

A map of South Carolina showing major cities and highways. The text is overlaid on the map.

Safety First, Justice Always:

YOUR GUIDE TO
South Carolina
Auto Accident Law

A photograph of a severely damaged car, likely involved in an accident, with the front end crumpled and the driver's side door open. The image is overlaid with a dark red tint.

KENNETH
BERGER

This publication is intended to educate the general public about personal injury, civil litigation, and workers' compensation issues. The information contained in this publication is not legal advice. Nor does your receipt or purchase of this book in any way create an attorney-client relationship with me.

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[DEDICATION]

To all those who have taken time to teach, train, and mentor -
without you, this would not be.

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[FOREWORD]

In an ideal world, South Carolina's roadways would be safe places, and there would be no need for this book. Experience teaches this is not the case. Rather, far too many South Carolinians continue to get injured due to drunk driving, texting, inattention, and other unsafe choices. What follows the crash? Medical bills, phone calls from different insurance companies, financial stress, confusion, and frustration.

After realizing that most car crash victims had the same questions, I began providing answers on my website. I then realized that I could take all those answers and put them in a free book. The information that follows is not groundbreaking, nor will it ever be cited as a definitive scholarly text. It was not written for that purpose. I wrote this book because the public deserves answers. You deserve to know why insurance companies treat you like a number, whether the hospital can refuse to file your bill with health insurance, and how much compensation the law allows for medical expenses you will incur down the road.

This book does not remove the need for a lawyer in the large majority of cases. I cannot put years of law school and legal practice into 60 (or 6000) pages. In fact, I think it is almost always a good idea to at least speak with an attorney before giving recorded statements, executing medical authorizations, or signing a release. The book you are about to read will address many of your concerns, however. I hope you find it engaging, informative, and worth recommending to others in need. My firm's mission is to seek justice in our state by protecting the lives, rights and dignity of those who have been harmed. In accordance with that mission I wrote the book you now hold.

[CHAPTER 1]

An Overview

5 THINGS YOU SHOULD KNOW ABOUT AUTO ACCIDENTS IN SOUTH CAROLINA

If you have a copy of my first book, you probably recognize this article. Don't worry - the book you are now reading contains plenty of original content. I simply believed certain articles to be indispensable to this publication, so there is a little overlap.

- 1. If you are injured in an auto accident in South Carolina, you may be entitled to damages not only for your medical bills, but also for lost wages, lost earning capacity, future medical costs, mental anguish, and a number of other losses you've suffered due to your accident.**

I remind clients that each case is different and there is no guarantee of recovery. However, in most cases where medical bills have been incurred, the injured party has suffered additional losses demanding compensation. The law is designed to place you in the position you enjoyed prior to your accident. Thus, for every loss you suffer, money damages may be sought.

2. You should only seek reasonable and necessary medical treatment after your auto accident

Do not allow a pending claim or lawsuit to influence your health care decisions. I have met people who mistakenly believe that driving up medical bills (or conversely, avoiding medical treatment) will result in a greater recovery. Rather than trying to “game the system,” I encourage clients to apply a simple principle: seek reasonable and necessary treatment they can afford. Moreover, if you have any form of health insurance, present it to your provider at the time of treatment. A defendant’s liability and the money he/she owes you is not reduced by the fact that your health insurance company paid for treatment prior to the resolution of your legal matter. Though your health insurance company may be able to demand reimbursement for some of its expenditures once your case is resolved, a defendant can never offset its liability based on a third party (i.e. your health insurer) paying for your treatment. In law this is known as the “collateral source rule;” it is a rule I apply forcefully on my clients’ behalf.

3. Before filing a lawsuit, a claim is filed with the defendant’s insurance company and a fair settlement is sought

Money will never give you back the life you enjoyed prior to your accident. Nonetheless, my job is to maximize the value of your case by obtaining compensation for every loss you have suffered. This job is often accomplished by way of settlement. In other instances, I may have to defend your rights and file a lawsuit. My team understands that the faster you receive compensation for your losses, the sooner you can move forward with your life. We therefore work diligently to collect medical records, take photos, obtain affidavits and submit a demand package to the defendant’s insurance company on your behalf – all in hopes of achieving a fair settlement of your claim. Should an insurance company

prove unreasonable, we may be forced to engage in litigation, requiring discovery, mediation and trial.

4. Even if the defendant is uninsured, you may still seek compensation based on SC uninsured motorist laws

The law requires that every auto insurance policy sold in South Carolina include uninsured motorist coverage. Therefore, if you are injured by an uninsured driver, you may still receive compensation from the insurance company that insures either you, a family member with whom you live, and/or the vehicle in which you were a passenger. Furthermore, in some instances we may be able to “stack” these uninsured policies or reform the uninsured policy to obtain greater compensation for you.

5. Most if not all auto insurance companies are profit-driven corporations

Auto insurance companies have the goal of maximizing profits. Their allegiance is often to executives, board members, and shareholders. To accomplish their goals, insurance companies charge premiums while paying out as few claims as possible. Even when settlement offers are made, my experience is that initial offers to unrepresented persons are far less than what an insurance company is ultimately willing to pay – especially when they know a trained attorney is working on your behalf.

5 MAJOR MISTAKES TO AVOID AFTER A SOUTH CAROLINA CAR ACCIDENT

1. Giving a recorded statement to the insurance company

After a South Carolina car accident, you will probably begin receiving phone calls from the insurance companies. Every insurance company with an interest in the accident, including your

own carrier, may contact you. In most instances, these insurance companies will ask for a recorded statement. When I say, “ask,” what I really mean is that they will mislead you into believing you must give a recorded statement.

If you have been told a recorded statement is required, you have probably been deceived. Recorded statements are nothing more than the insurance company’s attempt to begin collecting evidence against you. Your words will be twisted and exploited to decrease the value of your case.

When insurance companies ask for a recorded statement for my client, I always tell them that I am happy to have the client provide an unrecorded statement if I can likewise get an unrecorded statement from the at-fault driver.

They always tell me that they will not allow any contact with their insured. I, therefore, do not understand why they believe they should be allowed to begin gathering evidence against my client. At most, you can offer an unrecorded statement in return for the transcript from the conversation they had with the driver who hurt you.

2. Signing the insurance company’s medical records release.

Along with their requests for recorded statements, the insurance companies will also request that you sign health authorization forms. By signing these forms, you allow the insurance company to access much of your medical history. The majority of the records that they request have nothing to do with the accident, but are instead designed to find some trace of pre-existing conditions or poor health. For example, they may tell you that because you are a diabetic, you heal

more slowly than most people and therefore are having problems not because of the wreck, but rather because of your diabetes. There may also be a record from ten years ago that mentions occasional back pain. This record will be used to say that the only reason you are having back pain today is because of arthritis or degenerative discs. It could not be because someone crashed into you from behind at high speed – at least that is their logic.

We have our car accident clients sign health authorizations so that we do not violate HIPAA. The difference is that we use medical records to establish injury rather than deny it. Furthermore, we often see pre-existing conditions as the reason why someone got hurt so badly. Thus, from our perspective, pre-existing conditions increase rather than decrease the value of a claim.

3. Choosing not to file medical bills with your health insurance company, Medicaid, Medicare, or Tricare

Most car accident victims don't know who pays for their medical bills after a wreck. We answer this question in a later chapter. However, for purposes of this article, know that one of the biggest mistakes we see victims make is not filing their medical bills with a health insurance provider. If you do not file your medical bills, or request that the medical provider does so for you, you will be charged as an uninsured person. That means you could be facing thousands of dollars in unpaid medical bills rather than a small co-pay. The at-fault driver's insurance company has to pay you for the cost of medical care, not your out-of-pocket expenses. Therefore, it is best for you and your case to submit your bills to the health insurance company.

