The Injury Victim's Handbook

A practical guide to protecting your claim after an accident in California, with a journal for the parts of an injury that never show up in a bill.

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Start here

I wrote this handbook for people who were hurt in an accident and have never been through a claim. I have handled these cases on both sides, first for insurance companies and then for injured people. Most of what goes wrong in a claim goes wrong early, and most of it can be avoided with a little information.

After many years, I find that most cases come down to five things:

1. **How severe the impact was.** Photos of heavy damage or visible injuries help.
2. **The nature and extent of your injuries.** A muscle sprain is generally less serious than nerve damage or an injury that needs surgery.
3. **Getting appropriate care quickly and consistently.** Delays and gaps in treatment are used against injured people.
4. **Telling your doctors everything, in detail.** If it is not in your medical records, an insurance adjuster probably will not consider it.
5. **Recording how the injury affects your daily life.** This is the part of a claim people most often leave out.

> **A word about the other side.** The insurance company for the person who caused the accident is not neutral. An insurer protects its insured and its own bottom line. That is not illegal or unethical, but the process is not designed to favor the injured person. Learn how it works before you start talking.

What is inside

Page 3	Your first seven days
Page 4	Rules that protect your claim
Page 6	The path of a typical case
Page 7	Understanding “non-economic” damages
Page 8	What goes into a demand letter
Page 9	Your injury journal (print extra copies)

Your first seven days

- [ ] **Get medical care.** Do not wait to see whether the pain goes away. Soft tissue injuries often appear quietly, and a delay will be used to argue you were not hurt.
- [ ] **Photograph everything.** Car damage and any visible injuries, from several angles and distances. Photos help persuade an adjuster that the accident was not minor.
- [ ] **Get the police report.** Ask the officer or the station when it will be ready. The first page, which carries insurance and identifying information, is often available before the full report.
- [ ] **Tell your own insurer you had an accident.** Say whether you are making a claim or only reporting it, and get a claim number. A late report can cause problems, especially if the other driver turns out to be uninsured.
- [ ] **Be careful with the other side's adjuster.** You are not required to give a recorded statement. If asked how you feel, you can say: *"I'm not really sure how I feel. I am sore and I am in pain, but I don't know the full nature and extent of my injuries yet. Can we please talk about my property damage or renting a car?"* Otherwise the note in the file may read "no injuries reported."
- [ ] **Do not sign a broad medical authorization** for the other side's insurer while you are still treating. It lets them search your records for anything to use against you. Your own insurer is different, because your policy may require cooperation.
- [ ] **Check your rental coverage before renting a car.** Some people find that insurance does not cover the rental, or does not pay the whole bill.
- [ ] **Start your journal** on page 9, and stay off social media about the accident.

> **Do not take an early offer blindly.** Early offers usually exist to close the file quickly. You cannot weigh one until you know what you owe, what the bills total, what your insurance paid, and what future care you may need. A release closes the door on any further recovery.

Rules that protect your claim

Protect your words

- Do not talk to the other party's insurer about your *injuries* without getting advice. Their questions are generally designed to downplay them.
- Do not post about the accident or your recovery. Insurers do research you online, and photos of you hiking, biking or on vacation can be used to minimize your claim.
- Do not delete past posts without first asking an attorney. Deleting material after an accident can cause problems of its own.

Protect your medical care

- **Keep every appointment.** Missed appointments and gaps in treatment will be used against you. If you fall out of touch with a doctor, call them.
- **Be specific.** Doctors cannot read your mind. If neck pain radiates into your shoulder but you only say “neck pain,” the shoulder may not be recorded. Break your body into parts and mention every one.
- **Tell your doctors how the injury affects your life:** trouble sleeping, trouble at work, anxiety, things you can no longer do. If it is not in your records, it is as if it never happened.
- **Be honest about prior injuries.** Tell your doctors and your attorney about any earlier injury to the same area. Hiding a pre-existing condition hurts your credibility, and your past records are not off limits.
- **If you cannot work,** get a note from your doctor for each period you are off. Adjusters generally do not credit lost time unless a doctor ordered it.

Control your bills

- **Nothing here is free.** The responsible party is not going to pay your medical bills as they arrive, and an adjuster will not arrange or pay for your care.
- **This is not an all-you-can-eat treatment buffet.** Even when someone else caused the accident, you must keep your treatment and bills under control.
- **Do not ignore your bills.** Hospital, ambulance and ER bills are your responsibility. Think of it this way: vandals spray-paint your house, and you hire a painter. You cannot tell the painter to collect from the vandals. You pay the painter, then pursue the vandals. Unpaid bills can go to collections, so pay them or arrange payments.
- **Care on a lien** means the provider waits for payment until the case resolves, but you still owe the bill whether you win or lose.
- **Your health plan,** whether Medi-Cal, Medicare or a private insurer, is generally entitled to repayment from a settlement. Your own medical payments coverage may carry reimbursement rights too. Do not ignore letters about this.
- **Know what a settlement means.** The settlement figure is the gross amount. After attorney fees, medical bills and liens, what you take home is less. On a $10,000 settlement, for example, your check is only a portion of it.

Keep your documents

- Keep copies of every bill, letter, report and photo. Keep a folder, and do not assume anyone else has copies.
- Keep track of your out-of-pocket expenses, such as prescriptions and mileage to appointments. Co-pays are not the same as co-insurance, so note both.
- Keep your contact information current with anyone handling your claim, and return their calls promptly.

