

# CAR & TRUCK CRASHES

*10 Secrets Victims Should Know to  
Protect Their Rights*



**Marc Whitehead, Attorney at Law**

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## **Marc Whitehead Biography**

Marc Stanley Whitehead is the founding partner of Marc Whitehead & Associates, Attorneys at Law, LLP which was established in 1992 in Houston, Texas. Marc was born on November 24, 1966 in Memphis, Tennessee and was raised in Normangee, Texas. He graduated in 1985 from Normangee High School as class valedictorian. Marc attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance. Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992. He is also admitted to practice before all U.S. Federal District Courts in Texas, the U.S. Court of Appeals-Fifth Circuit and the U.S. Court of Appeals for Veterans Claims.

Marc's areas of practice include personal injury and wrongful death, social security disability, long-term disability insurance denials, employee benefit denials, ERISA litigation and insurance claims.

He is also a former adjunct professor of Law at the University of Houston Law Center teaching Civil Trial Advocacy. He has also been an instructor for the National Institute of Trial Advocacy teaching Civil Trial Advocacy and an instructor for the National Business Institute teaching Social Security Disability Law.

Marc is double board certified in both Personal Injury Trial Law by the Texas Board of Legal Specialization and in Social Security Disability Law by the National Board of Trial Advocates.

Marc Whitehead was the 2009-2010 President of the Houston Trial Lawyers Association, a current member of the Board of Directors of the Texas Trial Lawyers Association, a former member of the Texas Trial Lawyers Board of Advocates, and a member of the American

Association of Justice. He is a former HBA Social Security Section Chairman (2004-2005) and is a former member of the governing council. He is a member of the following organizations: Association of Civil Trial and Appellate Specialists, National Organization of Social Security Claims Representatives, Texas Aggie Bar Association, Houston Volunteer Lawyers Association, College of the State Bar of Texas, and the Houston Bar Association. Marc is married and has four daughters.

Mr. Whitehead authored the following articles:

- *Tort Reform As It Relates to Strict Products Liability;*
- *A Lawyer's Guide for Determining Eligibility of Social Security Disability Claimants;*
- *Nuts & Bolts of Social Security Disability Law;*
- *The Five Step Sequential Evaluation Process Used in Determining Disability For Social Security Claimants;*
- *The Social Security Disability Puzzle-How to Fit the Pieces Together and Win Your Claim;*
- *Disability Insurance Policies-Solving the Mystery and Proving Your Case*

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## Auto & Truck Crashes

### *10 Secrets Victims Should Know to Protect Their Rights*

#### Introduction

At Marc Whitehead & Associates, auto and trucking accidents are the most common type of personal injury claim that we handle. Over the past two decades we have handled hundreds of these types of claims that involved major injury and death to the less serious soft tissue or whiplash type of claims. We view all claims with equal importance because we know that it is the most important event occurring in our client's life at that moment. During this time, an injured victim is undergoing stress from all sides, insurance companies wanting statements, doctors and hospital bills needing to be paid, cars in need of repair, the need to get a rental car paid for, lost time from work and most importantly your lost health and the physical pain that comes with it. We tell our clients one thing: Go to the doctor to get better; we take care of the rest.

What can we do for you?

- We help you to find a doctor who is trained in treating patients with injuries;
- We help you to have your car repaired;
- Interview and obtain statements from all witnesses to the accident;
- Research the law that applies to your case;
- Preserve the evidence of your damages in a way that will be admissible in court if it is necessary to go to trial;
- Advise you as to the value of your claim through research as to settlements and verdicts of other cases similar to your own;
- Prepare a detailed and convincing settlement brochure to present to the insurance company to obtain a fair settlement of your claim; and,
- Take your case to trial if necessary in order to obtain fair compensation for you.

All of this is done at no charge to you. We get paid only if we collect money for you.

The following eBook is designed to give you guidance in pursuing your legal rights if you have been in a car or truck accident. Whether you choose to hire Marc Whitehead & Associates or not, we hope that this eBook prevents you from becoming a victim twice!

