

NO STRESS PERSONAL INJURY

TEN THINGS YOU NEED TO KNOW IF YOU
HAVE BEEN INJURED IN A CAR ACCIDENT

BY THOMAS TONA, ESQ.

TONALAW



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By Thomas Tona, Esq.
TonaLaw



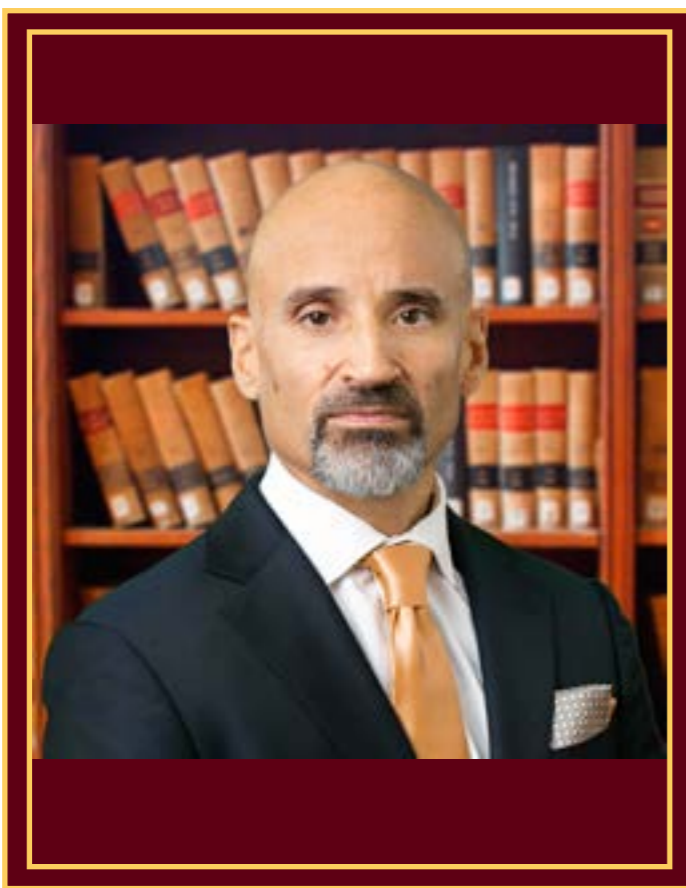
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Islip, New York
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*A special THANK YOU to
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for their contributions to the writing and editing of this book!*



Thomas Tona's Biography

Thomas Tona currently represents seriously injured clients in a wide variety of personal injury accident cases, as well as the healthcare providers who treat them against the improper denial of claims reimbursement by insurance carriers. His practice is focused on vindicating those who are taken advantage of and denied justice, so that they may be afforded their due dignity and pride, and equipped with the financial resources to live a full life, made whole again.

Tom earned his undergraduate degree from Hofstra University in 1990 and earned his J.D. degree from Hofstra University School of Law in 1993.

Since its' inception in 2001, Tom's law firm, TonaLaw, has built a reputation as one of New York's premier boutique law firms due to its expertise, integrity, tenacity and established history of results.

A Suffolk County, NY resident since infancy, Tom resides in Suffolk County, on the north shore of Long Island with his wife, daughter, and two dogs. He has been a martial artist since the age of 15, and is currently a black belt in Brazilian Jiu Jitsu.

Tom is a frequent lecturer on Personal Injury, No-Fault Insurance and Collections, and Business/Consumer Litigation throughout Long Island and New York State.

Professional Admissions & Certifications

- New York State Bar 1994
- U.S. District Court for the Eastern & Southern Districts of New York 1994
- NYS Trial Lawyers Institute
- Brother, Justice Lodge No. 753 F. & A.M

Honors and Memberships

- AV Preeminent Rated by Martindale Hubbell
- 10.0 AVVO Rating
- 5.0 Facebook Rating
- 5.0 Google Rating
- Medical Resource Group
- New York State Bar Association
- New York State Bones
- New York Chiropractic Council
- New York State Chiropractic Association
- Suffolk County Columbian Lawyers' Association

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INTRODUCTION

Nobody ever expects to be the one to get in an accident. But with the advent of new technologies, and new factors that contribute to the increasing numbers of auto accidents, taking the time to read this short book will at least prepare you for the scenario should you need to be.

The purpose of this book is to shed some light on the most frequently asked questions we hear from our clients on a regular basis. If you have been in a car accident in NY, you might be injured and you might be facing an onslaught of overwhelming questions that are the result of the different claims that can arise under a simple two-car accident. Not only can it be confusing but thanks to the overwhelming amount of money spent by the insurance companies every day, failure to act immediately can lead you to lose rights you're likely not even aware you had.

I have heard from clients time and again, that they hoped for it to be simple, and that the insurance companies would "do the right thing" and just resolve the claim fairly without the intervention of an attorney.

NOTE

Every day, thousands of people are injured or killed in auto accidents across the US. Do you and your loved ones know what to do if you find yourself in an accident?