4. Mentioning your car accident or injuries on a social media site

I discuss this topic with clients at every initial consultation. It is also mentioned in the information sheet we give clients as a part of their new client packet. Why will discussing your case on a social media site hurt? Very simply, everything you say on a social media site you say to the world. Insurance companies, defense lawyers, judges, and juries may all one day see the way you described your accident, injuries, sleeplessness, and anger. Much like giving a recorded statement, your social media posts will be turned against you.

There is nothing that you can say on Facebook, Twitter, or any other site that will benefit your case. If you need to share those things with someone, call my office, call a family member, call a close friend, but please do not say it to the entire world. Discussing your case on social media is like taking money and lighting it on fire. It just isn't smart.

5. Signing a release before speaking to an attorney

You may be that 1 in 1,000,000 that the insurance company treats fairly. You may have done a masterful job negotiating your case and receiving a full and fair settlement check. You may not have any other insurance money available to you beyond the at-fault driver's minimum limits policy. However, the opposite could be true. The insurance company could have deceived you into believing that only your co-pay rather than the true cost of medical care is the basis for compensation. You may not have known that another \$25k, \$50k, or \$100k could have been available to you through your own underinsured motorist coverage.

Nonetheless, when you sign the release and mail it off, your case is almost certainly over. There is very little that an attorney can do after a release has been properly executed. That is why they call it a release. You are “releasing” the insurance company, driver, and everyone else, including your own insurance company, from ever having to pay you another dime for your harms and losses.

If you’ve negotiated your claim and simply want an attorney to review it for you, call me. I will listen to the facts of your case and let you know whether or not I believe the insurance company is paying you a fair amount. I will not charge you for my time, but you could be costing yourself thousands by signing that release before having a lawyer review it.

SOUTH CAROLINA AUTO ACCIDENT REPORTS: THE POLICE OFFICER DOES NOT HAVE FINAL SAY WHEN IT COMES TO FAULT

Every year, I review numerous accident reports. These are the two-page reports that police officers routinely hand both drivers after a wreck. There is a diagram and description of how the accident happened on page one. The second page of the accident report indicates what the “at-fault driver” did to cause the collision. Though the officer generally assigns fault to one of the drivers, his conclusion is not relied on by our civil courts.

South Carolina’s civil courts decide actions involving money, including car accident and other personal injury cases. While a cop may be allowed to testify in civil court as to what he observed after the wreck, he is not permitted to give an opinion as to fault. For example, a police officer could testify that when he arrived at the scene, he observed a driver who smelled of alcohol stumbling out

of a car that had crossed over the yellow line and struck another driver head-on. However, the officer could not tell the jury that he found the drunk driver who swerved into the wrong lane, at fault. A jury must reach that conclusion on its own.

Similarly, if you are attempting to make a left out of a restaurant when a speeding driver comes out of nowhere, dashes into the median, and hits you moments before you complete your turn, the cop may find *you* at fault. The accident report might say you “failed to yield the right of way.” The cop’s conclusion could be the result of lies told by the speeding driver, or an inaccurate description of the accident from a witness. Either way, you might be facing a traffic ticket, hospital bills, a high insurance deductible, no way to fix your totaled vehicle, and no means of paying for medical treatment. Your own car insurance company would likely rely on the accident report which found you at fault. Coverage for your car and injuries may therefore be denied even though a speeding driver who improperly changed lanes was the true cause of the wreck.

This type of injustice happens everyday. If it ever happens to you, a lawyer may be able to help. Often times, I find that at-fault drivers who engage in the type of reckless behavior I described above, have a history of dangerous driving. Additionally, we may discover through subpoenas and depositions, that the driver who injured you was texting, drinking, or under the influence of prescription medication, before harming you.

In sum, while I have tremendous respect for our law enforcement officers and the sacrifices they make to keep South Carolina safe, their accident reports sometimes fail to paint a full, accurate picture of the collision. When this happens, I stand ready to bring the truth to light.

INFORMATION WE NEED WHEN YOU CALL & WHEN WE MEET

I am fortunate in that I receive my fair share of calls from people looking for answers and guidance with regard to their car accident. Most of these calls are initially fielded by my assistant or paralegal. They gather basic information related to the accident, schedule a time for me to return the potential client's call, and relay the accident information to me.

Therefore, when you call my office, please be ready to discuss the following questions (it only takes a few minutes):

1. *How did the accident happen?*
2. *What did the other driver do wrong to cause the accident?*
3. *Was anyone ticketed?*
4. *Who received the ticket?*
5. *If no one got a ticket, do you have the form (FR-10) with the insurance information?*
6. *Does it say who contributed to the accident?*
7. *Who does the officer say contributed to the collision?*
8. *Where did the accident happen?*
9. *Did you have any passengers? Were there any witnesses?*
10. *Were any passengers injured?*
11. *Was anyone taken to the hospital?*
12. *Which hospital?*
13. *What medical treatment did you receive?*
14. *If you did not go to the hospital, when did you first receive medical treatment?*
15. *Where did you first receive medical treatment?*
16. *What was the diagnosis? What did the doctor say your injuries were?*

17. *Which doctors have you seen since leaving the hospital, or which other doctors have you seen since the first day of treatment?*
18. *Are you still seeing a doctor?*
19. *What problems are you having now? Is anything still hurting?*
20. *Have you already spoken to the at-fault driver's insurance company? If not, please don't speak to the at-fault driver's insurance company until hearing from me.*
22. *What is the best number(s) to reach you?*
23. *What is the best time for me to call you?*

After learning these essential facts, we will often set up a free consultation with a potential auto accident client. If you come in for one of these consultations, there are a number of items I need you to bring. Once more, having these items on hand will greatly benefit your case and usually helps move the case forward a little quicker.

In addition to the accident report and any other paperwork given to you by the police officer, please bring: *any medical documents or bills in your possession, your health insurance card, a copy of your auto insurance policy, photos related to the accident/property damage/injuries, repair bills, and any other documents that you would not have, had it not been for the accident.* In other words, I want to see everything related to the car accident, as well as your medical treatment. I do not need your complete medical file, I only need to know where you have treated since the wreck, so that my office can request your records from those facilities.

Lawyers should present the strongest evidence - from the accident report, to the photos, to the medical reports - when pursuing your case. Collecting this evidence begins the moment you walk into my

office and will not stop until I believe we have built the best possible case given the facts of your accident. Insurance companies are not impressed by our words, but rather the evidence we present. Help me in this pursuit by being prepared to answer the above questions, and by bringing with you the documents I have listed.

TALKING, TEXTING, EMAILING, FACEBOOK, & PUNITIVE DAMAGES

Before smart phones, people could not browse the internet, email, text, and talk with only one device. Now they can – even while they drive. If you’ve done it, you know it’s dangerous. If you have trouble believing that it’s as common as the media portrays, know that millions of emails and text messages are sent from drivers every year.

When a new auto accident client comes in for a consultation, one subject we discuss is whether the client saw the at-fault party prior to the collision. If so, I want to know if the at-fault driver was talking on a cell phone or looking down before he/she injured my client. I also talk to witnesses about whether they saw or suspected cell phone use.

If we cannot settle a case without filing a lawsuit, one of the first items I subpoena in most auto accident cases is the Defendant’s cell phone records. My staff and I then check for incoming/outgoing calls, text messages, and Internet capability. We also review social media sites to determine whether any “posts” or “tweets” were made from the Defendant’s phone near the time of the accident.

Many people view texting and driving as a reckless, willful act. When it causes injury to another, jurors often believe the Defendant’s recklessness warrants punitive damages. For this reason, punitive

damages are demanded in every lawsuit I file where the at-fault party was texting while driving. As an attorney my job is to maximize clients' recovery and help deter dangerous behavior. Seeking punitive damages is one part of this job in cases where another driver placed a "smartphone" ahead of my client's safety.