## Car Accident Statistics

With the increasing number of cars on the roads each year, car accidents have become an unfortunate, but common sight. On average there are over 6 million car accidents in the United States every year and more than 3 million people are injured due to car accidents; 2 million of these injuries are permanent. There are over 40,000 deaths due to car accidents every year. Surprisingly, however, the number of car accident deaths has been decreasing in recent years.

*Each Year There Are  
6 million car accidents,  
3 million car accident related injuries,  
400,000 car accident related deaths.*

People between the ages of 15-24 are most severely affected by car accidents. The majority of car accident victims are the drivers, then the passengers, pedestrians and lastly cyclists. These injuries and deaths leave the victims and their families devastated and often not knowing where to turn to next.

The resulting costs after an auto accident can be overwhelming: medical bills, ongoing physical therapy, long-term injury care, property damage. With help, however, these expenses don't have to be financially disastrous. If you were involved in an accident that wasn't your fault, you may be able to recover extensive money damages. A good attorney will diligently break down the details of your case to show that you were a victim of negligence. It is our job to show fault and ask the court to provide you with the money your family needs to recover from the accident.

## Causes of Car Accidents

Practically all car accidents that are not caused by equipment failure can be avoided if drivers use reasonable and ordinary care factoring in their driving conditions. Below are some of the most common causes of car accidents:

- Driving under the influence of drugs or alcohol
- Speeding
- Reckless driving/cutting in and out of traffic
- Ignoring road conditions
- Talking on a cell phone/texting while driving
- Generally not paying attention
- Failure to maintain vehicle mechanically

## Damages Recoverable from Car Accidents

When involved in a car accident, most people worry about how much the incident will cost them and who is responsible. Here is a list of expenses generally covered by the responsible party:

- Medical expenses: Doctors visits, emergency room treatment, hospital expenses, physical therapy, medical devices.
- Future medical expenses: These are recoverable if the injured person can show that he is likely to need continued medical care as a result of the accident. This amount may be determined by the opinions of doctors and other medical professionals.
- Pain and suffering: Pain and suffering damages may be granted for the physical and mental pain resulting from the accident. The jury will look at the nature of the injury, the severity of the pain, and how long the person is likely to suffer in the future.
- Mental anguish: Mental anguish includes apprehension, fright, anxiety, nervousness, worry, humiliation, grief, shock, and/or embarrassment. If the victim has been disfigured by the accident, mental suffering is almost always recoverable.
- Lost wages: You may recover the amount of money you would have earned between the time of the injury to the time of a judgment had you not been injured.
- Loss of earning capacity: You may recover damages for loss of earning capacity if you can show that your ability to earn money in the future has been impaired.
- Loss of consortium: This relates to the loss of the benefits when one spouse is injured or killed.
- Property damage: Recovery for the value of property that was damaged.

## Truck Accidents

Interstate commerce is still thriving across the U.S. and throughout Texas. Semi-trucks, or 18-wheelers, are seen on surface streets, as well as highways. No matter where they are, they are a potential danger to themselves and the vehicles around them.



Many tractor-trailer drivers are paid by the delivery and frequently get a bonus for arriving ahead of schedule. Therefore, some drivers may take risks such as driving longer than acceptable shifts, speeding or being more aggressive in their driving. Big rig drivers can suffer fatigue from the monotonous aspect of their job and may fall asleep at the wheel. They also

can be distracted easily by talking on cell phones or CB radios. If they are in a hurry, they may not accurately complete a safety check of the semi-trailer. This can lead to faulty tires, lights or brakes.



These factors account for the high percentage of serious injuries and death resulting from an 18-wheeler accident – even if it is a single vehicle accident. According to the NHTSA in 2003, Texas reported more than 3,000 fatal vehicle accidents. More than 475 of those involved large trucks. Nationally, in the United States there are approximately 5,000 people killed on our nation’s roadways due to truck accidents every year. A little over 150,000 people are injured in truck accidents each year: 1 in 4 passenger vehicle deaths in multiple-vehicle crashes involves a large truck. Large trucks are involved in multiple vehicle fatal accidents twice as often as passenger vehicles. Obviously, due to their massive size and weight, truck accidents are usually catastrophic, resulting in death and serious personal injuries.