Like many industries, the insurance industry is a for-profit industry with carriers putting profits ahead of people, despite the years spent paying into the systems via insurance premiums. My goal in writing this book is to make you aware of the hot button issues we see in our practice and the most common questions that have arisen in over 25 years of private practice as a personal injury attorney. By informing you with this guide, I hope to help you avoid the most common mistakes we see people make after being injured in an accident so that you are equipped to maximize your recovery and receive adequate compensation for your injuries, as well as get your medical providers' bills paid, and reclaim all lost wages. Keep this guide handy as you never know when you might need it. Never let an insurance company, their lawyers, or anyone else pressure you regarding your injury claims.

At TonaLaw we understand that, after being injured in an accident, the last thing anyone wants is chaos and confusion to take focus away from the most important thing, which is recovery. People are typically more skeptical of lawyers than insurance companies, but we have been fighting for the little guy since 1994. If you have any questions about what to do, please call us at (844)TONALAW to schedule a confidential, free case evaluation.



1. SPEAK TO AN ATTORNEY

As I said in the introduction to this book, the insurance industry spends billions of dollars every year on every mass media outlet one can imagine. Just Google “auto insurance advertising spending in 2017” and you will see that an obscene amount of money is spent to get your children singing those catchy jingles, paid for by your auto insurance premium dollars.

DO THE MATH

If Geico spends \$1.34 billion dollars, to retain existing policyholder dollars, and acquire new existing business with a new yield rate of 7.6%, Geico makes \$101.8 billion dollars in new business in auto insurance for that investment.

And how does Geico show a profit on that income? By paying out as little as possible in auto claims. This puts their objective of profit maximization at direct odds with the purpose of the insurance, which should be the fair and equitable payment of claims.

You want your property damage paid.

The insurance carriers want to profit.

You want your injury claims paid.

The insurance carriers want to profit.

You want your medical bills paid.

The insurance carriers want to profit.

You want your lost wages paid.

The insurance carriers want to profit.

Auto Insurer Advertising Spend in the U.S.(\$M)			
Insurer	2015 Advertising Spend	Advertising Spend as % of DPW (All Lines)	New Business Yield Rate (Auto)
Esurance	\$200	12.4%	1.1%
GEICO	\$1,340	5.8%	7.6%
Amica Mutual	\$99	5.0%	0.5%
Progressive	\$694	3.2%	4.3%
Allstate	\$778	2.6%	6.2%
American Family	\$184	2.5%	2.8%
21st Century	\$36	2.4%	1.0%
Farmers	\$387	2.0%	2.4%
MetLife	\$71	2.0%	1.0%
Nationwide	\$359	1.8%	1.8%
ACSC (AAA)	\$59	1.7%	4.1%
CSAA IG (AAA)	\$57	1.7%	5.1%
Liberty Mutual	\$497	1.7%	2.6%
State Farm	\$926	1.6%	6.1%
Mercury	\$44	1.5%	0.9%
Ameriprise	\$15	1.4%	0.3%
ACG (AAA)	\$24	1.1%	6.2%
USAA	\$147	0.9%	2.2%
The Hartford	\$87	0.8%	1.1%
Travelers	\$117	0.5%	2.0%
Erie Insurance	\$24	0.4%	1.9%
Auto-Owners	\$17	0.3%	0.8%

Sources: S&P Global Market Intelligence and J.D. Power 2017 U.S. Insurance Shopping Study

<https://www.insurancejournal.com/news/national/2017/06/19/454947.htm>



1. SPEAK TO AN ATTORNEY

Do you see the pattern? Policyholders sometimes pay premiums for decades with no claims ever made, only to get victimized by the insurance company on the first claim against their own auto policy. Carriers are infamous for abusive tactics, including bad faith negotiations in spite of good faith laws that require fair claims practices, mandated use of “approved body shops” that require after-market parts be used, and on and on. To add further insult to injury, policyholders frequently get dropped by their carrier after a

single claim. This recently happened to yours truly after paying over 16 years of business insurance to a carrier. I filed ONE claim following a storm, and the carrier dropped my firm. Ridiculous, but true.

Insurance companies will try to engage with accident victims as soon as possible following an auto accident in order to prevent an injured person from retaining a lawyer. We have personally witnessed insurance adjusters driving to the scene of a car accident with a low-figure settlement check in hand,

intending to pacify policyholders before they can make a substantial claim. We were lucky to be able to advise a client in one such case before they accepted a \$5,000 check for a claim that eventually resulted in a 6 figure settlement two years later. While adjusters may seem friendly and compassionate, they are not. They are doing their job, and that job is to save the big insurance company money. Very often adjusters are compensated for the amounts they save the company, and for target quotas they meet every month.



Don't sign anything from your carrier without consultation



Does your carrier make you use only “approved” body shops?



Were you dropped by a carrier for a claim against your policy?



Don't accept a low-figure settlement just for convenience!



1. SPEAK TO AN ATTORNEY

This does not mean that an attorney is necessary in every accident case. If you have a small claim, with minimal damages, you may do better to negotiate the claim with the adjuster yourself. That said, seeking consultation is ALWAYS advisable. I have not seen, in over 26 years of experience litigating personal injury claims, many instances where a non-lawyer was able to get the type of result an experienced personal injury attorney could obtain. There are several reasons for this.

