

7 MISTAKES
THAT CAN WRECK YOUR
WISCONSIN
AUTO ACCIDENT CASE

—AND HOW TO AVOID THEM

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Why We Wrote this Book

We have met with thousands of accident victims. All too often, they have made mistakes after being involved in an automobile wreck. Some of these mistakes could be fixed; others were fatal to their cases. These folks were not dishonest, nor were they seeking an advantage in their cases. They simply did not know their rights and how to protect themselves in what can be an unfair fight – a regular person up against an insurance company with seemingly unlimited money, personnel, and knowledge. Nobody would choose to enter such a fight voluntarily, but many do so unarmed.

The goal of this book is to help you avoid the landmines that could damage your case. Simply put, we want to help you avoid being injured twice – once in a car wreck and then a second time at the hands of an insurance company. This book is intended to be a consumer guide, not legal advice or a technical discussion of the law.

We view this book as a “legal first aid kit” for drivers and passengers of automobiles. Like a first aid kit that you keep in your car in case of emergency, we hope that you will read this book and keep it with your first aid kit, so that you can refer to it if the need arises. In the case of understanding how to respond if an accident occurs, an ounce of prevention can save pounds of grief.

Disclaimer

We are lawyers, so you should not be surprised that we are including a disclaimer with these materials. Please understand we are giving you information, not legal advice, in this book. The suggestions and warnings we provide in this book are not a substitute for consulting or hiring a lawyer. We do not represent you and we cannot give you legal advice unless you hire us and we agree in writing to represent you. Nonetheless, we believe the information we provide in this book is valuable for each and every Wisconsin resident, whether or not they have been in an automobile wreck.

1. Our Observations About How Insurance Companies Handle Claims

We are often asked to comment on how insurance companies handle claims. Often, injured folks believe that an insurance company will treat them fairly and reasonably as a general rule. Undoubtedly, some insurance companies and some injured folks have worked well together in resolving claims. However, at the core of this process is a terrible dynamic.

Insurance companies are motivated by profit. In most instances, saving money on your claim and thousands like it improves their bottom line. This notion plays out daily across the country. Consider that most of the largest insurance companies have implemented software programs engineered and adjusted to minimize the amount they pay on claims. Have you ever heard of a family member or friend who received a strange settlement offer – instead of \$40,000, an offer of \$36,442.32? If so, it was probably generated by a sophisticated computer program – rigged to spit out low numbers that favor the insurance company.

Understand that many claims adjusters carry large case loads, have little authority to act on a particular file, and may not have enough time to do their jobs properly. Their performance may be measured based upon the number of claims they resolve, how quickly they resolve claims, or some similar metric that has

little to do with paying claims fully and fairly. Claims adjusters are not evil; they are being paid to do a job – to minimize the insurance company's exposure.

Does this mean you cannot get a fair settlement? No. You can get a fair settlement, but you have to avoid the mistakes we outline in this book and present your claim appropriately.

2. What Must You Prove to Win Your Case?

We regularly do focus groups or mock trials in our cases. During these practice sessions, we present various aspects of a given case to members of the community so that we can get their reactions. Many folks we encounter believe that a person who was in a car wreck should get compensated regardless of whether he or she was at fault or even injured in the wreck. This is simply not the law in Wisconsin.

In Wisconsin, an auto accident victim has to prove three things to win his or her case.

1. That another party was negligent;
2. That the other party's negligence was a cause of his or her damage; and
3. That he or she was damaged as a result of the wreck.

If accident victims cannot prove these points, they will lose their cases. Hopefully, after reading this information you will set the record straight the next time someone tells you about a story about an accident case that simply does not make sense.

In Wisconsin, we also have something called contributory negligence, which can reduce the amount of an injured person's monetary recovery by the percentage of their negligence. For

example, if a victim gets a jury award for \$100,000, but the jury determines that the victim was 20% at fault, the \$100,000 award would be reduced by 20%, or \$20,000, leaving the victim with \$80,000. If the jury finds that the victim was 51% or more at fault in the accident case, the victim will recover nothing. Is this fair? Maybe not, but insurance companies understand that if they can spread even a small percentage of the blame to the victim in a large number of cases, they will save huge sums of money.

In reviewing a case, we carefully analyze these issues to give you a realistic assessment about what you can expect.