Accidents involving large trucks are often more complicated than auto accidents, and the injuries are often more severe. Drivers of large trucks are responsible for maintaining their vehicles properly on the road, obeying traffic laws, and respecting the space of other automobiles. But when mistakes are made, victims are physically and financially devastated.

## **Common Causes of Truck Accidents**

Truck drivers are “professional drivers”, so they should be held to a higher standard than your ordinary driver of a personal passenger vehicle. Despite this label of being a professional, the safety record in the U.S. trucking industry is abysmal. Below are common causes of serious trucking accidents:

- Jackknifing
- Stopping distance
- Blind spots
- Turning accidents due to wide turns
- Equipment failures
- Driver error
- Driver fatigue
- Substance use
- Defective equipment
- Over-weight trucks
- Over-loaded trucks
- Failure to have proper maintenance
- Failure to have proper inspection
- Unsafe operation of truck

Many people do not realize that they can sue the truck driver and/or his company after they are injured in a truck accident in Texas. All trucks driving the roadways of Texas are required to have insurance for this purpose. It is unlikely that any victim involved in a truck accident will walk away unhurt.

Many trucking companies even have their own team of investigators who arrive at the accident scene within minutes so they can begin to plan their defense.

## Texas Auto Accident Laws-The Basic Steps

The basic steps that need to be taken in a successful auto accident claim or lawsuit are:

### 1. Establish Negligence

The law states that all Texas drivers must exercise reasonable care and avoid doing things that they should know will probably cause injury to a person, or to property. Failure to comply with this is defined as negligence. That is, you are being negligent if you drive in such a way that anybody could predict you would cause harm. Some obvious examples would be speeding or driving at night without your headlights on.

#### *Proper Lookout*

The Proper Lookout standard was developed to pinpoint negligence more clearly. A driver's *proper lookout* is his duty to be observant and careful, keeping an eye on nearby vehicles and their speed, obeying the basic rules of the road, and being aware of the general situation in which he's driving. Failure in Proper Lookout constitutes legal negligence.

#### *Basic Steps for a Claim or Lawsuit*

- 1. Establish negligence*
- 2. Establish Causation*
- 3. Establish Damages*

### 2. Establish Causation

The next step is to show that the other driver's negligence caused the accident in which you were injured. This is known legally as *causation*, and can sometimes be difficult to establish. If, at the time of the accident, you gathered information such as phone numbers of nearby witnesses, the causation step will be easier. Perhaps you took photos of skid marks, positions of vehicles, vehicle damage, or lighting and weather conditions. These would be very useful in proving the circumstances of the accident.

### 3. Establish Your Damages

In this chain of legal thinking, the third step is to prove that your damages were the result of the other person's negligence. The term *damages* includes:

- Medical and funeral costs
- Lost income
- Lost support or companionship
- Replacement or repair costs for your vehicle
- Pain and suffering

#### *Comparative Negligence*

If the defendant in your lawsuit can prove to the court that your own actions contributed to the accident, the court may reduce your damages. It will establish a percentage of responsibility for you and reduce your award by that percentage. This is known as your comparative negligence.

### What You Should Know About Your Automobile Accident

An automobile accident may be a minor intrusion on your life or create a major life altering experience. Understanding the laws that may affect your rights in an accident will assist you in dealing with the situation promptly and put the experience behind you.

This book provides information that you may use in determining whether you need legal assistance. Many insurance companies apply standard guidelines to each claim they receive. Unfortunately, some may try to take advantage of your inexperience in the claims handling process. Hopefully, the information provided will enable you to resolve your claim with as little trouble as possible, and as quickly as the system will allow.

This literature is presented in three different parts:

1. What should you do when you are in an auto accident?
2. How do you determine who is at fault?
3. What are your damages under Texas law?