CAR ACCIDENTS & HEAD INJURIES: A SILENT EPIDEMIC

Suffering a closed head injury or concussion is more common than some might think. According to the Centers for Disease Control and Prevention, an estimated 1.7 million people in the U.S. suffer a traumatic brain injury every year. In cases of minor injury, such as a mild concussion, the victim will typically recover over the course of 1-2 weeks with rest. Unfortunately, this is not the case with all head injuries.

In some cases, victims who suffer head injuries in a car crash may be completely unaware of the harm. They might simply think they were "woozy" at the accident scene, but nothing more. Symptoms of traumatic brain injuries vary greatly, and may not become apparent until days or weeks after the crash.

Possible symptoms include:

- **headaches and migraines;**
- **fatigue;**
- **depression or anxiety;**
- **double vision, blurred vision or blindness;**
- **decrease in cognitive skills;**
- **slurred speech or other speech impediments;**
- **seizures;**
- **disorientation;**
- **inability to focus;**

- **mood swings;**
- **bouts of anger;**
- **memory loss;**
- **loss of smell;** and
- **loss of taste.**

If you have experienced any of the symptoms outlined above, inform your doctor and call me immediately. Far too many TBIs are going undiagnosed and untreated simply because a CT scan or MRI came back “normal.” These tests fail to identify many of the most common brain injuries (exp. axonal shearing). These images also fail to capture the effect a TBI has on an accident victim’s life, work, and family. Unless a doctor has met with your family members, reviewed your past school and medical history, conducted tests of cognitive abilities, and thoroughly analyzed the accident’s effect on your mood, a brain injury may be going undiagnosed.

I could write pages and pages on closed head injuries, but this book is not the forum. Here, I simply want to call attention to some of the symptoms, and let you know that if any of them are present, help is available.

3 THINGS SOUTH CAROLINA HEAD ON COLLISION VICTIMS AND THEIR FAMILIES SHOULD KNOW

Innocent people hurt in auto accidents do not need an attorney to show them pictures of ambulances, crashed cars, and people in neck braces. They need answers, guidance, compassion, and justice. I have met many victims who were enjoying a normal life one moment, and in the next had their future forever changed. I have met families who carry pictures and memories, but have been robbed of their loved one’s company by another driver’s

negligence or drunkenness. It is for these reasons, and for these people, that I offer the following information on head on collisions in South Carolina:

1. Head on collisions often result in closed head injuries.

Though a victim may have only minor scratches and a small bruise on their face, these visible signs of harm do not rule out the possibility of traumatic brain injury (TBI). If you or a loved one has been in a head on collision, please know that even a mild TBI can produce serious consequences. Mild TBIs are commonly missed at your initial diagnosis, though the harm could be permanent. Severe TBIs are more easily diagnosed, as they are often associated with swelling of the brain, speech impairment, physical changes, and clear changes in cognitive ability. If you are unsure whether you sustained a TBI in a head-on collision, I certainly cannot diagnose you, but would be happy to point you toward resources and neurological specialists that may be able to answer your questions.

2. You may be able to recover compensation from your own auto insurance company if the at-fault driver was uninsured or lacked sufficient coverage to pay for all your losses.

Negligent, reckless, and drunk drivers who cause head on collisions often possess either no insurance or minimum limits coverage. South Carolina law recognizes this fact, and therefore gives you the opportunity to protect yourself by purchasing “uninsured motorist” and “underinsured motorist” coverage up to the limits of your liability policy. If you or a loved one has become the victim of a head on collision in South Carolina, uninsured or underinsured motorist coverage could be the difference between mountains of medical expenses and fair compensation. I have helped families recover uninsured or underinsured coverage when no other compensation was available.

3. Every driver who contributes to a head on wreck in South Carolina may be held responsible. Sometimes, it is a passenger who becomes the victim a head on crash. When this occurs, the passenger can recover compensation from all drivers who contributed to the accident. For instance, a loved one may be in a car that is being driven too fast for conditions. Another car, heading the opposite direction, might swerve into oncoming traffic. Though other cars are able to avoid the wrong way driver, because the individual with whom your loved one is riding is speeding, he does not avoid the accident, causing a head on collision. In a case like that, the person who swerved into oncoming traffic is clearly more at fault than anyone else. However, the driver of your loved one's car might also have some responsibility for the wreck because of his high speed. You may therefore be able to seek compensation from both drivers' auto insurance companies, as well as your own insurer – if you have underinsured motorist coverage.

I hope this article makes clear that while the harm caused by these collisions might never be undone, justice is available.

SOUTH CAROLINA INTERSTATE & HIGHWAY ACCIDENTS: WHAT YOU NEED TO KNOW

Crashes on South Carolina's highways can be devastating. When it comes to interstate wrecks, there are at least three things everyone needs to know.

1. South Carolina's courts have jurisdiction over all car accidents that happen in our state. Out-of-state drivers are governed by and receive the protection of South Carolina law when they are on our roadways. In other words, truck drivers, tourists, and other visitors may be called into court for any harm they cause in our state.

Additionally, if an out-of-state resident is hurt on one of South Carolina's highways, he will have the same rights and remedies as anyone else. The out-of-state resident could therefore file a claim or bring a suit against an unsafe driver the same way a resident could. Our personal injury laws do not discriminate against non-residents. We all receive the same protection. We are all entitled to recover compensation for the harms and losses an unsafe driver causes.

2. The at-fault driver might not be the only party responsible for your injury. Many highway accidents are caused by company drivers. When such an accident happens, the company as well as the driver may be liable for your harm. Companies have a duty to properly investigate drivers before hiring them. They also have a duty to make sure the driver is properly trained and supervised. When these duties are violated, innocent people get hurt.

In addition, South Carolina's Department of Transportation (SCDOT) has a responsibility to ensure our roads are in safe condition. If a defect or hazard in the road contributed to the wreck, SCDOT could be partly liable.

3. High-speed collisions often result in head injuries. While this may seem like a common sense statement, many head injuries go undiagnosed. If you struck your head on the steering wheel, headrest, or window – or if the crash resulted in severe whiplash – pay close attention to whether you are experiencing any of the following symptoms: headaches, dizziness, loss of balance, fatigue, memory loss, mood swings, nausea, or pressure behind the eyes. In the event any of those symptoms are present, inform your doctor and call me immediately. Traumatic brain injuries (TBI) – even concussions – can produce long-term effects if not properly treated.

MOTORCYCLES ARE DANGEROUS...FOR REASONS OTHER THAN THE INSURANCE COMPANY HAS TOLD YOU

I have liked motorcycles ever since I watched *Easy Rider*. Nothing looked much cooler to me when I was a kid than a bunch of guys taking their bikes out on the open road. However, as I got older, I learned there were few things more dangerous. It is not because the people who ride are dangerous, it is because when a crash happens, they have only leather and a helmet to protect them.

You do not need a lawyer to tell you the dangers of riding, or the consequences of a crash. Like me, you may have seen or experienced the terrible damage caused when a driver fails to look before switching into a bike's lane. Too many riders are injured everyday in South Carolina because other drivers fail to look twice, stop for red lights, put down their cell phone, or designate a sober driver.

Yes, motorcycles are dangerous, but too many times the public blames those who ride, not the negligent drivers who injure them. Insurance companies have perpetuated stereotypes of motorcycle enthusiasts and the injury attorneys who represent them. Accident victims should not also be made the victims of insurance smear campaigns.

While I encourage you to always wear a helmet and take every safety precaution, understand that if someone else's poor driving ever causes you injury, justice is available. Motorcycle accident victims should never be blamed for another driver's safety violations.

[CHAPTER 2]

Insurance Matters

INSURANCE ADJUSTERS: WHO THEY ARE & WHAT THEY DO

As a lawyer, I am all too familiar with insurance adjusters. Conversely, before I became an attorney I had little understanding of what an insurance adjuster was, or why they were named as such. I therefore want to offer a definition and describe what I now understand their job to be.