First, we have more educational resources to draw from. I cannot tell you the number of times a prospective client will call, and in trying to figure out if they should represent themselves, ask the following question, "What do you think the case is worth?" That question is very complex and can only be answered after a detailed claim investigation coupled with significant legal research that most of the general public does not have ready access to.

Second, in most New York based cases, we will file a lawsuit in Supreme Court. Unless you have been trained in trial practice, civil trial procedure,

rules of evidence, and the laws applicable to your case, you will be at a significant disadvantage representing yourself in the courtroom. Pro se is a Latin phrase meaning "for oneself" or "on one's own behalf". While everyone has a right to represent themselves pro se, this is almost always inadvisable. In fact, I have been in the courtroom more than once, where a judge would heavily recommend that while a person has a constitutional right to represent themselves in a case, they would do better to retain an attorney. And to sum this up, I will take from the book of the physician William Osler, who said, "A physician who treats himself has a fool for a patient."

While nobody likes to pay attorney fees, there are times when it is a necessity. A claimant who acts as his own attorney, more often than not, has a fool for a client.

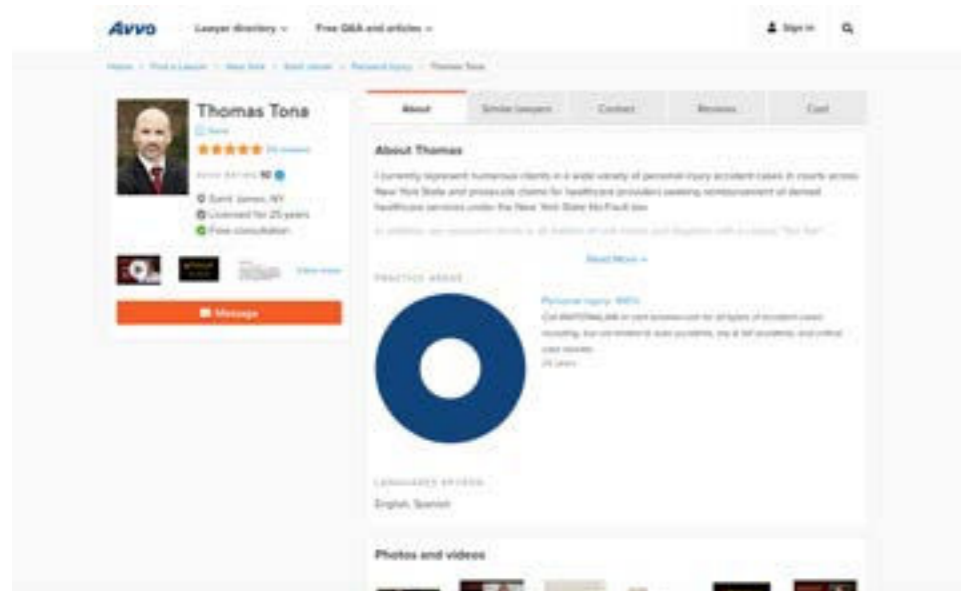
Real personal injury attorneys will know after a very brief call whether your matter warrants further investigation and work up. Remember, it costs nothing in New York to speak with an attorney about your accident claim. What other profession offers **FREE CONSULTATIONS?**

If you think your case doesn't warrant consultation with a lawyer, ask yourself:

- *Are you underestimating the level of your damages, and costs of your injuries?*
- *What if that seemingly minor injury ends up requiring surgery in the future?*
- *Why would insurance carriers be so eager to settle with you as quickly as possible after an accident?*
- *Given the significant impact an accident can make on your life, isn't it at least worth speaking to a qualified legal professional about your rights and options?*