## What Should You Do When You Are In an Auto Accident?

Immediately summons the police. Also request an ambulance if anyone appears injured. If you are incapacitated by your injuries, be sure your spouse or other family member or attorney is notified of the accident so that someone may obtain the information set forth below.

The most important thing to do when involved in an accident, to ensure that you will be covered if a valid policy exists, is to obtain vital information from the other parties. Always carry a pen and paper in your glove box to record the following from each party:

- Name,
- Address,
- Work and home phone numbers,
- Driver's license number,
- Tag number and make of automobile,
- Auto insurance information including the name of the insurance company, the policy number, and the expiration date.

*Always carry a pen and paper in your glove compartment.*

As you are writing down this information, make notes to yourself regarding the involvement of each driver, the damage caused to his car, his demeanor after the accident, and anything he may say regarding the accident.

Draw a diagram of the accident scene. Do not trust this to memory. Step off the distance of all skid marks, and include this in your drawing. Estimate the speed of each vehicle upon impact. Note how each car became involved, and its location after the accident. Speak to witnesses, and obtain their name, telephone number, and address. Ask them what they saw, and supplement your notes with their recollection. If a police officer is summoned, much of this information will be reflected in the formal report he or she prepares on the accident. You should refrain from discussing the manner in which the collision occurred. Be careful what you say. Comments charged by emotion may be misunderstood or misquoted by others.

*At an accident scene:  
Take notes.  
Draw a diagram of the scene.*

Of course, you should accept no fault as it may unclear at the time who, if anyone is clearly responsible. Although you may feel sorry for what has happened, you may not be legally liable for the collision. You should therefore withhold your comments for the time being, and wait for the police to arrive. Once they do, cooperate fully with their investigation. They will probably ask for you to give a statement and you should comply. If your memory is vague due to the excitement and trauma of the accident, make sure that you explain this to the officer. It is important for him to know that you may miss slight or seemingly unimportant details due to your emotional state.



Because the officer must investigate the accident, leave your vehicle where it is without obstructing traffic more than is necessary. Texas Transportation Code 550.021(b). Occasionally, the police may not be called or may not arrive. If so, the Texas Department of Public Safety requires that you complete an accident report within 10 days if an injury occurred, or if total property damage exceeds \$500.00. Texas Transportation Code 550.061(a). You may obtain this form at any law enforcement office. Retain a copy for your records.

Hopefully, significant injury will not result from the accident. But, should it occur, care will be provided at the scene by an emergency medical team. You will then be transferred to a hospital for immediate follow up care. Most counties in Texas have public community hospitals. These facilities provide services regardless of your ability to pay or the presence of insurance coverage. You should request transportation to one of these hospitals should you believe that you may have suffered a serious injury. Immediate symptoms such as headache, neck pain, shooting pain into shoulders or arms, and numbness may indicate serious cervical injury.

*Physical injury may not cause immediate pain.  
When in doubt see a doctor.*

Many times, a real physical injury may not cause immediate pain. You may have suffered an injury, which causes delayed symptoms. The onset of pain may occur up to 24 hours after some serious neck injuries. Some accident victims choose to ignore their pain as they treat it with over the counter pain medication. You may be so

concerned or anxious with other problems related to the accident that a lingering physical discomfort goes unnoticed. A friend or family member may have told you that the pain will subside

given time. Be aware that any new or different feeling may indicate a serious medical problem. Ensure that you visit a physician as soon as possible to receive medical care.

Immediately contact your insurance company. Delay in doing so may leave you without coverage. Give them all of the information you obtained at the accident sight. Allow them to take a statement, and inform them of any physical problems that you may have. If you have seen a doctor, provide his name and address to the company. If you have not seen a doctor, ask how you may go about obtaining authorization from them to do so should any



medical problems arise. Record the highlights of each conversation with the adjuster in a notebook. Reference the following section regarding your rights under the law to determine what may be owed to you.