An insurance adjuster is the person who decides how much money to offer you. Because insurance companies maximize profit by paying out minimum amounts on claims, the insurance adjuster's job – from the start – is to make sure you get compensated as little as possible. If you have ever spoken to an insurance adjuster, he may have used a kind tone. He might have said he was going to help you. He may have even told you not to get a lawyer because the attorney would only take your money. In my experience, all of those statements are lies. The insurance adjuster is not your advocate. Furthermore, the main reason he does not want you to hire a lawyer is because represented people generally receive considerably more money than unrepresented people.

If you want a glimpse into the mind of an insurance adjuster, consider the following story: A bad accident spun a car off the highway and down an embankment, where it crashed into a tree. The driver side door was crushed, and the injured driver went from earning a steady income and paying for his son's college tuition, to borrowing money from family in order to buy groceries.

When I told the insurance adjuster that the man's well-documented back pain was so severe that he could no longer sit in his furniture, but instead had to use a folding chair to watch TV and eat meals, the insurance adjuster's response was, "*What do you want me to do, buy the guy a new folding chair?*"

These people rarely understand you. They often look at you as nothing more than a claim number, and I doubt they will ever appreciate the lost quality of life you experience because of their insured's wrongdoing. In sum, they are your adversary.

Insurance adjuster's are well-trained, well-funded, and have a near endless supply of defense attorneys to choose from in their quest to beat you. While not every case needs a lawyer, if you have suffered real injuries due to another party's negligence, I strongly encourage you to at least consult a lawyer before signing any forms, giving any statements, or taking on this adversary alone.

UNDERINSURED MOTORIST COVERAGE: WHAT IT MEANS & WHY IT MATTERS

South Carolina law requires that every time an auto insurance policy is sold in our state, a meaningful offer of underinsured coverage must be made as well. Underinsured motorist ("UIM") coverage allows you to protect yourself, your passengers, and

your family in the event of an accident with a driver who though insured, lacks sufficient liability coverage to pay for your injuries. Put simply, insurance coverage of this kind is meant to guard you against losses caused by “underinsured” drivers; it is meant to allow you to insure yourself against another’s negligence. For example, if a driver with only minimum liability limits (\$25k) runs a red light, crashes into another vehicle, and puts the innocent party in the hospital, the at-fault driver’s insurance limits would not be great enough to cover the innocent party’s medical bills, let alone lost wages, permanent impairment, and a host of non-economic damages.

These are the times when underinsured motorist coverage is critical. Without it, the injured party could face collection notices from medical providers and foreclosure notices from mortgage companies. Too many times, I have seen hard working people put out of work due to an accident, then collect only \$25,000 in minimum liability money because he/she failed to purchase UIM coverage when given the opportunity.

UIM policies give every South Carolinian on the highway a chance to protect themselves and the people closest to them. Accidents are often unavoidable from the vantage point of the injured. The consequences are not, however. UIM coverage can lessen the financial impact on those injured by another driver’s negligence or recklessness.

Rather than putting myself at the mercy of other motorist’s liability limits, I purchased UIM coverage shortly after becoming an attorney. I hope that I never have to use it, though I feel safer knowing I’m covered. If you do not currently possess UIM coverage, you may consider contacting your insurance agent

regarding rates. In many instances, UIM policies are less than \$5 per month. I know of few things that could be of greater benefit yet cost so little.

WHAT HAPPENS IF AN UNINSURED DRIVER INJURES YOU IN SOUTH CAROLINA?

Our state's auto accident and insurance law is intended – in part – to protect citizens against uninsured drivers. South Carolina law requires that every auto insurance policy sold in our state include uninsured motorist coverage. Therefore, if you are injured by an uninsured driver, you may still receive compensation from the insurance company that insures either you, a family member with whom you live, and/or the vehicle in which you were a passenger. Furthermore, in some instances we may be able to “stack” these uninsured policies or reform the uninsured policy to obtain greater compensation for you. Policy reformation depends on whether the auto insurance company that sold the uninsured policy made a “meaningful offer” of uninsured coverage up to the limits of the liability coverage.

While the legal explanation may be complicated, the takeaway is simple: if you are injured by an uninsured driver in a South Carolina auto accident, you may be entitled to damages not only for your medical bills, but also for lost wages, lost earning capacity, future medical costs, mental anguish, and a number of other losses you've suffered due to your accident.

Each case is different and there is no guarantee of recovery, but in most cases where medical bills have been incurred, the injured party has suffered additional losses demanding compensation.

The law is designed to place you in the position you enjoyed prior to your accident. Thus, for every loss you have suffered, money damages may be sought.

MEDPAY: WHAT IT MEANS & WHY EVERY SOUTH CAROLINA DRIVER NEEDS IT

All auto insurance policies sold in South Carolina give drivers the option to protect themselves against at least \$1,000.00 in out-of-pocket medical expenses. This option is often called “medical payment coverage.” It may also be referred to as “personal injury protection.” Like most legal or insurance terms, its meaning can be figured out by breaking down the words. Medical payment coverage (“medpay”) is the section of a car insurance policy that provides money to pay for medical bills you incur because of an auto accident. Think about it: your own auto insurance company is offering you the chance to protect yourself against medical expenses. I strongly encourage all my clients to take the insurance companies up on their offer.

Many injured people mistakenly believe that the at fault driver’s insurer will pay for medical treatment throughout the case. I have never seen it happen. Instead, the other party’s insurance company may offer you a settlement when you finish treating. The settlement will be based in part on your medical bills. While your lawyer is fighting to achieve the best possible result in your case, your medical bills could grow and even be sent to collections. Medpay funds can be applied directly to medical bills, co-pays, or placed in your pocket. Unless some extraordinary circumstances exist, your lawyer should not take a fee on any medpay funds he obtains for you. Do to so is in violation of our ethics rules.

Medpay can also be the difference between receiving necessary treatment and living with daily pain. Many times, injured South Carolinians cannot afford the medical care they require after a car accident. Medpay coverage can help you get the treatment you need. In most instances, it only costs a few dollars per month. Therefore, I hope you will protect yourself and your finances by purchasing medpay coverage the next time you renew your policy, or by contacting your insurance company today.

COVERAGE MATTERS: THREE TIPS ON BUYING AUTO INSURANCE IN SOUTH CAROLINA

Why is a lawyer writing about tips on buying insurance? Does he receive a kickback from a buddy who sells auto insurance? Is it because he is a greedy trial lawyer who has concocted an ingenious scheme to add to his riches? Or is it because he has grown tired of watching families get destroyed by accidents when there is nowhere near enough insurance coverage to pay for medical bills? If you have ever met me or read anything else I have written, you know the answer to the first two questions is “No.”

I provide the following suggestions because as an accident attorney, I am uniquely positioned to inform South Carolinians of the consequences that may flow from not purchasing “full” coverage. When I say “full” coverage, I mean more than liability, collision, and comprehensive, as you will see below.

I do not want you or a family member to tell me of a serious accident and \$10,000s in medical bills, only to find out the insurance money available to you will never fully pay you for your losses. We must protect ourselves, as not every driver follows our safety rules or insurance laws.

Purchase additional uninsured coverage. In South Carolina, you can purchase uninsured coverage up to the limits of your liability policy. For example, if you have \$100,000 in liability coverage, you can buy up to \$100,000 in uninsured coverage. Why is this important? Simple, it protects you against the wrongdoing of uninsured drivers. Consider for instance, that an uninsured driver runs a red light and crashes into you. While every auto insurance policy sold in our state comes with \$25,000 in liability and uninsured coverage, what if the uninsured driver who ran the red light causes you or a family member to incur more than \$25,000 in medical bills or lost wages? Without additional uninsured coverage, you would be limited to \$25,000, no matter how bad you got hurt and no matter how much you owed in medical bills. If you are thinking about going after the uninsured driver's personal assets – good luck. Most people who do not have auto insurance do not have a mansion on the hill, either.