1. SPEAK TO AN ATTORNEY

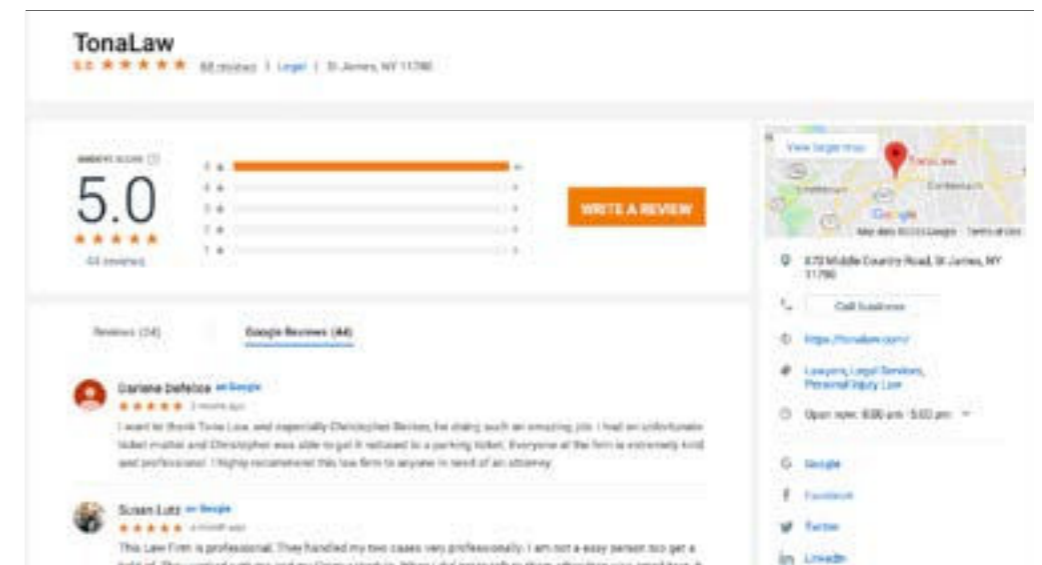


DO YOUR HOMEWORK.

Not all lawyers are created equal. Trust your instincts! Ask well thought out and prepared questions. If you feel like you're being sold, you probably are. Lawyers, or their firm, may have flashy or sophisticated marketing, but that does not mean they are good lawyers, or that they will make you comfortable and confident in your case, or that they will focus on getting the best results. If you feel a connection beyond the potential money transaction or signature on the retainer, that's a good sign.

Ultimately, it's very important to find someone that you trust and can enjoy working with throughout an undoubtedly stressful period of your life.

If you're going to seek representation, prepare for the initial call and consultation with your lawyer or law firm like you would a job interview or any other important meeting. Think about what you'd like to achieve in a best and worst case scenario. Analyze, know, and set realistic expectations. With the advent of the internet, everything you need to know about a law firm or lawyer is at your fingertips. Your first stop should be Google.com. Your next stop should be Avvo, Martindale, or Lawyers.com, which are websites dedicated to law firm and attorney reviews.



And lastly, don't underestimate social media. In 2018, be wary of the lawyer or firm that has no website. Read the online reviews! Don't be romanced by television commercials featuring "paid actors" that supposedly recreate actual client experiences. Look for reviews, real video testimonials from prior clients, and indicators of the personality and culture of a firm to make sure it's a match for you.



2. TYPES OF INSURANCE COVERAGE

BODILY INJURY & PROPERTY DAMAGE LIABILITY	\$192.00
BI \$100,000 EACH PERSON - \$300,000 EACH ACCIDENT PROPERTY DAMAGE LIABILITY - \$25,000 EACH ACCIDENT	
COMPREHENSIVE ACV LESS \$499 DEDUCTIBLE	\$24.00
COLLISION ACV LESS \$999 DEDUCTIBLE	\$68.00
UNINSURED / UNDERINSURED MOTORIST BODILY INJURY	\$13.00
\$50,000 EACH PERSON - \$100,000 EACH ACCIDENT	
UM/UIM PROPERTY DAMAGE \$25,000 / ACCIDENT	\$23.00
\$250 DEDUCTIBLE APPLIES TO PROPERTY DAMAGE	
PERSONAL INJURY PROTECTION	\$18.00
\$5,000 EACH PERSON / EACH ACCIDENT	
ROADSIDE ASSISTANCE	\$7.00
Premium by Vehicle	\$345.00
Automobile Theft Prevention Authority Fee	\$0.50
Total Policy Premium	\$345.50

I typically advise my clients to buy at least \$100,000/\$300,000 in liability coverage and UM/SUM if you can afford it.

i. **Personal Injury Protection (PIP)**, is required by NYS law. It covers all of your medical bills and other basic economic losses, like lost wages. NYS is a “no fault” state, which means your own PIP pays this regardless of who was at fault for the accident. PIP usually covers you, your spouse, and relatives living in your household. The NYS minimum coverage is \$50,000, though more can be purchased for a relatively modest premium increase. In NY you can often have a PIP deductible of \$200. I typically recommend the purchase of Additional PIP (APIP), where financially feasible to protect yourself in the

event of a serious crash and serious injuries. The no-fault carrier is responsible for paying for your treatment of causally related injuries.

ii. **Collision Insurance** covers property damage to your car regardless of fault for the accident. Collision insurance, such as PIP, will usually come with a deductible that you are responsible for paying. The higher the deductible the lower the premium, but the increased cost on the back end should you need to use the insurance. It is not uncommon for collision deductibles to be between \$500 and \$1500.

iii. **Uninsured/Supplemental Underinsured Motorist Coverage (UM/SUM)**

This is one of the most important coverages you can have to protect you and your family in the event of an accident.

This coverage pays you for injuries and financial damages if you are hurt by the fault of another driver and that driver is either uninsured or underinsured, meaning they do not have enough insurance to compensate you for your injuries. This coverage also applies to resident relative members of your household. In NY, you can only buy UM/SUM coverage up to the amount of liability coverage you have. This is in furtherance of the public policy, that you can only insure yourself under UM/SUM, to the extent you are willing to insure others under your liability policy.

iv. **Liability/Bodily Injury Coverage (BI)**, protects your personal assets for an accident that is your fault. In NYS, the minimum policy is \$25,000/\$50,000. That covers \$25,000 per person, with a maximum of \$50,000 per occurrence or accident. It covers you if you are at fault and caused someone to be injured. Keep in mind that if you elect minimal coverage you will cap your UM/SUM coverage in doing so.