If another driver appears to be clearly liable, contact his insurance carrier. Ask if the particular policy is valid, and if a claim number has been assigned. Obtain their address and send a certified letter to them. Explain in the correspondence that you were involved in an accident with their insured, and that you would like to file a claim against his policy. An adjuster should contact you

*Determining fault is important.  
This generally establishes who  
covers the losses.*

regarding the situation. If no response is received within 3-4 weeks, send another certified letter. Continue to do so until someone from the company contacts you.

Some insurance companies may ignore your request for assistance. Should this occur, you may be forced to obtain the advice of the attorney.

## How Do You Determine Who Is at Fault?

The investigating officer may have ticketed one of the parties at the accident sight. This is generally an indication that a particular law was broken, but does not necessarily establish who caused the accident. Sometimes the police report will reveal which driver, in the investigator's opinion, should be held responsible for the accident.

If no one was ticketed, or you wish to clarify who may be at fault, you can consult the Texas Statute concerning operation of a motor vehicle.

Determining fault is important because this will generally place either your insurance company or the adverse insurance company in a position that requires them to cover the losses. Regardless of who caused the accident, you may be able to recoup at least your property damage, lost wages and medical expenses, depending on the insurance coverage available.

## What Are Your Damages Under Texas Law?

You may be able to recover your losses even if you are at fault or if the other driver is uninsured. If you purchased Personal Injury Protection and Collision coverage, your insurance company must repair your vehicle and pay for reasonable and related medical expenses when the accident was caused by you. If you carry uninsured motorist coverage, your losses will be paid by your insurance company if the other driver who was at fault did not have a minimum liability policy as is required by Texas law. Check your policy to determine if you paid for this coverage.

If the other party is at fault, and the adverse insurance company accepts liability, an adjuster may offer to settle your claim for property and personal injury damage. The law allows you to recover for certain losses, and you are encouraged to go to the local law library and look up the following cases.

- An injured person may recover reasonable expenses incurred for medical, surgical, hospital, and nursing services and any other items reasonably and necessarily incurred in effecting a cure of one's injuries. Powell v. Underbrink, 499 S.W. 2d 206 (Tex. Civ. App. San Antonio 1973, no writ).
- Future medical expenses that, in reasonable medical probability, will be incurred are also recoverable. Powell v. Underbrink, 499 S.W. 2d 206 (Tex. Civ. App. San Antonio 1973, no writ).
- You may recover for past and future pain and suffering. Hernandez v. Baucum, 344 S.W. 2d 498 (Tex. Civ. App. San Antonio 1961, writ refd n.r.e.).
- Mental anguish is recognized as a separate and distinct element of damage. Southwestern Bell Tel. Co. v. Cook, 30 S.W. 2d. 497 (Tex. Civ. App. Fort Worth 1930, writ refd).
- One may recover for impairment if he/she shows that there is a disability that extends beyond mere pain or lost earning capacity. Green v. Baldree, 497 S.W. 2d 342 (Tex. Civ. App. Houston [14<sup>th</sup> Dist.] 1973, no writ).
- Your family members may recover for impairment of familial interest known as loss of consortium. Whittlesey v. Miller, 572 S.W. 2d 665 (Tex. 1978).
- Finally, exemplary damages may be assessed if it is found that the responsible party acted with gross negligence. Channel 20, Inc. v. World Wide Towers Services, Inc., 607 F.Supp. 551 (W.D. Tex. 1985).

These cases merely provide a reference framework for you to determine what rights you may have. Even though liability may be clear and your damages real, you may encounter difficulties settling your claim. Should you ever feel that you are not being treated properly, and that the insurance company through its adjuster has not fulfilled its duty, you should contact an attorney to discuss your claim.

Always bear in mind that a settlement is final, and anything you may sign could release the insurance company from paying something else that might be owed. When in doubt, consult an attorney before agreeing to any settlement.

## Who Can Be Sued?

1. The other driver;
2. The other driver's employer if the driver was in a role of employee at the time of the accident;
3. The owner of the vehicle if he was not the driver. But you must be able to establish:
  - a. That the owner was a passenger at the time of the accident,
  - b. That the driver was acting as an agent of the owner at that time, or
  - c. That the owner should have known the driver was reckless or inexperienced.