Likewise, buy underinsured coverage up to your liability limits. What, you may ask, is underinsured coverage? Similar to uninsured coverage, it is designed to allow you to protect yourself and your family from other drivers' safety violations. Underinsured coverage applies when an at-fault driver causes a wreck, but does not have "enough insurance" to pay for all your losses. Let's return to the example of the driver who ran the red light, only now consider this person had \$25,000 in liability coverage. That's great, except you may have \$100,000 in medical bills and lost wages. This is a situation where underinsured coverage is crucial, as your own policy would protect you against losses in excess of \$25,000. Put simply, you could actually put your own insurance to use, to keep you and your family from financial hardship. If you are worried about cost, talk to your insurance agent. In most

instances, additional uninsured and underinsured coverage only costs a few dollars per month. Those few dollars can save you \$1000s or more should another driver ever cause you or a family member injury.

Ask your insurance company about safe driver, student, and other discounts every time you renew your policy. You do not need an injury lawyer to tell you that auto insurance is a cutthroat business. These giants generally despise attorneys who are committed to protecting the public. Insurance companies are also in perpetual competition with each other. Use this to your advantage. If your rates are steadily increasing, find out why. Also ask your insurer about discounts. If you have not been in a wreck, if your child is an honor student, or if you are retired military, remind your insurance company that their competitors are offering discounts, and you expect the same from them. There is no reason for you to accept anything less than top-quality from a company that you pay hundreds of dollars, if not more, each year. You are upholding your end of the deal by paying your premium. Make them uphold their end by treating you fairly.

Insurance is a great way to protect yourself and your family, but without knowing what you are buying or what it is for, the entire system can be confusing. I hope you now have a better understanding of South Carolina auto insurance. I also encourage you to consider these tips the next time you purchase or renew your auto insurance policy.

[CHAPTER 3]

Medical Bills and Healthcare Issues

“HOW DO MY MEDICAL BILLS GET PAID AFTER A CAR ACCIDENT?”

I addressed this topic in my last book, but thought it was important to include here as well. Most of my auto accident clients are more concerned with medical bills than any other aspect of their case. They are not trying to get rich. They simply want to walk away from the crash, avoid collections notices, and move forward with their lives.

Many of them have been led to believe that the at-fault party's insurance company will immediately begin paying for medical care after the accident. This is a myth that must be dispelled. In order to help the public better understand the process by which medical bills are paid after an injury is sustained, I created the following summaries.

FOR SOUTH CAROLINIANS WITH HEALTH INSURANCE, MEDICAID, MEDICARE, OR TRICARE

If you have any form of health insurance, you should use it for all treatment related to your accident. In other words, present your health insurance card and request that all medical providers submit their bills to your health insurance company. Whether you pay your

insurance co-pay is up to you. My firm cannot pay your outstanding balance until your case settles or a jury award is received. Moreover, the at-fault party's insurance carrier generally will not make an offer on your case until medical bills and records have been submitted. In practical terms, that means time will pass between the date of your accident and the date you may receive a settlement or jury award. For this reason and many more, we strongly encourage clients with health insurance to use it for all injuries caused by their accident.

If money damages are recovered by way of settlement or trial, those proceeds will first be used to pay back your health insurance company's lien. We work to reduce the lien to ensure our clients recover the greatest possible sum. Money damages are also intended to reimburse you for all co-pays. Further, if there are any outstanding medical bills at the time your case concludes, we will use the settlement funds/jury award to zero out all balances. Put differently, we write checks directly to medical providers and health insurance companies as a service to our clients when their case comes to an end. My clients are therefore left with no outstanding medical bills or liens at the conclusion of most cases.

FOR SOUTH CAROLINIANS WITHOUT HEALTH INSURANCE

If you DO NOT have health insurance, your attorney cannot pay for your medical treatment without violating his/her ethical obligations. A common misconception is that attorneys are responsible for paying their clients' doctors while the case is ongoing. This practice is not employed by my firm. Rather, I seek qualified doctors willing to treat uninsured patients based on "letters of protection." These letters are sent by me, to your treating physician or therapist, and serve to protect the doctor's fee with a legal promise that the medical professional will be paid out of your settlement or jury award proceeds. Not all doctors accept letters of protection.

If damages are recovered by way of settlement or trial, those proceeds will first be used to pay back your medical bills. In some instances, hospitals and other care providers will reduce your medical bill to assist us in reaching a fair settlement. If there are any outstanding medical bills at the time your case concludes, we will use the settlement funds/ jury award to zero out all balances. Put differently, we write checks directly to medical providers as a service to our clients when their case comes to an end. Clients are therefore left with no outstanding medical bills at the conclusion of most cases.

HEALTH INSURANCE LIENS: WHAT THEY ARE & WHY THEY SAVE YOU MONEY IN THE LONG RUN

I advise all clients with health insurance to use it when paying for injuries related to their case. If an injured person does not file the accident-related bills with his or her health insurer, they will face the same astronomical charges as uninsured people. In this way, health insurance can be a huge advantage after an accident. It allows you to receive the medical treatment you need – often at a greatly reduced price.

I strongly encourage injured people to utilize health insurance, even though the insurer may seek reimbursement for their payouts. Nearly all health insurance contracts include a provision like, “any payment made in relation to a bodily injury claim must be repaid if proceeds are collected from a liability insurer.” In other words, your health insurance company probably has a legal right to reclaim at least some of the money they paid out. This is the essence of a health insurance lien.

Fortunately, many health insurers are willing to reduce their liens when contacted by an attorney. In fact, one South Carolina health

insurance giant grants a standard lien reduction ranging from 25%-33% to represented clients, depending on the circumstances of the case.

Health insurance liens might also be reduced when it is the only fair thing to do. Consider for instance, a case where a woman has been severely injured in a drunk driving accident. Her medical bills could be \$200k. The health insurer might pay \$50k for treatment, and therefore have a lien in the same amount. Nonetheless, if only \$25k or \$50k in liability proceeds are collected from the at-fault driver's insurer, a lawyer may get the woman's health insurer to reduce their lien to 1/3 of the overall settlement. Thus, if the case settled for \$50k, rather than seeing all the proceeds go to the health insurance company, the client could place a substantial sum of money in her pocket to pay for future medical care, and to compensate her for damages such as mental anguish, lost mobility, and physical pain.

If you have additional questions regarding how you should proceed with all the different insurance companies, I would be honored to speak with you.

"CAN THE HOSPITAL REFUSE TO FILE MY BILL WITH HEALTH INSURANCE?"

In South Carolina, we have an epidemic of hospitals and doctors refusing to file an injured person's medical bills with the health insurance company after a car accident. Why do I call it an epidemic? In part, because it is widespread; in part, because it is keeping people sick.

If you have any form of health insurance - including Medicaid, Medicare, and Tricare - you know that some doctors are part of

your network and some doctors are not. No matter which type of health insurance you have, it is almost certain that the hospital you visit after a car accident must accept your health insurance. Why? Because all the hospitals are part of your health insurance company's network. Let me break this down:

The hospital and health insurance company—for example, Palmetto Baptist and BlueCross BlueShield (BCBS)—enter a contract. The contract states that people insured by BCBS can treat at Palmetto Baptist for a lower rate than uninsured people. Palmetto Baptist must then agree to the health insurance company's terms, or risk not being able to treat anyone insured by BCBS.

If you are insured by BCBS, you are a beneficiary of this contract. You may seek treatment from Palmetto Baptist, which in turn will submit your bill to the health insurance company. You, a family member, or your boss is paying BCBS for this benefit. Therefore, if you are injured in a South Carolina car accident and taken to Palmetto Baptist (or any hospital, for that matter), the hospital must file your bill with the health insurance company, which in turn must pay for all procedures covered by your plan. At the end of your case, you may have to pay back BCBS a portion of what they paid the hospital, but the amount you have to repay will be much less than uncovered medical bills from the hospital.