BE CAREFUL WHAT YOU SAY TO INSURANCE ADJUSTERS

Usually under the guise of “quality control,” insurance companies will record your phone conversations with them. Unlike typical quality control though, this is not necessarily a measure to prevent unexpected issues, it also creates a record of everything you say. This is why they ask questions in a very specific, often scripted, way.

This is done purposefully and legally, all with the intention of lessening the claim payout where they can, based on what you say. If possible, this will be done prior to you retaining an attorney, as the adjusters are specifically trained to ask as many questions as possible during the initial contact and the reporting stage of the claim.

NYS is a Comparative Negligence state, which essentially means that the amount of damages that a plaintiff can recover in a negligence-based claim will be reduced down by the percentage of fault the plaintiff bears for causing the accident or injuries. Adjusters will ask specific questions of you on the phone relating to how the accident

3. WATCH WHAT YOU SAY

occurred, looking for fault on your part which will reduce the payout. Often the trickiest of questions will involve time, speed and distances, which most people will make mistakes on unless they were formally trained to measure and calculate the physics of accident reconstruction.

Adjusters are also trained to appear friendly, empathetic, and sympathetic during all calls. This is done to put people at ease, to get them talking. When you talk freely, your words and phrases can be taken out of context. Be aware that everything you say is likely being recorded. What may seem like common courtesy could actually be predatory prompting. For example, the answer of “I am ok,” to the seemingly benign question of “how are you feeling today?” could resurface two years later when the claim representative tells our team, “we have your client on tape saying they feel fine right after the accident.”

As lawyers we are trained to deal with these types of tactics. But make no mistake, the insurance carriers spend the amount of time they do on the claim intake purposefully and with intent.

Remember: it is the job of the adjuster to minimize your damages, and the ultimate claim payout, from the first call.

TRY TO AVOID MAKING THE FOLLOWING (OR SIMILAR) STATEMENTS:

- I'M SORRY
- I DIDN'T NOTICE
- I WASN'T LOOKING
- I'LL BE OKAY
- I'M DOING WELL
- I'M FEELING FINE
- THAT WAS MY BAD (OR MY FAULT)
- I'VE BEEN ON MY FEET ALL DAY
- I JUST GOT DONE RUNNING AROUND
- I WAS AT THE GYM

Insurance carriers are constantly vigilant for a misstep that indicates whole or partial responsibility for the accident OR reduced severity to injuries suffered in said accident.



4. PREPARE YOUR CASE

Plain and simple, gathering as much evidence as possible as soon as possible will create tactical advantages later on. The more detailed documentation you collect with regard to:

- How the accident occurred
- The medical treatment visits
- Daily restrictions on your life and duties under duress
- Any impact to your typical schedule, habits, relationships, or mental state

the more evidence you will have to work with during the life of your case. The devil is in the details. From day 1, create your own auto accident folder, with subfolders for each category of paperwork. For example, subfolders for a property damage claim, no-fault claim, unpaid medical bills, police report, etc. Definitely keep a journal of daily health feedback, again with as much detail as possible about your physical complaints and treatment. Immediately create a paper trail for every action that could be relevant to the case. This starts with contacting the police immediately after an accident, and the filing of a police accident report.



Use your smartphone at the scene of the accident. Take pictures and video of the accident scene and any injuries sustained by you and any passengers. Try to also video the opposing driver if you can.



The other driver may try to discourage you from calling the police at the scene due to intoxication, lack of insurance, driving with a suspended license or to avoid an insurance claim. **Do not be persuaded to forego calling the police by the opposing driver, do not accept payment of any kind from the opposing driver, and do not sign anything other than a police statement if you're so inclined at the scene.** Calling the police assures a higher level of integrity in the statement from the opposing driver, than will happen at a later point in time.

Exchange driver's licenses and all insurance information. If you end up communicating with the opposing driver through text or email, keep a record of these exchanges and maintain formality at all times. Anything you write or say is evidence.

Remember this.



Get the names of witnesses and if possible try to get statements either on video or in writing. Get all of the information you can from everyone involved in the accident at the scene. Do not worry about the level of detail, your attorney can evaluate each piece of evidence later on.





Get to a medical professional IMMEDIATELY.

Within the first 48 hours following an accident seek out professional medical help if you feel ANY symptoms. Even the most seemingly minor symptoms, which either did not exist prior to the accident or seem amplified by the accident should be explored by a competent medical professional. If it's a weekend and you cannot get to your normal doctor, go to the ER.

Follow all medical advice to the letter, and retain copies or photos of all paperwork, receipts, prescriptions, medical devices, etc.



4. PREPARE YOUR CASE



Document all damage to each involved vehicle, as well as injuries to self and other drivers. Keep records of this, all statements, and any communications with involved parties.

Track your sleep patterns post-accident.