## Answers to 10 Common Questions

### **1. I have been in an automobile accident. What is the first thing I should do?**

First, call the police, by dialing 911. At the scene of the accident, be sure to obtain the name, address, license number, and insurance information from the other drivers involved, as well as all witnesses. If you are injured in an accident, it is important to seek treatment immediately. Sometimes serious injuries do not cause immediate pain. If you experience even minor pain after an accident, you should see your doctor immediately.

### **2. An insurance adjuster for the other driver just called me, and asked me to give a tape-recorded statement about the accident. Whose side are they on?**

Not yours. The other driver's insurance company has two goals: first, they want to protect the interests of the driver who caused you injury, and second, they want to pay you as little money as possible.



### **3. Should I give the tape recorded statement that the insurance adjuster for the other driver is requesting?**

Although the insurance adjuster who calls you may give you the impression that you are obligated to give statement, you are under no obligation to give a statement. If you were injured, or if you are partially or totally at fault in the accident, you should contact a lawyer prior to deciding whether or not to give a statement to an insurance company.

### **4. I have been injured. Who will pay my medical bills?**

If you have medical payments coverage in your auto insurance policy, you will be able to have your bills paid under that coverage. If you have health insurance, the health insurance should pay for your bills. Your health insurance may file a lien on your case, so that you may be required to pay these liens from your settlement. Your attorney can help to negotiate these liens.

### **5. Who will pay for the damage to my car?**

Initially, the at fault driver's insurance should pay if liability is clear and they accept responsibility. If not and you have your own insurance, your insurance company will pay to have your car fixed or will pay you the value of the vehicle as a total loss. If you are not at fault in the accident, your insurance company will seek to be reimbursed by the insurer of the driver at fault. If you do not have collision insurance, and you are not at fault, the insurer of the driver at fault should pay for your property damage.

### **6. Who will pay for a rental car while my car is being repaired?**

Generally, once the insurance adjuster for the other driver has investigated the accident and determined that the other driver is at fault, the insurance company for the other driver will pay for a rental car while your car is being repaired.

### **7. Can I get money for my pain and suffering?**

Upon convincing proof to the insurance company of your pain and suffering, most insurance companies will agree to pay for pain and suffering damages. Proof of pain and suffering is one of the most challenging aspects of an automobile accident claim, and often requires witness statements and doctors' reports to support the claim.

**8. The accident was a short time ago, but the insurance company is offering me money now. Should I take it?**

Be very careful. Insurance companies make a profit by keeping money and investing it, not by paying it to injured victims. An early offer may not fully compensate you for your injuries, especially if you do not know yet the full extent of the injuries. Remember that once you accept the offer of the insurance company, they will pay you no further money. This will be true even if you later discover that your injury is worse than you thought.

**9. If I hire a lawyer, what will the lawyer do for me?**

Your lawyer should help you to find a doctor who is trained in treating patients with injuries; help you to have your car repaired; interview and obtain statements from all witnesses to the accident; research the law that applies to your case; preserve the evidence of your damages in a way that will be admissible in court if it is necessary to go to trial; advise you as to the value of your claim through research as to settlements and verdicts of other cases similar to your own; prepare a detailed and convincing settlement brochure to present to the insurance company to obtain a fair settlement of your claim; and, take your case to trial if necessary in order to obtain fair compensation for you.