3. Do You Really Need an Attorney to Help with Your Personal Injury Case?

You do not need an attorney to help with every injury case. In fact, you may not need an attorney if you have minimal property damage and minimal non-permanent injuries. Although some lawyers will accept such cases, our law firm does not. In small cases, there may not be much left over for the injured person after the lawyer gets paid her or his fee and costs, and the health insurer gets reimbursed for paying related medical expenses. We do not discourage injured folks from pursuing such claims, but we do not handle these types of cases. In the end, we only want to be involved in cases where we can make a substantial difference in the lives of our clients.

4. What Are the Benefits of Hiring a Lawyer?

After sustaining injuries in a car wreck, folks enter a strange and difficult world. Some have likened this world to a war zone, where insurance companies wage a no-holds-barred campaign to discredit you and diminish your claims. Your credibility, integrity and financial future are on the line. Does this sound extreme or overstated? After years of fighting these battles, we believe we are in the middle of a war in most cases.

The car insurance companies frequently raise bogus defenses. For example, we recently had a traumatic brain injury case involving an adult woman. She had led a great and productive life prior to her injury. Yet, the insurance company refused full payment of her claim because she fell off her bike when she was a young child, cut her head, and had a few stitches. Preexisting condition, or a frivolous defense?

In many other cases, insurance companies fail to admit responsibility in rear-end auto wrecks or cases where one driver crosses the center line and hits another. Lawyers who have dealt with such situations understand the range of options and can help the injured best respond to these types of ridiculous defenses.

Insurance companies often do not stop there. They frequently hire defense medical doctors under the ruse that these doctors are “independent.” Usually, these doctors review the records

and do a brief interview with the injured person. The result – you guessed it – the insurance company’s doctor’s report helps justify the insurance company’s position. In the end, this doctor serves the insurance company in making sure that the sum paid to you is minimized. Experienced injury lawyers can help you through this process and defuse this deadly tactic.

As if that were not bad enough, the insurance companies devote untold resources to waging this war in the media and politically. In the end, your friends and neighbors, and yes—you too—are more skeptical than ever before of claims made by the injured. It makes sense to have a lawyer who practices the latest techniques to battle this range of insurance company tactics. While in a small case you may not need a lawyer at all, in a serious case, the right lawyer may make the difference between success and failure.

Besides, if you have been seriously injured, you should be spending your energy recovering, not on fielding the phone calls from an insurance company.

5. The 7 Biggest Mistakes That Can Wreck Your Wisconsin Accident Case

Over the years, we have worked with Wisconsin auto accident victims who have found themselves in a difficult position through no intentional fault of their own. When you are in an accident, the first instinct is to make sure that you and your family are okay and then to get out of there. This is a very natural impulse. However, the moment an accident happens, a series of unforeseen hurdles spring up, with the potential to damage your case seriously. We have written this book with the hope that with forewarning, these hazards can be avoided. After all, preventing these mistakes on the front end is far easier than trying to unscramble the egg after the insurance company has denied your claim.

Mistake Number 1 - Failing to Preserve Evidence. We have often met with auto wreck victims who have failed to preserve evidence. We suggest that in the event of an accident you or someone close to you follow these steps:

Call 911 to get appropriate assistance to the accident scene. This is good protocol because even if there appear to be only minor injuries, it is better to be safe than sorry. In terms of your case, it is helpful to have a written record of the accident scene that includes information about the cause of the accident, who is involved, who owns the vehicles, the identity of insurance companies that provide coverage, and other important

information. It is critical that this information be obtained and preserved because with the passage of time, memories can become fuzzy and inaccurate. The reports compiled at the scene can help.

Cooperate fully with law enforcement's investigation. The police may ask you for a statement at the scene of the accident. They may also ask for insurance information. We believe it is a good idea to cooperate fully with law enforcement officers under these circumstances.

Get photographs of your vehicle. Many folks wrongly believe that the police have taken accident scene photos. Police do not take photos in every case and they are typically photographing vehicles to assist with their investigation, not to demonstrate damage to your vehicle or to you. We suggest that you get photographs of your vehicle after an accident. Sometimes these photographs assist in determining various facts about the accident.

Call law enforcement to get an accident report, photographs, and a copy of the 911 recording as soon after the accident as possible. Then you will have a chance to address any problems with the report. Police officers are human too. They can make mistakes such as dates, time, and identity of witnesses. In the event of such mistakes, they are usually easier to correct immediately after an accident, instead of years later when the officer has no recollection of the crash. It is also important to note that some law enforcement agencies do not retain records for forever. For example, some law enforcement agencies only retain 911 recordings for short period of time, perhaps 90-120 days.

