

You Do Not Have a Right to Remain Silent

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When it comes to your duties as an insured with your automobile insurance company, you do not have a right to remain silent – unless you do not want your insurance company to pay. No one ever talks about what to do when YOU cause a car crash. Notice I did not say car “accident”. Let’s be honest, there are no accidents when it comes to car crashes. You did not intend to hurt someone when you crashed into the back of their car. You did, however, intend to look at your phone when you were driving. You did intend to too following someone too closely because they were driving slowly. You did intend to look at that Porsche next you when you should have been looking at the traffic slowing in front of you. It is human nature to make bad choices when driving. It is one of the many reasons we are required in this state to have automobile liability coverage. But no one ever really knows what duties they owe and what rights they have with their insurer when you are the one that causes a car crash.

Duties.

Assignment number one - read your policy. Colorado requires you to carry bodily injury liability coverage. The liability coverage you have on your vehicle pays for the bodily injuries someone may incur from the collision you caused. Colorado requires that you carry a minimum of “25/50” (“minimal limits”). This means that your insurance carrier will pay a maximum of \$25,000.00 per person that is injured in a collision that you cause and your insurance carrier will pay a maximum of \$50,000.00 per occurrence or per collision that you cause. However, simply having that coverage in place is not where your job ends. When you cause a car crash you have duties as an insured. You, like any party to a contract, have a duty to adhere to the terms of your policy. When you cause a car crash, most likely, you have a duty to promptly notify your insurance company that you have been involved in a crash. You may have a duty to give a recorded statement. A recorded statement being when your insurer asks your questions pertaining to the crash and you answer them. All is recorded. All of these duties essentially fall under the same hood which is a duty to cooperate with your insurer when you cause a crash.

Be advised, your right to remain silent still exists in any traffic ticket you may have received in the car crash. You may have a reason to be concerned about that traffic ticket for careless driving, failure to stop at a stop light or following too closely. Perhaps the ticket will affect the driver’s license that is required for your job or you have racked up too any points already with prior tickets and are at risk of losing your license. If you have concerns about the criminal ramifications of a traffic ticket from the car crash, please consult one our criminal defense attorneys. Any recorded statement given to your insurance company can be used in your criminal case.

What happens if you do not cooperate? If you dig your head in the sand, do not answer your phone or even acknowledge your insurer when you cause a crash the risk is that your insurer may not insure and indemnify you. If your insurer denies payment of your liability insurance, you are exposed. The person you hit in the crash can come after you personally for any damages caused in the crash. If the insurance company covering the

vehicle for the person that you hit has to pay to repair their insured's vehicle or pay for bodily injury damages, the insurance company can come after you. The bottom line is that when you cause a crash, it is simple, notify your insurer. Answer their questions. If they want a recorded statement, give it. Participate, cooperate and you have fulfilled your duties as an insured.¹ Now it is time for the insurer to fulfill their obligations.

First the Bad and the Ugly.

Let's rewind to the scene where you have just rear-ended someone after looking at your phone. You call your insurer and promptly notify them. Days later, you give a recorded statement. You respond to every phone call, letter and request from your insurance adjuster. In fact, you have spoken too much to your insurance adjuster that you are now invited to the adjuster's wedding. However, a year later you receive a phone call from your new best friend insurance adjuster and get the fantastic news that you are going to be sued by the person that you rear-ended a year ago. Why?

You have paid for liability coverage so why are you being sued? The "why" you are getting sued is everything. You have a right to know. Find out what your insurer has done on your behalf to resolve claims made by the person you rear-ended. First, confirm the amount of your liability limits. For example, when you were involved in that rear-end crash, say your liability limits were \$100,000.00. Next ask the insurance adjuster specifics about the bodily injury claim made by the person that you rear-ended. Ask how much their medical bills were, how much income loss there was, how much are they asking for pain and suffering. The point is, find out the details of the liability claim. If the person you rear-ended has \$5,000.00 in medical bills and they are asking for your policy limits of \$100,000.00 to settle their claims against you, then your insurer is not being unreasonable in settling this claim on your behalf. If, however, the person you rear-ended has \$95,000.00 in medical bills and they are willing to resolve their claims against for the \$100,000.00 policy limits and your insurer offers \$50,000.00 in settlement of all claims against you, the insurance company is being unreasonable.