**10. I would like to talk to a lawyer, but I cannot afford one. What can I do?**

Practically all attorneys who specialize in representing injured victims in Auto & Trucking cases will represent you on a contingency fee basis. This means the lawyer will take a percentage of what they collect for you with no money up front. Most experienced lawyers will also front litigation expenses. In short, you should not have to pay to talk to a lawyer. However, it is key to talk with a lawyer that is an experienced personal injury trial attorney. The best indicator of experience is whether or not they are “Board Certified” in personal injury trial law by the State Bar. To become Board Certified in Personal Injury Trial Law, an attorney must have:

- Been licensed to practice law for at least five years
- Devoted a required percentage of practice to personal injury trial law for at least three years
- Handled a wide variety of personal injury trial law matters to demonstrate experience and involvement
- Attended personal injury trial law continuing education seminars regularly to keep legal training up to date
- Been evaluated by fellow lawyers and judges
- Passed a day-long written examination

The consumer can identify a Personal Injury Trial Law Board Certified attorney in one of many ways. A Personal Injury Trial Law Board Certified attorney is entitled to indicate certification on business cards and letterhead by stating "Board Certified – Personal Injury Trial Law – Texas Board of Legal Specialization." Special Competence awarded by the Texas Board of Legal Specialization, and lists the certification in legal directories and telephone listings under "Attorneys – Board Certified." The Texas Board of Legal Specialization was created by, and operates under the authority of, the Supreme Court of Texas. Its members are appointed by the president of the State Bar of Texas.

## **Do's And Don'ts In The Event of an Auto Accident – A Checklist to Keep in Your Car**

- *Do not* leave the accident scene
- *Do not* admit fault
- *Do not* act upon the belief that you are not injured until a reasonable time has passed since the accident. (Often injuries do not surface until several days, or even weeks, after an accident)
- *Do* stop immediately, but safely
- *Do* call the police immediately
- *Do* be sure to obtain the name, address, license number, phone number, registration number, and insurance information from all other persons involved in the accident
- *Do* obtain the name, address, and phone number of all witnesses to the accident
- *Do* notify your insurance company immediately (but do not give a recorded statement until you have obtained counsel)
- *Do* protect your legal rights, and obtain legal counsel immediately if you have been injured

## **Car Repairs – How Do I Protect Myself?**

Your best protection from fraud and faulty repair work is to find a reputable mechanic or repair shop before your car needs to be repaired.

Ask your friends if they know of a reliable mechanic.

After you have selected some repair shops, call the Better Business Bureau or the Office of the Attorney General in your area and ask if anyone has complained about the shops you are considering.

Ask the shops for the names of customers you can contact to see if they are satisfied with the shops' work.

You should ask the repair shop to give you a written estimate before any work is done on your vehicle. Then tell the mechanic if my car requires any additional parts or labor over the estimate, call me with the information before you do anything. Your final bill should be close to the estimated price.

If the charge is much higher than the estimate, or if the work was done without your authorization and you feel that you have been overcharged, question the bill. Have the shop write out the reasons for the difference in cost. Keep that information. If you refuse to pay a repair bill, the mechanic has the legal right to keep your car until you pay.



If you feel that the shop has overcharged you, call the Attorney General’s Consumer Protection office nearest you. Only a private attorney is likely to be able to get your car back if you don’t pay the unreasonable charge, but the court proceedings necessary can be expensive. Often the easiest solution is to pay the bill, making clear that you do not agree to it, then sue the shop for return of the excessive amount plus penalties under the **Deceptive Trade Practices Act**.

- Get everything in writing, and keep every piece of paper.
- Ask the mechanic for your old parts back. (The mechanic may return some parts, such as alternators and brake shoes, to the parts supplier for a refund, so you may not be able to get them.)
- Tell the shop manager clearly and calmly that you are dissatisfied. Write down his response.

## A Few Other Car Repair Tips

If you suspect that the repair shop has violated the law, and you can’t get them to resolve the problem to your satisfaction, your first step should be to take your car to another repair shop. Give the mechanic a copy of your itemized receipt and order an inspection of the alleged repairs and parts.

Get this report in writing. If you notice the same problem with your car is recurring, or find a new problem that should not have arisen, you will be in a better position to negotiate a refund from the first mechanic if you get a second mechanic’s opinion of the work done - *in writing*.

If you have an auto repair problem that the shop will not correct, the Consumer Protection Division of the Office of the Attorney General nearest you or your local Better Business Bureau can provide a mediation service to help resolve your problem with the repair shop.