Document your injuries and treatment. Have a friend or a family member take photographs or videotape your injuries. Bruises, cuts, and lacerations are very real. Yet, without photographs, they are just words. We suggest that you photograph your injuries regularly to document the healing process and your level of function. Sometimes a photograph or videotape can do what no witness can, demonstrate your pain and suffering in an unbiased, universal manner. Film is cheap and nearly every cellular phone has a camera – document your injuries and your treatment.

It is important that you or someone close to you take these steps. You cannot count on an insurance company to take these steps to protect you.

Mistake Number 2 - Failing to Seek Appropriate Medical Treatment. Many of us do not like going to the doctor or we feel that our injury is minor and we will just get over it without medical care. While this may be true in some cases, failing to receive appropriate medical care can be fatal to your case. Insurance companies generally require that injuries be documented before they provide adequate compensation.

Please understand we are not suggesting that you run to the doctor for every nick or scrape or that you seek treatment you do not need. We are not medical professionals and are not giving medical advice. Determining appropriate medical care is between you and your medical care providers. So give these highly trained folks a chance to help. Do not take matters into your own hands and fail to seek care—only to find that when you return to work after the accident, your symptoms are much

worse than you expected. Think about it. At that point an insurance company may claim that your injuries are not related to the car wreck, but instead are related to some incident at work or at home. To avoid these types of problems, seek timely and appropriate medical care for your injuries. If you fail to do so, you may have to answer this question from an insurance company: “If you don’t care about your health enough to receive timely and appropriate medical care, why should we care about compensating you?”

Mistake Number 3 - Failing to Follow Doctor’s Orders.

Most accident victims do not purposely disobey their doctor’s orders. There are certain demands in life that prevent some of us from following the doctor’s orders as faithfully as we should – work, kids’ sporting events, family get-togethers, home repairs, car trouble, etc... But, if you are going to make an injury claim, it is critical that you follow doctor’s orders. For example, if your doctor recommends that you have additional tests and you fail to have those tests, you are hurting your case. Similarly, if your doctor recommends that you go to physical therapy three times per week and you only go once, you will likely hear a claims person from an insurance company argue that you could not have been badly injured or you would have followed the doctor’s orders. What happens next? You guessed it. The insurance company will probably use this as a basis to reduce its settlement offer to you.

Mistake Number 4 - Trying to Hide Past Accidents and Injuries from Your Lawyer.

You should always be honest with your lawyer. It is nearly impossible for a lawyer to help a client unless he or she has all the facts. Nowhere is this more true than

in dealing with an accident victim's past accidents and injuries. This information is critical because insurance companies will want to know and probably have a right to get this information. Insurers often use this information to claim that you have a preexisting condition, have a psychological problem, or other issues that justify a low-ball settlement offer.

If you have been in an accident or have been injured in the past, tell your lawyer. These issues can be dealt with in an effective and forthright manner, but only if your lawyer knows all the facts.

Mistake Number 5 - Signing Documents that Allow an Insurance Company to Get Unlimited Access to Your Records. Insurance companies often ask accident victims to sign a medical records authorization that is unlimited in both time and scope. In other words, many victims allow an insurance company to get records from the injured person's date of birth to the present time. Does that seem reasonable? It is not.

Getting such records harasses and annoys the injured. We have seen a situation where an insurance company denied payment to a forty-year-old car wreck victim with a traumatic brain injury because she had a "preexisting condition." She had fallen off of a bike when she was six. She had no symptoms for nearly 35 years. Yet, the insurance company denied payment.

Similarly, we have been involved in situations where the scope of the authorization is a problem. For example, we are aware of a case where a thirty-year-old woman, a wife and mother of three children, was badly injured in a wreck. She signed

an unlimited authorization. The insurance company gathered records and ultimately got records indicating that this woman had suffered with an eating disorder between the ages of 13 and 16. The insurer claimed that this unfortunate woman was not really injured in the accident. Instead, she had an underlying psychological condition, as evidenced by her eating disorder.

The point is not that anyone is trying to hide relevant and important information. Quite the contrary, we believe such information should be disclosed. However, avoiding signing an unlimited authorization goes a long way toward preventing an insurance company from denying your claim for an illegitimate reason.

Mistake Number 6 – Misrepresenting Your Activity Level or Limitations. Insurance companies may hire private investigators to conduct surveillance of those claiming to be injured. This is generally done to prove that the injured person is lying concerning their limitations or activity level. Is this legal? Yes.

