

**7 FATAL MISTAKES  
YOU MAKE IN YOUR PERSONAL**

**INJURY CASE**

**AND WHAT YOU CAN DO ABOUT IT**



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# Seven Fatal Mistakes You Make in Your Personal Injury Case

and

## What You Can Do About It

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## **Disclaimer**

Before we begin, we must legally make a few disclaimers.

First, we are not allowed to give legal advice in this book. We intend to offer helpful tips and suggestions but we cannot technically offer legal advice unless you have hired us. Please do not interpret anything in this book as having constituted legal advice or to have established an attorney client relationship.

Second, we are licensed only in the State of Wisconsin and residents of other states are advised that we are not allowed to offer legal advice to those outside of Wisconsin.

Finally, although we have written several books and guides, have been recognized by our peers as “Top Lawyers” or “Super Lawyers”, the State Bar of Wisconsin ethics rules do not allow us to say that we are the “best lawyers” or “experts.”

## **About the Authors**

Welcenbach Law Office is made up of Joseph J. Welcenbach, his son, Robert J. Welcenbach, and daughter, Jeanne E. Bell.

All of our attorneys have been life long residents of Wisconsin. All of us attended Marquette Law School.

Joseph Welcenbach's grandparents were immigrants who settled in the Milwaukee area in the early 1900's. Joe's father was the head of sanitation for the City of Milwaukee. Joe is married to Patricia and they have six children, three of whom are attorneys.

Jeanne and Robert both attended Tosa East High School, received their undergraduate degrees from the University of Wisconsin – Madison and their law degrees from Marquette University Law School.

Jeanne is married and lives in St. Francis, WI with her husband, Nathan.

Robert is married and lives in Pewaukee, WI with his wife Leah and daughter, Caitlin.

We specialize in personal injury, workers' compensation and social security disability.

We are dedicated to fighting for injury victims who face the multi billion dollar insurance industry.

## **Why are we writing this book?**

Every day we see people who are legitimately hurt denied the recovery they are entitled to because they are caught in a system where the deck is stacked against them.

After an injury, most people believe they are making the right choices to protect themselves, however, they may not have all the necessary information available to them to make the best decision for their case. Many of these decisions they make early on can drastically affect the outcome of their case.

Although, this book may not be able to replace the advice and guidance an attorney can offer, we hope that it will at least help you to make the best decisions early on to protect your rights.

Personal injury victims face a multi billion dollar insurance industry that is waging a campaign to instill public fear that lawsuits are out of control and that they negatively affect the public at large. These campaigns are not based in truth. It creates an unequal playing field and only serves the insurance industry, not the public.

The effect of the insurance industry's campaign is that honest people who are legitimately hurt must be very careful at every stage of their personal claim or they risk having their claim be denied, dismissed by a court or a jury awarding them little or nothing.

## **Why should I follow the advice in this book?**

We have been helping injured people for over 35 years. In that time, we have noticed that because of the insurance industry's "tort reform" campaign, the laws have become much tougher and juries are more skeptical. Courts now limit victims access to justice and, even when victims get to a jury trial, juries are now less likely to compensate victims for legitimate injuries.

For instance, in 2010 it was estimated that 32,000 people were killed or injured in due to medical malpractice, according to a Wisconsin Administrator of State Courts 2010 report. However, out of 32,000 injuries, only 147 victims filed a lawsuit and, of those, only 44 were successful. Only .001% of the total claims were acted upon and successful.

Thus, it is vital to have the best knowledge at the earliest opportunity so we decided to write this book as a free resource to the public.

We hope that by writing this book we can help educate the public so that innocent victims will not be denied the compensation that they and the public have paid for by purchasing insurance.

# What are the 7 fatal mistakes I can make in my personal injury case?

Although there are many decisions that a client makes before we ever see them for a consultation, we have tried to come up with the 7 most common mistakes that are made that can really hurt your case.

For a complete guide on auto accident and personal injury cases, look for our other books and guides coming soon.

Now, here are the top 7 mistakes and what you can do to do avoid them.

## MISTAKE NUMBER 1

### **Telling the other driver, witness or police that the accident was your fault.**

After an automobile accident, slip and fall or other personal injury, there is typically some type of investigation conducted. Any information you give to the investigating person, whether that be a police officer, store manager, witness or just another person involved in the incident can be used against you in your case.

What you say can be used by the insurance company to initially deny your claim or it may be used at a

later time in court to prove that the injury was not caused the way you claim it was.

If you tell anyone that the accident was your fault in the beginning, it is difficult to overcome those statements - even if other information establishes that you were not at fault.

For instance, even if there is a witness to the accident that clearly establishes you were not at fault, the statement you made can still be introduced in court against you.

If an investigation is being conducted, explain to the police officer or other investigator what happened to the best of your knowledge, but do not make any decisions about who was at fault or why the accident occurred. Questions about fault or cause are legal questions and are often very complex.

