPORTANT NOTE:** *Some insurance companies try to get potential claimants to sign a General Release of All Claims shortly after a crash by persuading the claimant they are just receiving a little compensation for their “inconvenience” and any “minor out of pocket expenses” they may have.*

**E. Wrongful Death Claims:** Alabama law is very unique when it comes to wrongful death claims. Most other jurisdictions try to compensate family members for the loss of a loved one based upon the “economic” value of the lost life. Alabama holds that all lives are precious and the damages for wrongful death claims should be assessed on the degree of the wrong that took the life, not on the economic value of the life that was taken. Wrongful death claims are prosecuted by the personal representative of the deceased (or the parents of a minor child.) Wrongful death proceeds are passed to the heirs of the decedent based upon Alabama Code §43-8-41. The proceeds are not subject to the claims of creditors of the decedent.

## 5. UNDERSTANDING COMPUTER ASSISTED CLAIM EVALUATION PROGRAMS.

Every major auto-insurance company now uses some form of Computer Assisted Claim Evaluation (CACE) Program for property damage and injury claims. The adjusters are responsible for inputting data for the programs to analyze but they are often subject to strict guidelines as to when important information favorable to the claimant can actually be input.

**A. Property Damage Claims:** Most companies have programs to help them determine the “fair market value” of a total loss vehicle. The problem for claimants is that they are unaware of the value drivers and default parameters of these programs. For example, a car that has 1.25 times more miles than “average” may automatically be defaulted to “poor” condition in the computer valuation program. Requesting a copy of the valuation report can be helpful to see what additional favorable information can be presented. That information can be input by the adjuster to “override” the devaluation factor.

**B. Personal Injury Claims:** In the last 20 years the rise of CACE programs for personal injury claims has been amazing. Every major insurance company now uses some type of CACE program with **Colossus™** being the most common. Adjusters are required to input certain information into the program and it will then spit out an evaluation for the injury claim. Diagnosis and treatment codes, prescriptions, duration of care, activities under duress, restrictions, impairments, etc., are all supposed to be input and then a value assessed. Again the problem for claimants is not knowing for sure which value drivers have been actually input into the program and what can be done to eliminate a negative value driver. For example almost all CACE programs consider a delay in care as a negative value driver. The idea being if a claimant is really hurt they would get medical care soon after the accident. This presents two problems for claimants. First, the period of delay can be manipulated by each company. Allstate’s program may default to devaluation if the claimant waited four days before seeking care and State Farm’s program may not begin devaluation

until the delay exceeds a week. The second problem is claimants are not aware of how to “override” this negative value driver.

## 6. INFORMATION ABOUT HIRING AN ATTORNEY.

Alabama law provides very limited regulations on attorney advertising. This means lawyers can make all kinds of claims about money they’ve recovered for car accident victims. Many of these commercials have small almost microscopic disclaimers saying: “Not an actual case” or “Dramatization: Not an Actual Case” or “Not a Typical or Expected Result.” Some lawyers give themselves nick names like “the Shark” or the “Screw Driver” to try and coax victims into signing a fee agreement. Here are a few things to remember about hiring an attorney:

**A. Free Consultations:** All personal injury attorneys provide free consultations. Some injury claims do not warrant hiring an attorney or some claimants are simply reluctant to hire an attorney. Whether you think you’ll need an attorney or not, anyone with an injury claim should at least consider consulting with an experienced auto-crash injury attorney as soon as possible after an accident. A 30 minute consultation can give you some specific guidance on legal issues you may be facing and offer some helpful tips even if you don’t need an attorney at that moment. Also, an early consultation can give you some guidelines as to when it may become beneficial to hire an attorney for your claim.

**B. Contingency Fees:** All personal injury attorneys provide free consultations and almost all work on a contingency fee arrangement. That means a fee is only paid if the attorney is successful in recovering money for the client. In most auto-crash injury situations, the potential client has time to consult with more than one attorney. Choosing an attorney you are comfortable with is very important. You will be relying on your attorney for information and guidance throughout the insurance claim process so it is important to know how communication between you and the attorney will work. Also, you should be given a copy of any fee agreement you sign as well as copies of other claim related documents.