Having a lawsuit filed against is scary enough. But things can get even scarier. Once the lawsuit has been filed, litigation can be scary. You have a duty to participate in the litigation process but be advised, your lawyer, is not in a monogamous relationship with you. Part of what you pay for when you pay for liability coverage is legal representation should a lawsuit be filed against you for the damages you caused to others a car crash. The legal representation is a lawyer hired by your insurer. The lawyer does represent you, but they also represent your insurer. Therefore, you have one lawyer representing two clients who have different goals. You want the lawsuit to go away and for your insurer to pay out the insurance benefits that you have been paying for so that this lawsuit goes away. Your insurer, however, wants to pay as little as possible. Insurance is big business after all.

So what do you do? You have a duty to participate in the litigation process but knowledge is power. If you indeed caused the crash and you are deposed, tell the truth. Fess up. What you may not know is that your "attorney" when they filed their answer to the lawsuit filed against you, denied that you were at-fault in the car crash. Get the details of what the insurer has been doing on your behalf. If this is a scenario where you have

¹ You will have additional duties as an insured when making an underinsured/uninsured motorist claim or a claim for medical payment benefits. You most likely will need to fill out a HIPAA release, provide medical records and bills, and undergo an independent medical examination. Read your contract with your insurer to make sure you understand your contractual obligations.

\$100,000.00 in policy limits and the person that you rear-ended has \$95,000.00 in medical bills, make it known to your attorney that you want the insurer to pay the policy limits. Write them a letter. If the lawsuit results in a trial and a jury awards \$200,000.00 to the person that you rear-ended, guess what? You are personally responsible for the \$100,000.00 portion of that verdict that is in excess of the \$100,000.00 policy limits that you paid for. While we are on this topic, make sure you are properly insured. If you have \$100,000.00 liability coverage and significant assets, you are exposed. Get adequate coverage. This means make sure you have more than the minimal liability limits. Get the maximum liability limits. Get an umbrella policy which is extra coverage. The more insured you are, the more protected you are. To that end, get adequate underinsured/uninsured (UIM/UM) motorist coverage and make sure the umbrella you have includes both bodily injury coverage and UIM/UM coverage. All of these coverage options cost very little, especially when compared to the cost of being exposed when you do not have this coverage in place. If you have questions about your coverage, call us.

Now for the Good.

Colorado has excellent law to not only protect your rights as an insured, but to give you recourse when your insurer behaves badly. Your insurer has a duty to take reasonable steps to resolve a claim on your behalf. If you have had a lawsuit filed against you when your insurer should have settled, if you have been exposed to an excess verdict, you may have a bad faith claim against your insurer. How do you know for sure? Call us. Talk to a lawyer. Your duty to cooperate when you are the cause of a car crash does not mean you have a duty get sued or pay an excess judgment. When you cause a car crash, you do have rights. Do not assume that your insurer is handling everything on your behalf. When you cause a car crash, get involved in your claim. Ask questions, make sure your insurer is doing their very best to get this claim resolved on your behalf. You always have a right to talk to a lawyer. You can even hire a lawyer to represent with regards to your liability claim. Your lawyer would be independent counsel and would ensure that you were properly cooperating with your insurer but also making sure your insurer was acting reasonably.

Get in the Game – Do Not Sit on the Bench.

Bottom line, you have to be your own best advocate. When you cause a car crash, do not just assume that your insurer will handle it. Fulfill your duty to cooperate but do not let it end there. Get involved, be smart and let your insurer know that they have duties to fulfill as well. If you are concerned that your insurer is behaving badly, call us. Do not wait for inevitable “you’re getting sued” phone call. Your best offense is to start with a good defense.