## MISTAKE NUMBER 2

### **Telling the other driver, witness or police that you are not injured.**

Often after an injury occurs, it is difficult to know exactly the extent of the medical injury without medical treatment. Your body typically reacts to an accident by immediately releasing Adrenalin to kill pain. You may not even realize that you are hurt because your body is doing what it should – masking the pain.

However, the adrenaline will start to wear off and you may begin to feel the effects of the accident. Typically our clients initially report that they are not hurt, but later that day or in the days following the accident, they must go to the ER or a doctor. An injured body part may also take time to swell and cause pain.

Informing a witness or investigator that you are uninjured may cause difficulty proving that the injuries you experience after the accident are related to the accident. If you feel any pain or discomfort immediately after the accident, make sure you say so to the police officer.

Often times, we want to act tough and say “its no big deal” or we don’t want the person who caused the accident to feel bad so we say we are okay even when we are not.

If you feel any pain or discomfort, it is best to seek medical treatment and report all symptoms of whatever kind to investigators and medical personnel as soon as possible to protect your claim.

### **MISTAKE NUMBER 3**

#### **Failing to get medical treatment when you are injured because you think you will just get better.**

Many people believe that they will be able to treat their injuries with a little ice and some Ibuprofen hoping that the injury will resolve itself in time.

Unfortunately, some injuries progressively get worse and failing to get proper treatment at an early stage can delay healing and complicate the injury.

Also, when you don’t seek medical treatment for injuries early on, the insurance company is likely to use that against you. They will try to prove that you suffered

no injuries because you have no early medical records to back it up and they will say that any treatment you received at a later date is not related to the accident.

Even if emergency treatment is not necessary, a trip to an urgent care or with a primary care doctor is well worth the minimal charge in light of the harm it will cause to your case if you do not seek treatment.

When you don't go to the doctor, the insurance company interprets that to mean you have no medical issue and are in fine condition. So when are suffering at home with a swollen knee or sprained back and there is no medical record to verify that, the insurance company will treat it like it never happened.

Additionally, a secret the insurance industry doesn't want the public to know about is that they use complicated medical records software to evaluate your claim. There are several of these programs out there with "Colossus" being the most well know and widely used.

If you do not have immediate medical treatment, "Colossus" is set up so that the value of your claim is

significantly diminished or even denied. Thus, any settlement will be difficult. The adjuster may not be able to offer a fair amount because they are limited by “Colossus.”

If that becomes the case, filing a lawsuit generally becomes the only way to obtain fair compensation.

You can read more about “Colossus” and how it was purposely designed to cheat insurance consumers here:

<http://www.theinjuryspecialists.com/upload/Colossus.pdf>

## **MISTAKE NUMBER 4**

### **Giving a recorded statement to the insurance company.**

There is no obligation or reason whatsoever to give a recorded statement or even talk to the insurance company of the person who caused your injuries.

Recorded statements are used by the insurance company to record your version of events, get you to

admit things against your case and to give the insurance company a reason to deny your claim.

Giving a recording statement is handing the insurance company an invitation to deny your case. They can use the recorded statement at a later time in your case to make it seem like you are lying, faking or trying to mislead. Never give a recorded statement without first talking to an attorney.

Even if you give a statement that is good for you, the insurance company often times refuses to give the statement to you or they claim that the tape has disappeared.

We have had several cases where we know our client gave a good statement before they hired us and when we asked the adjuster for the tape, the adjuster claimed that either the tape was lost or that it didn't record.

Thus, either way you lose. If you give a recorded statement and it is bad for you - the insurance company wins. If your statement is good for you, they will probably

not produce it, claim it was lost or that there was a malfunction. So even when you give a good recorded statement you are no better off.

Thus, if you've had an accident and the other driver's insurance adjustor asks for a recorded statement, decline to do so until you have contacted an attorney.

We very rarely allow our clients to give recorded statements. It is usually done only after we have enough information about the accident and treatment, set up our own recorder and we also make it subject to us taking a recorded statement of the other driver as well.

## **MISTAKE NUMBER 5**

### **Using your medical payments insurance through your auto coverage to pay for medical bills.**

Many people have private health insurance and pay a monthly premium for it. This is the insurance that should be used to treat your injuries after an accident.

This is your primary insurance.

The medical payment insurance you have through your automobile policy should never be used as your primary insurance.

Your primary health insurance company most likely has the right to be reimbursed for any treatment they pay for that is related to the accident. Thus, if you recover any compensation from the person at fault for your injuries you have to repay whoever paid your medical bills.

Your primary health insurance usually pays a discounted rate, usually 30-60% of the medical bill, with the hospital and medical providers, while your medical coverage through your auto insurance does not. Your medical coverage through your auto insurance will pay the entire amount of the bill charged.

Thus, the hospitals and doctors want to bill your auto insurance medical coverage because they get 100% of their bill paid. This is bad for you.

Let's take an example that you have \$3,000.00 in medical bills. If you settle your claim for \$9,000.00, you

will pay an attorney usually 1/3 leaving \$6,000.00 for you to split with whoever paid the medical bills.