**C. Expenses:** In Alabama attorneys are allowed to advance expenses related to their client’s claim or case. These expenses must be reimbursed by the client when the claim is over and are usually deducted from the client’s portion of the recovery. It is important to have an estimate of the expenses and how unforeseen expenses may be handled.

**D. All Injury Attorneys are Not Equal:** Alabama Bar Association Rules for Attorneys require every attorney advertisement to say: “*No representation is made that the legal services to be performed are greater than the legal services performed by other attorneys.*” The implication being all attorneys are equal. However, that is simply

not the case. An attorney with 30 years of experience in representing auto-crash victims in the claim process and, when necessary, in Court will carry more credibility with the insurance company than a two year associate attorney stuck in a cubicle at a “churn and burn” TV mega-law firm. Most of the Computer Assisted Claim Evaluation Programs discussed in section 5B. have a rating system for the claimant’s attorney and the rating is a factor in the evaluation process. The internet provides today’s legal consumer with a lot of information about attorneys, their experience and the types of cases they have handled. Pick two or three that you feel have experience with your type of claim and give them a call or go sit down for a free consultation.

## **7. PREPARING FOR AND PROVIDING YOUR RECORDED STATEMENT**

Schedule the Recorded Statement for a time and date that allows you to be fully prepared! DO NOT simply answer the phone and agree to give a statement without having prepared! Simple mistakes such as direction of travel or poor time or distance estimates can easily result in a claim denial! Also, remember, determining “fault” for causing a motor vehicle crash requires an interpretation of facts and law. When giving a recorded statement your job is simply to report the facts accurately and truthfully. By following the simple ideas and suggestions below, you will help make sure you are prepared and the recorded statement is correct and helpful in the claim resolution process.

### **A. PREPARE FOR THE STATEMENT**

- 1) Review the accident report before giving the statement. If you do not have the accident report, get a copy or ask the adjuster to furnish you with a copy before scheduling the statement. [Most legitimate insurance companies will mail, fax or e-mail you a copy of the accident report but just as with getting a transcript of your statement, you have to ask for it.]
- 2) Make sure you know your direction of travel and the name of the road you were on. You will also need to be able to identify the direction of travel for the other driver and what road he or she was on.
- 3) Make sure you know the time of the collision.
- 4) Review in your mind your route of travel and be able to tell the adjuster where you were going and the purpose of your trip.
- 5) Know the names of all passengers and if possible their contact information, especially if you believe they can help validate your account of how the collision occurred.
- 6) You will need to know the weather conditions and if safety belts and/or child restraints were being used by you and your passengers.

- 7) You will need to be prepared to describe the property damage to your vehicle and the other involved vehicles as well as describe the post-collision position of the vehicles.
- 8) You will need to have the contact information for any witnesses known to you.
- 9) You will probably be asked for information about your employment such as how long you have been employed, the type of work you do and your job's physical requirements, your pay rate and the name and telephone number of your immediate supervisor. NOTE: If you are making a lost wage claim or loss of revenue claim, you can anticipate a more detailed inquiry into these areas.
- 10) If you were injured, even slightly, you need to be prepared to describe your injuries with specificity and in detail. Your description of your injuries should always be honest and never exaggerated but you need to make sure all injuries are mentioned. Bruises and small contusions from seat belts are often forgotten or not mentioned as are small cuts or abrasions. If you have received medical attention, or are still receiving medical care for injuries from the collision, be sure you have the healthcare providers name, address and telephone number available and be prepared to tell the adjuster about the number of visits and what you have been told about your injuries. Also, if you were injured in the collision and making a bodily injury claim for medical bills and related damages, be prepared to answer questions about your past medical history, i.e., other similar injuries, other prior accidents or incidents, etc.
- 11) Ask if you will be given a chance to review the statement or at least be given a transcript or copy of the statement. [Most legitimate insurance companies will provide a copy but you must ask for it.] If the adjuster wants to know why you want a copy you can explain it is simply to make sure the transcript is accurate and that you would like to have a chance to correct any misstatements, inaccurate responses or mistakes you may have made.