So why would the hospital mislead you into believing that because you were in a South Carolina car accident, they cannot file with your health insurance company? It's simple. They want you to pay them back 100% of their fee rather than accept the reduced rate that BCBS has negotiated on your behalf. Thus, they are trying to rob you not only of the compensation you receive for your

injuries, but also the benefit of the health insurance coverage that you have been paying for.

Many doctors' offices in your health insurance company's network will try to play this same game. If you have any form of health coverage, yet you're being told that either you cannot be treated or your medical bills cannot be filed because you were in a car accident, please call me. The rest of my family is in the medical field, and is equally disturbed and disappointed in the fraud that is being perpetrated upon injured South Carolinians.

"CAN THE HOSPITAL SEND MY BILL TO COLLECTIONS AFTER A CAR ACCIDENT?"

I know that injured people are often as concerned about their mounting medical bills as they are their future health. Clients come to us with large hospital bills or co-pays they cannot afford. If you face this problem, you came to the right place.

Hospitals and medical providers are allowed to send your bill to collections after a car wreck the same way they could if your injuries involved an at-home fall. Nonetheless, when our clients face this dilemma, we contact the medical providers, inform them of the pending case, and request that those bills stay out of collections until a settlement or jury verdict is reached. Most South Carolina hospitals and doctors respect our request.

While your medical providers will want to be paid back out of your settlement in these instances, your credit is protected and hopefully you'll be able to sleep a little easier at night. No one likes those red and yellow collection notices. South Carolina auto accident attorneys such as myself can put a halt to those disturbing pieces of mail while we work to achieve a fair resolution of your case.

As I've discussed, use your health insurance to cover your medical bills if possible. Moreover, if you can afford to make monthly payments on your co-pays, I encourage you to do so. These monthly payments, much like a letter from my office, should keep your bill out of collections. The balance can then be satisfied once your case comes to an end.

My job involves more than getting you the best possible result. It also requires that you have the best possible experience from the first time we first meet until your case comes to a close. I've found that keeping your medical bills out of collections goes a long way toward reducing stress and allowing you to move forward with your life while we move forward with your case.

"SHOULD I SEE A CHIROPRACTOR OR MEDICAL DOCTOR?"

I am frequently asked whether a client should see a chiropractor or medical doctor after a car accident. There is no right answer to this question. I will simply share my experience on the subject.

Chiropractors work on injured people's spines to relieve pain and promote healing. They are not medical doctors. They are not physical therapists. They are not licensed to perform surgery. They cannot prescribe pain medication. However, many of them are highly trained and skilled when it comes to treating back injuries. Some chiropractors are exceedingly knowledgeable when it comes to nerve damage, ligament tears, and non-surgical treatment options. Two of my good friends – Shelly Jones and Dan Matzner – are very fine chiropractors. And though neither of them paid me for this endorsement, I can tell you that I would trust either to work on my back.

Unfortunately, insurance companies often dispute the necessity of chiropractic treatment. Insurance adjusters will argue that chiropractors' bills are too high, that treatment lasted too long, or that if the patient was really injured, he would have gone to a "real" doctor. These arguments are BS, yet insurance companies make them everyday. Their attorneys also attempt to discredit chiropractors at trial by asking questions about the controversial origins of chiropractic care. Despite insurance companies' best efforts, the truth always makes its way to light. If the chiropractor is qualified, and if the injury is real, jurors will give the chiropractor's testimony the weight it deserves.

Medical doctors – especially orthopaedists and neurosurgeons – are likewise trained to heal injury. They went through rigorous medical training. Many of them are board certified specialists in spine injuries. They are qualified to perform surgery, write prescriptions, and refer patients for physical therapy. South Carolina has a number of orthopaedists and neurosurgeons that I would not hesitate to treat with. Almost all of them encourage conservative forms of treatment such as physical therapy, home exercise, pain management, and injections before ever recommending surgery. For most people – especially those under 50 – surgery is the final option. Most medical doctors will do everything in their power to relieve your discomfort and heal your spine without surgical intervention.

Insurance companies are quicker to accept a medical doctor's bills and diagnoses. Likewise, insurance defense lawyers have a tough time discrediting a board certified doctor who underwent specialized training, worked in hospitals, and knows the spine well enough to publish scholarly articles on the subject.

If the doctor has a decent bedside manner, jurors are likely to trust his/her testimony. Medical doctors are also allowed to testify as to the need for future medical treatment, the costs of such treatment, and what will occur if such treatment is not provided. In these ways, a medical doctor's testimony can help ensure that a verdict accounts not only for past harm, but future expenses as well.

Each case, client, chiropractor, and doctor is different. I am familiar with many healthcare professionals and their reputations. If you have questions about your back injury, what treatment you should seek, or which doctor you should see, I cannot make a decision for you, but I will tell you what I know.

[CHAPTER 4]

Compensation for Harms and Losses

HOW MUCH MONEY SHOULD YOU RECEIVE AFTER A CAR ACCIDENT? IT DEPENDS.

When you are harmed by an at-fault driver in South Carolina, you are entitled to compensation. How much? It depends largely on your harms and losses. South Carolina auto accident law does not operate like “Wheel of Fortune.” Instead, the law seeks to fix, help, and balance. Allow me to explain:

When I say “fix,” I mean repay you for all losses that can be fixed. A good example is your medical bills, future medical expenses, and lost income. These figures can be calculated. A jury is then suppose to compensate you for all those losses so that an innocent party is not forced to incur a burden caused by a rule violator.

South Carolina law also says money should be allowed for losses than can be helped. For instance, if someone is rendered a paraplegic, the law cannot give him back his ability to walk. However, money can be awarded to cover the costs incurred in refitting his home. Specifically, money could be allowed to install ramps and handrails. The verdict may also allow money so that the

paraplegic could enroll in vocational rehabilitation. This money does not fix the paraplegic's harms and losses, but does help him. Lastly, the verdict should account for the worst harms in any case: the things that cannot be fixed or helped. Using the example above, nothing could fully restore our paraplegic's health. Nothing could give him back the self-esteem he felt when he walked, rather than wheeled, through a grocery store. Nothing could take away the feelings he experienced when his eyes opened in the morning and he was reminded that he could not get to his bathroom without reaching for his chair. Nothing could take away the isolation he experienced every time he wanted to leave his home, but remembered he had no way of getting where he needed to go. Nothing could give him back his self-reliance or take away the feelings he experienced every time he thought about what life used to be like. A jury must be shown what cannot be fixed so that they can determine how much it takes to match it. And calculations can be made, because yes, a jury can put a dollar value on it.

Every car accident case is different. Some cases have very few unfixable harms and losses. Other cases involve minimal medical bills, but very serious harms that can never be undone. While many attorneys talk about pain and suffering, it is important to know why the victim is in pain, what causes their suffering, and whether these harms are temporary or permanent.

"HOW MUCH ARE YOU OWED FOR MEDICAL BILLS?"

One of the first questions many clients have concerns how medical bills get paid. I have answered that question at countless consultations, on my website, and in my books. Now I want to answer a less common question, but one of near equal importance.

You should know that the at-fault party's insurance company is responsible for the total cost of all accident-related medical treatment. In practical terms, the liability insurer cannot pay you less simply because you have health insurance.

South Carolina law recognizes that it would be unfair to compensate two otherwise equal people – one who possesses health insurance, one who does not – at different levels. The at-fault party's insurer cannot claim to owe you only co-pays or deductibles. Furthermore, liability insurers do not receive the same discount as your health insurer. For example, even though Blue Cross/Blue Shield may only have to pay 60% of your medical bill, and while you may only be responsible for a 10% co-pay, Allstate would be required to compensate you for the “total, unadjusted” cost of medical care.

Insurance adjusters often try to talk unrepresented people into accepting compensation for nothing more than co-pays. Adjusters then use that small number to justify offering you a meager sum for damages such as lost mobility, mental anguish, pain, and lost enjoyment of life. Do not accept this deceitful practice; it is a misrepresentation of South Carolina law that should not be tolerated.

“WHAT HAPPENS IF MY INJURIES GET WORSE AS I GET OLDER?”