Sleep disruption is an often overlooked, extremely unsettling aftereffect of an auto accident, whether it's due to pain from the injuries, post-traumatic stress disorder, or a combination of factors. If you are suffering from sleep disruptions, speak to a physician. If you have stress or anxiety related to the accident or that has increased from the accident speak to a mental health professional. Again, under NY law, all of your causally related medical bills are the responsibility of the no-fault insurance carrier. You do not pay for the treatment and you do not use your health insurance if you have it.





5. TELL THE TRUTH

Tell the truth

Tell the truth about how the accident occurred, your treatment, your physical complaints, everything. Do not lie. Do not exaggerate, do not minimize. Record the facts in the journal recommended above. Your objective is to help identify who caused the accident and elaborate on the extent of your injuries. If you're unsure of certain details, do not guess or estimate, be transparent about your uncertainty. Assumptions and guesswork can be misleading and counterproductive to your legal representation. Your role as a client is to obtain and preserve facts, which your attorney can then use to build your case and negotiate with, or litigate against, the insurance carrier.





6. DON'T SIGN ANYTHING

Signing anything the insurance carriers give you could significantly impact your case. Not only could you unwittingly waive important and necessary future benefits, but you could drastically reduce the payout you receive. I have personally witnessed insurance carriers trying to settle cases at the scene of an accident for \$5,000 in exchange for a bodily injury release. Luckily I was called by a family member from the scene, drove to the scene and sent the adjuster away. That case later settled for over \$100,000!

The documents the carriers give you all have legal implications:

Medical authorization release, for the release of your medical information, unless tailored by an attorney, could grant the insurance company unlimited access to all of your past medical records. This is overly broad, overly invasive, not necessary to the handling of your claim, and would *never* be allowed by an attorney. The adjusters know this.

Release of all claims. This is exactly what it sounds like, and typically is a prerequisite for the exchange of a check. It releases the opposing driver and the insurance company for any liability for your damages from the date of the accident until eternity. Once signed it is legally binding and stops you from being able to sue for your injuries. Prior to signing, you want to make sure that you are being properly compensated. It is important that an attorney approves any release BEFORE you sign it. This goes for **Property Damage Releases, Bodily Injury Releases or General Releases** of all claims.





7. CLAIM ADJUSTMENTS

Carriers have spent significant money to develop software to analyze and manipulate data, using sophisticated algorithms, with the end goal of minimizing claim payouts. In the last 25+ years that I have been practicing in Personal Injury Law, I have seen and heard many, many variations of the argument from adjusters that this is the "range" for settlement valuations.

But pressed to clarify how they determined that range, carriers often become uncooperative and inaccessible. In fact, almost every carrier uses this type of software, and yet not a single one will

willingly disclose this information to the public.

This flies in the face of the NYS requirement to fairly adjust bodily injury claims. Our firm independently values claims based on all of the facts of a claim. Carriers can, and have been *shown in court* to **manipulate data that would increase the payout.**

It has been proven in whistleblower lawsuits against carriers and undercover investigations by media outlets that carriers will manipulate data by removing details that would increase the

value of a case, including:

- manipulating the trauma severity
- having adjusters make medical assessments on files despite no medical training or licensing as an expert
- running data such as medical bill dollar amounts through repricing software to lessen the impact on the computer valuation
- encouraging liability disputes as to who was responsible for the accident despite clear evidence to the contrary.

**NYS Injury
Threshold**



Policy Limit

Range of Potential Settlement Valuation

8. BAD FAITH

YOU CAN TAKE LEGAL ACTION AGAINST INSURANCE CARRIER FOR BAD FAITH.

In NY, there are multiple laws that require insurance companies to negotiate claims in good faith, and fairly and quickly resolve claims with, and on behalf of their insured customers.

The above examples are not the only instances where the carriers have played dirty in the past. There have been multiple investigative news series, which can be found at:

<http://badfaithinsurance.org/>

...documenting the extent of bad faith claims handling and insurance carrier fraudulent claims practices.

There have been many, many large verdicts against Insurance Carriers in New York State, and throughout the country, where plaintiffs have proven the extent of a carrier's bad faith.

In New York, Bad Faith is very much alive and well. In fact, our office is sure to document every instance of a carriers Bad Faith throughout the life of a case. To pursue a claim for Bad Faith in New York, a plaintiff must document settlement opportunities that give the carrier the opportunity to settle a case within applicable policy limits. Where case values exceed the policy limits we meticulously document every conversation, and every instance of Bad Faith negotiations. When we reach jury selection we have already written at least two Bad Faith letters, and served them on the carriers by certified mail, return receipt requested.

In the event the carrier still does not tender the policy limits, and we obtain a verdict in excess of the policy, we will then pursue a claim for Bad Faith, seeking payment of the full verdict, in excess of the carrier's policy.

Some common examples of Bad Faith we see are:

- Denying a claim without providing a valid reason.
- Asserting unsupportable positions on liability or damages.
- Failing to negotiate a claim based on the supportable evidence.
- Forcing attorneys to proceed forward in unnecessary litigation.
- Adjusters asserting conclusions without the necessary expert opinion.
- Offering substantially less than the claim is worth.
- Failing to communicate with you, or your attorney.
- Failing to return calls timely.