The path of a typical case

The steps below usually happen in this order. How long each takes depends on too many factors to predict, and many cases take months to a year or more.

1

Treatment

You get care and keep every appointment. Specialists, physical therapy or imaging may be added. Treatment continues until you return to your pre-accident condition or reach a point where more care will not help. Meanwhile, property damage and a rental car are sorted out, and any lost earnings are documented.

2

Documenting

Once treatment ends, the records and bills are gathered, along with out-of-pocket expenses and proof of lost earnings. Liens from health insurers, auto insurers, Medi-Cal or Medicare are identified.

3

The demand

A "demand package" goes to the insurer: a demand letter with photos, medical records, bills and lost earnings proof. See page 8.

4

Negotiation

The insurer responds, often asking for more records, past records or an examination by a doctor it chooses. The more serious the injury, the more it will ask for. Offers and counteroffers follow, and liens are negotiated to improve your net recovery.

5

Settlement or lawsuit

If you accept an offer, you sign a release, and the settlement funds are paid out. If the case cannot be settled, the next step is considering a lawsuit and what that involves.

Understanding "non-economic" damages

Economic damages are your bills and lost wages. California law also lets you recover for how the injury changed your life. California Civil Jury Instruction 3905A lists what a jury may award as non-economic damages. Adjusters often lump these together as "pain and suffering." Breaking them into parts and telling your doctors and your attorney about each one makes a claim more compelling.

Item	Ask yourself
Physical pain	What was it like right after the accident, and now? What does it stop you from doing? Is it likely to continue?
Mental suffering	What is your emotional state day to day? People cannot read your mind, so say it.
Loss of enjoyment of life	What did you enjoy before that you cannot do now? How have everyday things, like playing with your children, changed?
Disfigurement	Is there scarring or a visible change? How has it affected you socially?
Physical impairment	What can you no longer do at work, at home or in daily care? What are your physical limits?
Inconvenience	How many times a week do you need help, wait at a pharmacy, or miss time for therapy? Small things add up.
Grief	Most often in the most serious cases: loss of use of a limb, of exercise, or of a career.
Anxiety	Are you worried about work, money or whether you will fully recover?
Humiliation	Usually in cases focused on psychological injury. Does anything about the injury embarrass you?
Emotional distress	Usually the most serious cases. How has the injury weighed on you emotionally?

What goes into a demand letter

When treatment is finished, the insurance company receives a "demand package": a letter plus supporting documents asking for compensation. It is usually organized like this:

1. **Identifying information.** Date of accident, claim number, the insured, and the person making the claim.
2. **Facts and liability.** What happened, why the other party is responsible, and what the police report says.
3. **Property damage.** Photos and estimates showing the force of the impact.
4. **Treatment, provider by provider.** What you reported at each visit, what the doctor found, the diagnosis, the tests ordered, how care progressed and how it ended.
5. **Economic damages.** A summary of the medical bills, lost earnings and out-of-pocket costs.
6. **Non-economic damages.** The ways the injury changed your life, using your journal and statements from people who saw it.
7. **Enclosures.** The accident report, photos, medical records, billing and wage documents.
8. **The demand.** A specific amount and a date to respond.

> **A short illustration (made-up facts).** *"Mr. Doe was stopped at a red light when he was struck from behind. He felt neck pain at the scene, as the police report notes. Over the next week the pain spread to his shoulders and he developed headaches. At his first exam he reported six areas of pain. His doctor ordered physical therapy and an MRI. He finished care after five months. Before the accident he hiked every weekend. For seven months afterward he could not."*

The letter is only as good as the records behind it. That is why the earlier pages stress detailed doctor visits and a daily journal.

Your injury journal

Medical bills do not show what an injury did to your life. Write short entries as things happen, and be specific. Note who saw it, because other people who can confirm your experience make a claim more credible. Print extra copies as needed.

Sample entry

Pain I was feeling: *Very sharp pain in the left shoulder that went into my head, and painful headaches. I had to take breaks all day at work.*

Issues I faced: *My boss is getting impatient. I tried to explain that I have never had these problems at work before. I canceled a family vacation.*

Who saw this: *A coworker drove me home one day because the pain was so bad. My spouse can confirm the canceled vacation.*

Date: _____

Pain I was feeling (be specific):

_____

_____

Issues I faced because of my pain or limits:

_____

_____

Who saw this and could confirm it:

_____

Date: _____

Pain I was feeling (be specific):

Issues I faced because of my pain or limits:

Who saw this and could confirm it:

Date: _____

Pain I was feeling (be specific):

Issues I faced because of my pain or limits:

Who saw this and could confirm it:

Date: _____

Pain I was feeling (be specific):

Issues I faced because of my pain or limits:

Who saw this and could confirm it:

Do you need a lawyer?

If your injuries are minor and clear up quickly, your medical bills are modest, and the other side is willing to pay fairly for both the bills and your pain and suffering, you may be able to handle a claim yourself. Even then, I recommend at least a consultation, so you know your rights and understand how many moving parts there are.

A lawyer is not only someone who argues in court. A good one is your guide and co-pilot through the whole process. The more serious the injuries, the more that matters. Think of it like visiting a country you have never been to: you would talk to the locals and study a map before you started driving.

Questions about your situation?

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This handbook is general information based on the author's experience and opinions. It is not legal advice for your situation, and reading it does not create an attorney-client relationship. Laws and insurance rules change, and every case is different.