Most of my auto accident clients want to know what happens if their injuries get worse as they age. The concern is that last year's car wreck will cause health problems in the future. Much like “old football injuries” or “things that happened in the military,” many people do not experience the full effects of a car crash until decades later. For instance, a 25 year-old who is thrown from a

car may appear to make a complete recovery over the course of several weeks. However, unseen and unfelt damage may have been done to the young person's back or hips when they landed in the roadway. As an older man, that same accident victim may question why his hip is sore and one of his toes is numb when he wakes up in the morning. He may think it is a sign of aging, or he may recall the car crash from his youth.

Once the body sustains serious trauma, it rarely returns to its previous state. A bulging disc is unlikely to heal itself. A displaced hip does not always fall back into place. South Carolina's auto accident laws therefore provide compensation for your future pain, medical expenses, and loss. Despite the law, insurance companies are reluctant to allow any compensation for future damages. For that reason, we get treating physicians and medical experts to explain – in detail – what future treatment our clients may need, as well as the cost of such treatment.

In cases involving lifelong injury, the cost of the “lifecare plan” often exceeds the past medical bills. To drive the point home to the insurance company, we ask experts what will happen if our client does not receive necessary medical care. In other words, “what will Ms. Smith's life be like if the knee is not replaced; if medication is not provided?” Lifecare plans and compensation for future harm are not intended to create windfalls. Rather, such compensation is designed to prevent the injured persons from bearing the weight of the medical bills they will face down the line.

Imagine the alternative. Instead of the at-fault driver's insurance company paying for treatment, it would be the victim, his family, his health insurance company, or a government program. Put

differently, if the law did not hold at-fault drivers accountable for every loss they cause, the responsibility (*and the cost*) would fall upon victims and taxpayers. For these reasons and many more, you can recover compensation for future medical treatment so long as a doctor agrees that such treatment might be needed.

If you are unsure as to the permanent harm you sustained in a car crash, or if the insurance company is disputing the need for future care, I would not sign a “Release” before first speaking with your doctor and an attorney. Once you sign the “Release,” your case is over and no more money will ever be paid, no matter how much you hurt or how much treatment you need when you get older. Therefore, know your rights and make sure they are protected – the insurance company will not do it for you.

“MY CASE SETTLED FOR \$100,000, WHERE DID ALL THE MONEY GO?”

I believe lawyers have a responsibility at the outset of a case to explain how the settlement money will be distributed. Many injured people rightly believe they should receive the largest percentage of the funds when a case ends. They do not want to be stuck in a nightmare scenario where a case settles for \$100k, their attorney makes \$40k, the doctors are repaid another \$40k, the attorney’s firm is reimbursed \$10k in costs, and out of the \$100k, they limp away with a permanent injury and \$10k to pay back the mountain of bills that piled up while they were out of work.

Unlike the nightmare I just described, I have never taken more money in attorney’s fees than my client received at the end of a case. When necessary, I have greatly reduced my fee to ensure

the injured person takes home more money than my firm. The client is the one who goes through the trauma and pain. I have the privilege of representing them.

So where does the money go at the end of a case? Why does a \$100k settlement often result in a client receiving \$50k? How could that be? Let's take a closer look, remembering that settlement funds have many purposes – including the repayment of contractual obligations.

First, all liens must be satisfied. A lien is money that a client owes to a loan company, health insurer, medical provider, or any other entity that provided some benefit while the case was pending. I strongly discourage accident clients from ever taking cash advances or “litigation loans.” These companies prey upon the injured, then charge huge interest rates. Conversely, I instruct all clients to file accident related claims with their health insurer even though it creates a lien. Why? Because the health insurance lien will still be far less than what you would owe the hospitals and doctors if you presented yourself as an uninsured person.

After all liens are repaid, your attorney's costs will be reimbursed. Every lawyer I know advances costs to the client. This does not mean a lawyer can pay your living expenses. In fact, that is highly unethical. Rather, it means the attorney will pay for medical records, deposition costs, expert fees, and any other expenses associated with your case to help achieve the best result. At the end of the case, these costs are repaid out of the settlement funds.

Next, your attorney will be paid his fee. Most attorney's fees are between 30%-40%. For example, if you receive a settlement for \$100k, and the attorney's fee is 33%, \$33k of the settlement would be used to pay the attorney. This is what is known as a contingency

fee. The money you owe your lawyer for his work is contingent upon the settlement amount. A contingency fee prevents you from having to pay your lawyer on an hour-by-hour, minute-by-minute basis. If that were the case, most people could not afford an injury lawyer.

Once all liens, costs, and attorney's fees are paid, the remainder is yours. For instance, if your case settled for \$100,000, your health insurance lien was \$5k, the attorney's fee was 33%, and his costs were \$7000, you would pocket \$55,000.00. Not bad considering many cases that ultimately settle for \$100,000 begin with an insurance company telling you they are willing to pay between nothing and a fraction of the case's worth.

In sum, while injured people must unfortunately pay lawyers to achieve justice in many cases, and though liens may subtract from your net recovery, without attorneys and the healthcare insurers that help you get the treatment you need, you might not have any settlement funds or jury awards to distribute.

[CHAPTER 5]

Drunk Driving Wrecks

3 THINGS SOUTH CAROLINA DRUNK DRIVING ACCIDENT VICTIMS & THEIR FAMILIES SHOULD KNOW

I represent victims, not drunk drivers. Each year, far too many innocent people are robbed of life when someone else chooses to drive under the influence. Many others sustain serious injury at the hands of people who ignore the law by getting behind the wheel after having far too much to drink. While it is up to our lawmakers, judges, prosecutors, and criminal juries to hold drunk drivers responsible for their criminal activity, it is my job to ensure they compensate victims for every loss they cause.

If you or a loved one has become a DUI accident victim, I offer my sympathy. I also want you to know that while we cannot reverse time and undo the harm, we can seek justice. In my time as a lawyer, I have heard many heart-wrenching stories. I have also learned that victims and their families are left asking questions. I therefore offer the following information in hopes that it will provide some guidance as you begin your search for justice:

1. Even if the drunk driver who caused the accident was uninsured, you may still be able to recover damages (i.e.

monetary compensation) from your own insurance company. In South Carolina, every car insurance policy comes with “uninsured motorist coverage.” This type of insurance coverage is designed to protect you against uninsured drivers – including drunks. You can purchase uninsured motorist coverage – also known as “UM” coverage – up to the limits of your liability policy. For example, if you have \$300,000.00 in liability coverage, you can also buy \$300,000.00 in UM coverage. Most insurance companies substantial UM coverage for only a few dollars per month. While we cannot always protect ourselves against intoxicated drivers, we can guard against medical bills and other financial losses by purchasing sufficient UM coverage. If you or a family member has sustained any harm or loss because of an uninsured drunk driver, UM coverage may be the difference between financial recovery and huge medical bills.

2. Even if the DUI driver who caused the accident only had minimum limits insurance, you may once again still be able to recover compensation from your own insurance company. Similar to UM coverage, every auto insurance policy sold in our state must give you the opportunity to buy “underinsured motorist coverage” up to the limits of your liability policy. Underinsured motorist coverage – known as “UIM” – protects you and your family when an at-fault driver is insured, but lacks sufficient coverage to pay for all your losses. For instance, if a drunk driver crosses into the wrong lane of traffic and causes a head-on collision, the injuries could be very serious. The accident victim’s medical bills may be \$100,000.00. However, the intoxicated driver might only have \$25,000.00 in coverage. This is a situation where the victim’s UIM coverage would kick in and pay for

losses that the drunk driver's policy could not cover. Like uninsured coverage, UIM generally costs only a few dollars per month. South Carolina DUI accident victims often need considerable UIM coverage to recover anything close to full compensation for the harm they suffer. If you have been victimized by a drunk driver and have UIM coverage, put it to use. You may even be able to "stack" your policies – a process I would be honored to explain to you in person or over the phone, as there is not enough space in this article to address the nuances of "stacking."