Our office abides by the following motto when it comes to insurance carriers and case resolution, "*Don't expect the Insurance Carriers to do the right thing, make them do the right thing.*"



9. DON'T MAKE THESE MISTAKES

a. **Failing to treat for your injuries.**

Many times claimants will tell us they were too busy to go to the emergency room, and then a few days later they wish they had. Or they will stop treating after 6 months despite being in significant pain and complaining of same to our office.

As we instruct every client, do not worry about your case, worry about your health. It is our job to worry about your personal injury case. Failing to treat for injuries you sustained will lead the insurance carriers, and in some instances the jurors that will ultimately decide the fate of your claim, to wrongly conclude that you were not seriously injured, even though you were.

Failing to treat with medical providers immediately post crash and for the life of your claims will have two significant and negative results. One, your physical recovery from the injuries is guaranteed to be less than optimal. Two, you could significantly diminish the value of your claim. The simple question at every stage of your life after the accident is "are you hurt?" If the answer is yes, then you should be treating with some type of medical provider.

Accident victims often experience symptoms and have no idea what their symptoms mean or what type of a physician they should be treating with for the specific pains they are feeling. An experienced attorney will be able to listen to your symptomology and even recommend specialists for you to see based on the injuries and pain you are experiencing.

b. **Using social media improperly**

There is no escaping the fact that social media is here to stay. Different platforms may come and go in their popularity, but the posts to these mediums live forever. This creates a digital footprint for every person on the internet. It also may be publicly searchable. Pictures, videos, and comments are all discoverable in New York personal injury cases.

In fact, New York was one of the first states where access to a person's facebook account was ordered by a court despite account privacy settings being utilized. Anything that is discoverable can be used against you to significantly diminish the value of the case, regardless of whether your profile has been set to private. There are legal ways to circumvent social media privacy settings if one is so inclined.

Our advice regarding social media use is to treat anything posted on social media as publicly available regardless of 'privacy' settings. Never post or discuss your injuries or anything related to your physical condition during the course of your case. The insurance carriers and their attorneys are watching!

c. **Lying**

Whether it's about treatment, injuries, liability or any other facet of your case, lying is a very bad idea. If under oath, it is perjury and that could rise to the level of criminal conduct.

DO NOT DO IT!

The insurance carriers already know if you have been in prior accidents, have made prior claims, what body parts you injured prior, etc. All of the advances in technology have led to network information sharing by and between the insurance companies. Lying about any facet of your case will create the presumption that you are lying about other facets of your case.

Just be honest. With your doctors, your lawyer and at all phases during your injury case.



9. DON'T MAKE THESE MISTAKES

d. **Waiting too long to consult an attorney**

Our office is quick to react once we are retained on a personal injury claim. We immediately begin our investigation and send out letters to all concerned parties preserving evidence, and all rights of our client. The moment you realize you are injured consult with an attorney. *Immediately.*

The insurance companies are already at work to uncover whatever evidence they can use to diminish the claim, immediately following the accident you were involved in. You must be as diligent in protecting your rights and preserving evidence that could help us help you.

In New York, the insurance industry has been successful in putting harsh deadlines into the law which place significant burdens on you as a potential plaintiff. One such example is the need to file a No-Fault application within 30 days of the accident. We have had clients come in at the 60 or 90-day mark tell us they never filed the application, which means getting their medical benefits paid correctly becomes our first order of business.

REMEMBER: *Consultations with our office are always free, with no strings attached.*

e. **Leaving the scene of an accident without calling the police.**

In New York, the Vehicle and Traffic Law governs use and operation of all vehicles on the road in the state. In New York each party involved in a motor vehicle accident must stop and share a copy of your driver's license and insurance card, and if the accident potentially involves personal injury you MUST report the accident to the police.

Depending on the facts of the accident leaving the scene of an accident may be deemed a criminal offense punishable by a fine or imprisonment.

If you are involved in an accident call the police. Report it. Stay at the scene. Let the police do their job. The information the police write down will be useful to your attorney after the fact.

My office offers a free insurance card and registration holder for your glove compartment with instructions on it for what to do in the event of an accident.

Email me at pi@tonalaw.com and we will mail it out to you free of charge.

f. **Talking to the insurance companies without an attorney.**

As discussed throughout this book the insurance companies are not out to help. They are your adversary when it comes to paying you for your claims. They will record your conversations, and amass evidence to contradict your claims where they can. It is tricky because this is an industry you would expect to protect the public interest. But like many other industries, they are for-profit companies which means they have competing and conflicting interests, despite the instructions of the law to fairly and expeditiously adjust claims, negotiate fairly and the like. Don't talk to the adversary without an attorney. If they call you immediately after the accident, tell them you have an attorney and get one immediately.



9. DON'T MAKE THESE MISTAKES

g. Failing to show up at IMEs and EUOs

Assuming you hired an attorney and filed the No-Fault application in a timely manner, you will eventually be sent for an **Independent Medical Exam (IME)** or an **Examination Under Oath (EUO)**, or both. These are insurance company devices and again are adversarial.