We do not know of any law prohibiting such videotape surveillance, particularly if the private investigator is not intimidating or disruptive.

The various social media sites where people post photos and video clips of themselves in all sorts of situations, snowmobiling, water skiing, and even hang gliding, can be deadly. We have heard stories from many lawyers from across the country about how insurance companies have used publicly available photos or videos to help in defending a legitimate case. Our suggestion is always to be totally honest about your level of disability and your limitations.

Mistake Number 7 – Waiting Too Long to Seek Legal Help. We are often contacted to help long after an accident has occurred. We are often told by accident victims that they wish they had acted sooner, before deadlines expired, witnesses moved away, and evidence disappeared. Wisconsin law requires that you file your auto accident case within a certain period of time after the injury. If you fail to file your claims within that time period, you may forever be barred from bringing your claims. This is known as the “statute of limitations.”

If your claim involves a governmental entity or employee, you may be required to file a notice of claim to preserve your right to sue. If you fail to file the notice of claim in the appropriate format with the appropriate entity or party, you may forever be barred from bringing your claims against the governmental entity or employee.

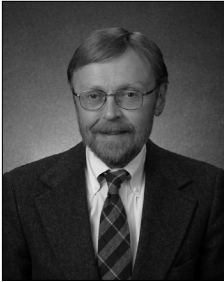
Waiting too long can be fatal to your case. You should contact an attorney as soon as possible to avoid missing these and other important deadlines.

Atterbury, Kammer & Haag, S.C.

Atterbury, Kammer & Haag, S.C., is a personal injury firm that handles cases Statewide with offices in Madison, Wisconsin. There is never a charge for any initial call, visit or inquiry. We only charge a fee if we are successful and you are compensated. The firm's practice focus is exclusively in the areas of personal injury litigation including car, truck, and motorcycle accidents, insurance company misconduct, products liability, construction site accidents and class action litigation.

Atterbury, Kammer & Haag, S.C., provides legal representation for individuals from all walks of life who have been injured. Our firm is committed to getting people back on their feet and fairly compensated after such an unfortunate event.

About the Authors



Lee R. Atterbury

Mr. Atterbury was born in Newark, New Jersey in 1948. He received his undergraduate degree from Lawrence University in 1970 and received his Juris doctorate at the University of Wisconsin Madison in 1974. He is a member of the Dane County Bar Association, State Bar of Wisconsin, The Association of Trial Lawyers of America, Wisconsin Academy of Trial Lawyers and is certified as a Civil Trial Advocate by the National Board of Trial Advocacy. His practice focuses on personal injury, product liability and medical malpractice. Mr. Atterbury's e-mail address is *latterbury@wiscinjurylawyers.com*.



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Mr. Kammer is a partner with the law firm of Atterbury, Kammer & Haag S.C. He practices in the areas of plaintiff's personal injury, wrongful death, bad faith litigation and traumatic brain injuries. Mr. Kammer has lectured and written on a variety of topics dealing with plaintiff's personal injury issues. He received his B.A. degree from the University of Wisconsin and his J.D. degree from Northern Illinois University, cum

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Eric J. Haag

Mr. Haag is a partner at Atterbury, Kammer & Haag, S.C., after spending the first fifteen years of his career working for another plaintiffs' litigation firm. Mr. Haag did his undergraduate studies at Duke University in Durham, NC, where he was a four year varsity letterman in Cross-Country and Track. He obtained his law degree from the University of Wisconsin, Madison in 1996. Eric has tried cases to verdict in multiple different State and Federal Courts throughout Wisconsin.

He has represented clients in various courts of appeals in Wisconsin and the Supreme Court of Wisconsin. He has argued before the United States Court of Appeals for the Seventh Circuit on at least three occasions. He is admitted to practice in all courts of the State of Wisconsin, in addition to the United States District Courts for the Eastern and Western Districts of Wisconsin, as well as federal courts outside of Wisconsin.

Eric is a member of the Wisconsin Association for Justice which is a large organization of trial lawyers from all over the State. He was invited to serve on the Board of Directors for WAJ and has done so for several years. He was a past Program Chair for the same organization. He is a member of the American Association for Justice, the State Bar of Wisconsin, and the Dane County Bar Association. He has lectured multiple times at various personal injury seminars and speaking engagements. Mr. Haag's email address is *ehaag@wiscinjurylawyers.com*.

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