Texas has no comprehensive statute specifically governing auto repairs. However, the Deceptive Trade Practices / Consumer Protection Act include some sections which deal with repairs. Under this law, it is illegal to:

- Knowingly make a false or misleading statement about the need for parts or repair service.
- State that work has been done or parts were replaced when that is not true.
- Represent that goods are original or new, when in fact they are second-hand or refurbished.

## How Do I Report Fraud?

If you have an auto repair problem that the shop will not correct, the Texas Attorney General's Consumer Protection Office and the Better Business Bureau both offer a mediation service to help resolve your problem.

## Consumer Information

For more information, call the Attorney General's Consumer Protection hotline at 1-800-337-3928, or contact your nearest regional Consumer Protection Division office.

- Austin: 512-463-2070
- Dallas: 214-742-8944
- El Paso: 915-772-9476
- Houston: 713-223-5886
- Lubbock: 806-747-5238
- McAllen: 210-682-4547
- San Antonio: 210-225-4191

All consumer complaints must be made in writing. Write or call for a complaint form to:

Office of the Attorney General  
Consumer Protection Division / 010  
P.O. Box 12548  
Austin, TX 78711-2548

## Laws Regarding Auto Accidents

Reckless Driving	Texas Transportation Code	' 545.401(a)
Following Too Closely	Texas Transportation Code	' 545.062(a)

Failure to Control Speed	Texas Transportation Code	' 545.351(a)
Failure to Stop at Proper Place	Texas Transportation Code	' 544.007(g)
Failure to Stop at Designated Point	Texas Transportation Code	' 544010 (b)
Brakes Not Maintained	Texas Transportation Code	' 547.402(d)
Drove Without Lights	Texas Transportation Code	' 547.302(a)
Driving While Intoxicated	Texas Transportation Code	' 49.04
Cut-in After Passing	Texas Transportation Code	' 545.053(a)
Fail to Stop For School Bus	Texas Transportation Code	' 545.066(a)
Failed to Yield at Stop Intersection	Texas Transportation Code	' 545.151(a) & ' 545.153(b)
Failure to Yield at a Yield Intersection	Texas Transportation Code	' 545.151(a) & ' 545.153
Failure to Yield Right of Way on Green Signal		
	Texas Transportation Code	' 544.007(a)
Failed to Signal for Stop	Texas Transportation Code	' 545.105
Failed to Signal Required Distance	Texas Transportation Code	' 545.104(b)
Failed to Signal Turn	Texas Transportation Code	' 545.103
Improper Turn Signal	Texas Transportation Code	' 545.107
Failure to Signal Lane Change	Texas Transportation Code	' 545.106(a)
Speeding	Texas Transportation Code	' 545.351(a)
Unsafe Speed	Texas Transportation Code	' 545.351
Speed Under Minimum	Texas Transportation Code	' 545.363(a)
Disregard Red Signal	Texas Transportation Code	' 544.007(d)
Disregard Yellow Signal	Texas Transportation Code	' 544.007(e)
Change Lane When Unsafe	Texas Transportation Code	' 545.060(a)
Disregarding Flashing Red Signal	Texas Transportation Code	' 544.008(a)

Disregard Stop Sign	Texas Transportation Code	' 545.151(a) & ' 545.153(b)
Turned From Wrong Lane	Texas Transportation Code	' 545.101(a)(b)
Turned When Unsafe	Texas Transportation Code	' 545.103
Failed to Use Due Care for Pedestrian	Texas Transportation Code	' 552.008
Failed to Stop and Render Aid	Texas Transportation Code	' 550.021

## Conclusion

Car and truck accidents, even minor fender benders, can be stressful from all sides – insurance adjusters, medical bills, cars repairs, lost time from work and compromised emotional and physical health. Whether you are at fault or a victim, don't get tangled in these issues. Let an experienced lawyer guide you through the maze. Contact the lawyers at Marc Whitehead & Association for a free consultation: [www.Personal-InjuryLawyer.com](http://www.Personal-InjuryLawyer.com), (800) 562-9830.