At TonaLaw we work with hundreds of New York State No-Fault Healthcare providers including orthopedists, chiropractors, and physical therapists. These providers regularly face IME denials during the process of treating their patients and we advise these clients:

"You determine medical necessity of treatment, not the insurance doctors or carriers. Just document your findings well throughout treatment."

If a provider feels that a patient's injuries have not yet resolved and that further treatment is medically necessary, we advise that they continue to treat the patient and pursue reimbursement from the carrier in court or arbitration. But it is critically important that you attend these examinations:

Independent Medical Exams for the No-Fault Insurance company are anything but Independent, and a high percentage of the time the exams are designed to cut off your No-Fault benefits. You must attend these exams, but you should only do so after reporting same to your personal injury attorney. Failure to attend scheduled IMEs can result in the denial of all of your benefits retroactively from the date of accident forward, making you financially responsible for anything that no fault has previously paid for.

Examinations Under Oath for the No Fault Insurance company are sworn statements taken under oath, similar to a deposition, under the guise of factual investigation by the carrier. In practice, many times the adjuster or attorney conducting the EUO will exceed the parameters of what is permissible at an EUO and for that reason, and that reason alone, you should never attend an EUO, or any event where testimony is being taken under oath, without a lawyer.

These Behaviors Can Lower the Value of Your New York Personal Injury Case:

a. Failing to treat for your injuries



b. Using social media improperly



c. Lying



d. NOT consulting an attorney



e. NOT calling the police



f. Talking to the insurance companies without an attorney



g. Failing to show up at IMEs and EUOs





10. THE FIRM YOU CHOOSE MATTERS

Throughout this book we have pointed out the various things insurance companies will look at in evaluating your case and determining the course of action in evaluating the value. With the advent of technology came statistical analysis on a claim by claim basis. In addition, now the insurance carriers have decades of historical data compiled on every law firm that handles plaintiff cases.

Who you choose to represent you matters. There are law firms that routinely settle personal injury claims for a fraction of the true value. We have had clients come to us, unsure of the advice they were being given regarding a nominal offer, only to have us secure full policy settlements, or 5 to 10 times the offer being procured by the previous law firm.

Who you choose to represent you matters. Do your homework. Don't go it alone.

There are many reasons to consult with the right law firm immediately following an accident:



An experienced personal injury attorney will know the true value of your case and make the insurance carrier pay more than they would have to if you were not represented.



An experienced personal injury attorney will help you prepare and participate in your recorded statement to the insurance company to make sure that your claim is not jeopardized.



Unrepresented claimants are more likely to miss important deadlines which will void one or more of their claims under the law.



Unrepresented claimants may not know their rights to certain claims or coverages afforded under the applicable policies and the law of their claim (i.e. medical payments, depreciation, punitive damages...)



An experienced personal injury attorney will properly compile and preserve evidence immediately following the accident to support your case under the law.



Unrepresented claimants will almost never secure full and fair compensation for their claims without the help of a qualified law firm.



10. THE FIRM YOU CHOOSE MATTERS

Injury claims can present unexpected and complex issues, and missteps can be costly. Missing legal time limitations or notice requirements pursuant to the terms of an insurance policy can prevent you from recovering on your claim. Likewise, if you say the wrong thing to an adjuster in a recorded statement, or just say something that could be taken out of context, it can cause great harm to your claim.

These are just a few ways in which handling your case without an attorney can be a risky decision and produce an unwanted outcome. The system is stacked against unrepresented claimants. Insurance companies are in business to make money and please their shareholders. To do this, they make every effort to find reasons to pay as little as possible (or even nothing) on claims. They accomplish this by having their own

attorneys on staff, and adjusters who are well trained in working the system to the advantage of the insurance company.

What can you do to assure you are speaking to the right personal injury lawyer or law firm?

Just as the insurance companies can access volumes of public data via a **Google search** on the internet so can you. Google both the lawyer you are speaking to and the law firm they are employed by.

Actually read the reviews.



Does the firm have **testimonials** in writing or video, which speak to the clients' experience with the firm?



Use common sense. Just like you would not go to a butcher with negative reviews, or any other business, make smart and informed decisions.



In addition to Google, check **Glassdoor** to see what the employees are saying about the inner workings of the firm, check:

Facebook, LinkedIn, Twitter, Yelp, Instagram, & Avvo to see additional reviews.



Lastly, you can go to <http://iapps.courts.state.ny.us/attorney/AttorneySearch> to check on an attorneys licensing and see if the lawyer has even been the subject of disciplinary actions.





CONCLUSION



On behalf of all of the TonaLaw team, we hope this book has been helpful in figuring out what to do if you are ever involved in an automobile accident. While nothing in this book is to be considered legal advice, what we are offering is an informational resource to help you navigate a complex & confusing system and processes from the moment an accident occurs to finding the right personal injury attorney to securing a reasonable financial recovery.

I hope you find this book and the information herein useful. What you don't know *can* hurt you and the intent of this book is to make you an informed consumer.