## **B. WHAT TO DO WHEN GIVING THE STATEMENT:**

- 1) Relax and try not to be nervous.
- 2) Be polite and use yes or no instead of uh-huh or uh-uh. The later responses can be very difficult to discern and transcribe and are easily transcribed incorrectly. Also, remember this may be your only chance to interact directly with the insurance company. For the remainder of the claim process, you are primarily just another claim number to the insurance company. You want to make a good impression.
- 3) Answer the question. Many times people go into a long narrative in response to a simple question. Try to be concise and accurate in your response.
- 4) Confirm on the record that you will be getting a transcript or copy of the statement. Many companies will now send you a digital sound document of your statement by e-mail.
- 5) If you were injured in the collision and anticipate making a bodily injury claim, ask

the adjuster on the record and at the end of the statement if he or she has a preferred healthcare provider or doctor you need to go see to verify or validate your injuries. Most of the time at the end of the statement the adjuster will give you an opportunity to say or add anything to the statement and this is the perfect time to ask the adjuster about a preferred healthcare provider. WHY THIS IS IMPORTANT. Most companies do not have preferred healthcare providers for you to see and most will not ask you to see a doctor of their choice to validate the claim, but by offering to do so, you are telling the adjuster early on that your injury claim is legitimate and meritorious because you are willing to allow them to “independently verify” the truthfulness of your injury claim. Obviously in catastrophic injury situations or broken bone claims, this offer is not as important, but if you have a soft-tissue injury such an offer can help establish in the adjuster’s mind that your claim is legitimate and you are not trying to present a fraudulent or exaggerated claim.

### C. WHAT NOT TO DO WHEN GIVING THE STATEMENT:

- 1) Do not exaggerate or overstate any aspect of the collision or your injuries. Be honest and candid in your account of the collision and your injuries.
- 2) Do not speculate. If you do not know an answer it is OK to say you do not know; however, try to give an estimate if at all possible. NOTE: Excessive use of “I don’t know” is often considered by adjusters as being deceitful or not completely honest or candid.
- 3) Do not give out personal information such as your date of birth and your social security number during the statement. You can confirm the last four digits of your social security number but in this day and age of identity theft it’s better not put your personal information into a statement that will be transcribed by someone you do not know. Understand the adjuster will need this information to process your claim. We are not advocating that you not provide said information, we just do not believe the recorded statement is the appropriate place to disclose said information. Often times this information can be confirmed with the adjuster after the statement is over and the recorder is turned off.
- 4) Do not agree with any commentary or suppositions asserted by the adjuster about your actions or details of the collision. In other words, do not let the adjuster “put words in your mouth.” NOTE: Most legitimate insurance companies do not allow adjusters to do this, but some companies encourage, or do not strongly discourage, this type of gamesmanship by their adjusters. Some examples: *“So you’re saying you’re really not hurt that bad and aren’t going to need medical care.”* - *“OK, if I understand what you’ve said, you’re not really really 100% certain the accident was our insured’s fault.”* - *“Based on what you’ve told me so far, wouldn’t you agree that you could have avoided this collision if you would’ve swerved just a split second sooner?”* - *“So based upon what you’ve told me about your work requirements, wouldn’t you agree you could probably be working even though your doctor told you to stay off work for*

two to three weeks.” If you find yourself confronted with this situation, you can simply tell the adjuster you are not going to agree or disagree with any of his or her characterizations. Also, if you do not believe the adjuster is being fair to you because of these type of forced questions, stop the statement. Giving a recorded statement is a courtesy and if the adjuster is going to abuse that courtesy then you have a right to stop or cancel the statement.

***NOTE: If you stop or cancel the recorded statement for whatever reason, send a written communication to the adjuster documenting why you felt it necessary to cancel or stop the statement. If you do not believe the adjuster was being fair or if he or she was rude and/or ugly, describe the adjuster’s behavior in detail. Try to be understanding of the adjusters job and position. While most adjusters handle themselves in a professional and civil manner please remember because of continued cut-backs by insurance companies, most adjusters are overworked, underpaid and mostly unappreciated by their company. Sometimes the stress of their job is reflected in the way they communicate with claimants. So even if the adjuster is having a bad day, try not to react in-kind. Stay calm and polite. Ask for a transcript and if the insurance company sends you a transcript or digital recording of your statement, take time to review it as soon as possible. Send a written communication to the adjuster with any corrections. Also, if you think one of your responses may need further explanation or more details, make the additions in the written communication.***