3. If the drunk driver became intoxicated at a bar or restaurant, you may be able to recover compensation from the establishment's insurance company. The law holds us responsible for our actions. Therefore, if a bar serves a customer too much alcohol, then allows that person to get on the road, the bar could be required to account for any harm the drunk driver causes. This is known as South Carolina dram shop liability. Like UM and UIM coverage, dram shop liability can sometimes be the difference between a life spent paying back medical bills and recovering fair compensation.

WHAT CIVIL LAWS PROTECT YOU AGAINST DRUNK DRIVERS

This is a question victims want answered after being in a wreck with a drunk driver. In addition to holding the drunk driver criminally liable, South Carolina law allows you to seek compensation for the harm the criminal caused.

In South Carolina, having a blood alcohol concentration (BAC) of 0.08 percent or higher will likely result in a driver facing charges

of driving under the influence (DUI). Drunk driving laws examine the driver's actual chemical, mental, and physical impairment. If at the time of the accident, the driver's BAC was over the legal limit, he or she can be charged with a drunk driving offense.

Drivers younger than 21 who are caught with a BAC of 0.02 percent or higher may be charged with an alcohol offense as well. The penalties for DUI will vary based on the driver's age, level of intoxication, and history of previous DUI charges.

According to the National Highway Traffic Safety Administration (NHTSA), there were 752 fatal crashes reported in South Carolina in 2010. Of those fatal incidents, 332 crashes involved drivers who were found to have been impaired by alcohol at the time of the accident.

A total of 810 victims were killed in traffic accidents in the state in 2010. Most of the victims' lives (410; 51%) were claimed in accidents in which alcohol was found in the drivers' systems.

Key evidence from the accident includes the police report containing the other driver's BAC test results or any additional physical tests, as well as the officer's and eye-witnesses' notes. Dash cam video may also provide evidence.

Moreover, I will research the other driver's DUI conviction history. If the driver has past DUI convictions, suspended licenses due to DUI charges or other DUI-related legal issues, it may only increase the damages owed.

In sum, South Carolina law seeks to punish and deter drunk driving

while also allowing fair compensation for innocent victims. My focus is obtaining justice for the innocent and their loved ones.

EVIDENCE IN A CIVIL CASE AGAINST A DRUNK DRIVER

The number of drunk driver victims in the U.S. increases every hour. According to the Centers for Disease Control and Prevention, it's estimated that a person dies every 48 minutes because of an alcohol-impaired driver. In addition to the thousands of deaths that occur in these accidents each year, many others sustain serious injury.

To recover the costs of medical bills, repairs, and other damages, we must collect and present evidence of the at-fault driver's intoxication. Such evidence includes:

- **The Police Report** – The accident report and supplemental findings often contain evidence of the at-fault driver's traffic violations, blood-alcohol level, and admissions of guilt.
- **Video** – Dash cam and Breathalyzer videos help establish the driver's physical impairment, slurred speech, and lack of remorse.
- **Pictures** - Photos of the accident scene help identify additional traffic laws and safety violations committed by the at-fault driver. For instance, did the driver's intoxication result in him running a red light? Photos of the property damage to your car are important in establishing the severity of injury.
- **Witness Affidavits** – If you speak with any witnesses at the accident scene, make sure to get their contact information. Witnesses are key to proving cases where liability is in dispute.

And yes, even in drunk driving accidents, insurance companies often claim their insured was not responsible for the crash. Witness affidavits bolster your case, expose the drunk driver's untruths, and may help resolve your case without need of a lawsuit.

Lawyers should collect this evidence and much more in preparing a case against a drunk driver. Insurance companies recognize that juries show little mercy in DUI cases, but evidence remains critical to ensuring fair compensation is received.

DRUNK DRIVERS, INNOCENT PEOPLE, & PUNITIVE DAMAGES

Many South Carolina DUI victims are awarded punitive damages in their civil case against the drunk driver. Punitive damages are meant to punish the defendant and to deter similar behavior in the future. In order for punitive damages to be awarded in South Carolina, the injured person or his family must be able to prove through clear and convincing evidence that the defendant acted in a grossly negligent or reckless manner in regards to the victim's wellbeing. Put simply, we have to prove the at-fault driver was intoxicated when he chose to get behind the wheel.

Factors that could affect punitive damages in a DUI case include:

- severity of injury and its effect on your life;
- defendant's level of intoxication (i.e. blood alcohol level);
- defendant's liability for the injury;
- any previous drunk driving convictions for the defendant;
- and
- whether punitive damages are likely to serve as a deterrent to future behavior.

The total amount of punitive damages DUI victims can receive varies greatly. In general, punitive damages cannot exceed three times the amount of actual damages the victim is receiving, or \$500,000, whichever is higher. However, in cases where the defendant could be subject to a felony conviction, the cap is the greater of four times the actual damages or \$2 million. Then there are situations in which there is no cap at all on punitive damages, including:

- if the defendant had an intent to harm the victim;
- if the defendant's behavior resulted in a felony conviction; and
- if the defendant acted or neglected to act while impaired by alcohol or drugs.

South Carolina law recognizes that drunk drivers must be punished, and victims must be "made whole." If you were injured by a drunk driver, punitive damages are likely available to you. Such damages not only protect your rights, they are also designed to keep our roadways and communities safe. Our state cannot become a safe haven for unsafe, intoxicated drivers. Punitive damages are one means by which we protect each other and punish drunk driving.

"WHAT HAPPENS WHEN A SOUTH CAROLINA BAR OR RESTAURANT GETS SOMEONE DRUNK THEN PUTS THEM ON OUR ROADWAYS?"

Every night in South Carolina, bars and restaurants "over serve" patrons, then put them on our roadways. Whether it be a second bottle of wine in a fine restaurant, or too many rounds of tequila in a college bar, businesses often sell far more alcohol to a driver than should be consumed before hitting the road. Bars and restaurants are in business to make money. Alcohol produces huge profits

for many of them. Therefore, I recognize that owners of these establishments must sell large quantities of beer, wine, and liquor if they are to make a living. That is perfectly understandable. As a lawyer, I am also a small business owner, and not one to interfere with free enterprise. However, if these establishments are going to serve alcohol, they must accept the responsibilities that come with that activity.

In South Carolina, one of those responsibilities is known as “dram shop liability.” The idea is that if you get someone drunk, you are in part responsible for what the drunk person does when he leaves your establishment. For instance, if a restaurant “over serves” a couple with complimentary champagne after the couple has already consumed two bottles of wine, the restaurant may be liable if the husband crashes into an innocent driver on the way home. Likewise, if a bar hosts a college party, and one of the young girls drinks too much liquor then strikes a pedestrian, the bar could be held in part responsible.

My job is to help injured people receive fair and full compensation for all their losses. The only way to achieve this is to hold at-fault parties responsible for the harm they cause or set in motion. Therefore, when a drunk driver injures or kills an innocent person, the drunk driver as well as the bars and restaurants that set the foreseeable event in motion, must be held accountable. Otherwise, the loss falls on the shoulders of the innocent.

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Safety First, Justice Always: **YOUR GUIDE** TO SOUTH CAROLINA AUTO ACCIDENT LAW



Kenneth Berger's mission as an attorney is to promote justice in the community by protecting the rights, lives, and dignity of those who have been harmed. He has seen the devastation families experience when drivers choose to break our safety rules. He knows all too well the harm caused by drunk drivers, as well as the consequences that come from texting and driving. Furthermore, Mr. Berger recognizes that injured people are often insulted and mistreated by insurance adjusters.

After studying at the University of Washington and Harvard University, Mr. Berger returned to South Carolina to serve the community that raised him. Since his first day in practice, he has been representing injured people and their families. The book you now have in your hand is but one of the many ways Mr. Berger looks to make our state safer, healthier, and more informed.

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