### Billing Private Health Insurance

If you use your private insurance you would repay the 60% discounted amount of \$1,800.00 and then be able to keep the rest, \$4,200.00. You get \$4,200.00.

### Billing Auto Med Pay Insurance

If you use your auto insurance medical coverage, you would repay the 100% of the bills of \$3,000.00 and then end up with \$3,000.00. Thus, you lose \$1,200.00.

Medical payment coverage through your automobile coverage should be used to cover any out of pocket expenses, deductibles and co-pays.

When you use your auto medical payment insurance instead of your private health insurance, you will also use up the auto payments much more quickly and then get stuck paying for treatment co-pays and deductibles out of pocket.

If a provider asks you to provide your auto medical insurance, tell them that they are to bill your private health

insurance. They do not have the right to demand to bill your auto insurance. It is your choice.

Which insurance pays the medical bills on your case will make a world of difference at the time you are healed from your injuries and want to settle a claim.

Make sure you do the right thing, it's what you pay for after all.

## **MISTAKE NUMBER 6**

### **Failing to tell the treating doctors how your injuries occurred.**

The history of how an injury occurred is essential to making a claim. Having that history in the medical records is extremely important and how the injury occurred must be identified correctly.

If the insurance company sees that there is no mention of an accident or incident in the medical records, they will assume that none ever happened. This is especially important for slips and falls and trips and falls where there is no other evidence or police report to independently establish that an accident occurred.

It is important to describe in detail how the accident occurred, what happened to the body in the accident and include any details of movements or impacts. Insurance companies deny many claims because there is no “mechanism of injury.”

Mechanism of injury usually refers to how the body movement in the accident caused the injury. For example, if you have an injured knee, but do not tell the doctor that you hit your knee on the dashboard or twisted it when you slipped, the insurance company may deny the case as there is no explanation why the knee hurts.

They will argue it is equally as likely that you injured it playing baseball, gardening, at work or doing some other hobby or activity.

It is important to describe how the body was moving or what body parts were affected so the insurance company can see how the injury occurred.

## MISTAKE NUMBER 7

### **Failing to follow up with doctor ordered medical treatment.**

If you are treating with a doctor who asks you to continue forward with medical treatment and you stop, the insurance company will assume that you stopped because you were healed and had no further problems.

Again, if there is no medical record to support your injury, the insurance company will assume you were back to your normal health. You must continue to undergo medical treatment if you plan to ask for compensation for your condition.

We have many clients who tell us that their injuries continued long after they stopped treatment with their doctors and it is difficult to prove there was a lasting injury without the medical record to support it.

If you do not have health insurance and cannot afford treatment, you may have several options an attorney can discuss with you.

One option is to check for free medical clinics.  
Even if they don't see you, having documentation of your  
attempts at treatment can be helpful.

## **CONCLUSION**

We hope this book offered some valuable suggestions and tips for you.

We've also attached our Accident Checklist at the end of this book which gives additional tips on what else you should do when you do have an accident.

For more free information, to download additional books or guides, or watch our informational videos, visit <http://www.injurylawwisconsin.com>.

If you would like to speak with one of our attorneys, you can reach us at (414) 774-7330.



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## **ACCIDENT CHECKLIST**

If you are involved in a car accident, motorcycle accident, truck accident or any other auto accident, make sure you do the following:

1. Check to see that you and all passengers are safe. Call 911 immediately if anyone is injured or there is any damage to the vehicle.
2. Be safe before doing anything else. If possible, pull your car out of traffic to the side of the road if you can do so safely. Getting out of the car in the middle of the road can result in additional accidents and injuries. If your car cannot be moved safely, remain in the car until the police or fire department arrives.
3. If you are able to exit the car safely, exchange insurance and contact information with the other driver. Also, take down notes as to the driver's license plate number, color make and model of their car and note any observations about the other driver such as any possible intoxication.
4. Do not tell anyone that the accident was your fault, even if you think it was.
5. If possible, take photographs of the scene and the car damage with a camera or your cell phone. If there are any skid marks, try to take photos if you can do so safely.
6. If there are any witnesses, it is very important to obtain their names, addresses and phone numbers. Often, proving your case in court may come down to what the witnesses observed.
7. File a Police Report if the police do not respond to the scene. A police report will document any car damage or injuries you have sustained and will allow you to file an insurance claim.
8. If you are injured, or the emergency responders suggest that you go to the Emergency Room, do so immediately. Often times, adrenaline will kick in during the accident and you may not realize the extent of your injuries until days or weeks later. It is vital to document your injuries as soon as possible with a medical provider.

9. Contact Welcenbach Law Offices to speak to an attorney to discuss your rights and obligations after an accident.

10. Welcenbach Law Offices will contact your insurance company. You must cooperate with them in their investigation of the accident and your injuries.

[Contact](#) the Milwaukee personal injury and car accident lawyers of Welcenbach Law Offices, S.C. at 414-774-7330 for a free consultation.