**D. SUMMARY:**

Schedule a Recorded Statement so you have time to prepare. Know all important information about the accident including contact information for passengers or witnesses. Be prepared to describe the property damage. Be honest and do not exaggerate but tell the adjuster about all of your injuries including minor scrapes and bruises. Be polite and courteous when giving the statement and use yes or no instead of uh-huh or uh-uh. Ask to receive a transcript and correct any mistakes in writing.

**CONCLUSION**

Auto-crash claims are complex. In smaller claims, it may not be economically feasible to hire an attorney but if your claim involves a personal injury you should consider consulting with an experienced auto-crash attorney. I have been helping auto accident victims for over 30 years and I understand how to get Reserves properly set for each claim. I also understand the Computer Assisted Claim Evaluation Programs used by most major insurance companies. I know what positive value drivers need to be documented and what can be done to override a negative value driver in these programs. I also know what needs to be done to help distinguish your claim from the thousands of other injury claims being made each day. Please call me today for a free consultation or send me an email at [mark@bfw-lawyers.com](mailto:mark@bfw-lawyers.com) The lawyers at Boteler Finley & Wolfe can help you and your family. 251 433-7766.



## **About the author: Mark C. Wolfe**

Licensed since 1987,

Over 100 courtroom victories for injury victims,

Over 3,000 insurance claims resolved,

Member of the Multi-Million Dollar Advocates Forum,

Member of the Million Dollar Advocates Forum,

Member of the Top Trial Lawyers in America,

Member of the National Trial Lawyers Association Top 100 Lawyers in Alabama since 2008,

Member of the Academy of Trial Advocacy since 2008 (only 2<sup>nd</sup> lawyer in Alabama to qualify),

Recognized as one of America's Super Lawyers since 2006,

Highest lawyer rating available from AVVO.com and Martindale-Hubbell

Certified as an Advocate from the American Association of Justice since 2004,

10 published Articles in National and Regional law journals on Litigation Strategies and Law Office Management,

Over 250 hours of teaching credits for seminar presentations to lawyers and doctors on insurance claim presentation, litigation strategies and law office management.

**Call Mark at 251-433-7766  
or email [mark@bfw-lawyers.com](mailto:mark@bfw-lawyers.com)**



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# WHAT TO DO AT THE ACCIDENT SCENE

Having a motor vehicle crash is never a planned event. Accident scenes can be chaotic with high levels of anxiety and worry. Yet being prepared and knowing what to do at the scene can make a big difference in how easily your insurance claim will be. Here are some important tips and reminders:

**Stay calm.** Getting upset only makes a bad situation more difficult. Maintain your composure even if the other person doesn't.

**Check for injuries and call the police.** Even if the accident is minor call the police. Notify them of injuries so that they can call for medical assistance.

**Don't move an injured person - unless they are in immediate danger.**

**Don't leave the scene of an accident.** Even if the other driver says its okay, they could later file for injuries or you could be accused of a hit and run. Wait for the police to arrive and let them tell you when you can leave.

**Try to protect the scene of the accident.** Don't move your vehicle unless it impedes traffic or it's necessary to prevent further damage. (Have a kit with emergency cones, triangles or flares.)

**Don't blame the accident on anyone -- including yourself.** Even if you might be at fault, don't say so to anyone. Give your full description of the accident only to the police officer.

**Exchange information with the other driver.** This includes:

- the license plate number, make, model & color of other vehicles
- names & addresses of all drivers/passengers
- drivers license numbers (note if driver is different from vehicle owner.)
- insurance company information.
- name and address of witnesses.

**Use your smart phone.** Capture the following if possible:

- take photos of the scene including any skid marks or gouge marks
- take photos of the damaged vehicles including, if possible, any interior damage
- take a video or audio statement from witnesses, get their contact information
- take photographs or video of any related traffic lights to document their function

**Ask the officer how you can get a copy of the policy report.**

Get the accident report as soon as possible and review it for accuracy.