

The background of the cover is a dark, cracked, and shattering surface, possibly representing a broken windshield or a shattered object. Scattered across this surface are several documents and a stethoscope. In the upper right, there is a document titled "INSURANCE POLICY" with a sub-section "AUTO INSURANCE CLAIM FORM" and a red stamp that says "DENIED". In the lower left, there is a document titled "SECOND NOTICE" with a table and various fields. In the lower right, a stethoscope is visible. The overall lighting is dramatic, with bright highlights breaking through the cracks.

# After The **CRASH**

**A Guide to South Dakota  
Motor Vehicle Accidents**

**WILLIAM D. SIMS**

# **After The** **CRASH**

**A Guide to South Dakota  
Motor Vehicle Accidents**

**WILLIAM D. SIMS**

**NORTHERN PLAINS JUSTICE**  
SIOUX FALLS, SOUTH DAKOTA

**PHONE: 605-306-4100**  
**WWW.NORTHERNPLAINSJUSTICE.COM**

Copyright © 2021 William D. Sims

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the author. Published 2021.

Printed in the United States of America.

ISBN: 978-1-63385-413-0

*Published by*

Word Association Publishers  
205 Fifth Avenue  
Tarentum, Pennsylvania 15084

[www.wordassociation.com](http://www.wordassociation.com)  
1.800.827.7903

# CONTENTS

<b>PREFACE</b> .....	1
<b>CHAPTER 1</b> What to Know Before the Crash .....	3
<b>CHAPTER 2</b> Impact and at the Scene.....	9
<b>CHAPTER 3</b> The First Week.....	13
<b>CHAPTER 4</b> Medical Treatment.....	17
<b>CHAPTER 5</b> Property Damage Claims .....	21
<b>CHAPTER 6</b> Other Claims Against the At-Fault Driver.....	25
<b>CHAPTER 7</b> When to Talk Settlement .....	31
<b>CHAPTER 8</b> When There's not Enough Insurance.....	33
<b>CHAPTER 9</b> Recovered Money–But Can You Keep It? .....	37
<b>CHAPTER 10</b> When to Settle a Claim on Your Own .....	39
<b>CHAPTER 11</b> When to Look for a Lawyer– and How to Find One.....	43
<b>CHAPTER 12</b> What You Should Expect from Your Lawyer.....	47
<b>CHAPTER 13</b> How to be a Good Client .....	51
<b>ABOUT THE AUTHOR</b> .....	53



# PREFACE

This book is not legal advice. I am not allowed to give specific legal advice here. I can only offer general suggestions and identify red flags for you to watch out for. If I accept your case, then we will be in this together. Until then, however, please do not construe anything in this book to be legal advice about your case. I will begin giving specific legal advice for your case only after you have agreed to hire my firm, and after I have agreed, in writing, to accept your case.



# CHAPTER 1

## What to Know Before the Crash

“A book called ‘After the Crash’ starts out with a chapter telling me what I needed to know before I was in a crash? Why on earth would he put that in this book?” you wonder. The answer is simple...because this information is that important. And, I don’t know of many, if any, other places where you can find this information.

First, let me say that there are a lot of things you probably should know before you are in a crash. How to drive defensively, how to plan ahead and how to drive in inclement weather are certainly near the top of the list. But there are a lot of resources out there that cover that information. This chapter focuses on one that gets far less attention...insurance. Over the years, I have found that, when shopping for insurance, most people look primarily at price and not value. That is, they look for the most cost-efficient policy (i.e., cheapest), without considering the most cost-effective policy (i.e., sufficient protection for the cost).

Almost everyone who owns a vehicle buys auto insurance, yet do you really understand what you are purchasing? Many



## Understand what you are purchasing

people I talk with express frustration at the complexity of insurance coverages. Insurance agents are a great source of information, but only if you can make time to meet with one and ask questions. Policies purchased over the Internet don't provide much guidance at all. Below is a brief explanation of insurance coverages you may have and certainly need to consider.

**Liability:** This coverage typically has two parts, Bodily Injury (which covers injuries to other people not in your vehicle) and Property Damage (which covers damage to property owned by others). This is insurance you buy to protect yourself from claims of others and provides payments to others. The question to ask yourself when setting your coverage limit is, how much protection do I need? You will be personally liable for any damages above the policy limit amount.

**Uninsured:** This coverage provides benefits to you when another motorist that does not have insurance injures you or someone in your car. This is insurance you buy to protect yourself and provides benefits to you. Unfortunately, you can't always count on other drivers having any insurance, so this coverage is necessary for your own good. The question to ask yourself when setting this limit is, how much money do I want available to pay for damages I suffer in a crash? For any damages above your limits, you must rely on yourself and your own savings.

**Underinsured:** This coverage provides benefits to you if another insured motorist does not have enough insurance coverage to pay for all the losses you've suffered. This is insurance you buy to protect yourself and provides benefits to you. In South Dakota, you cannot "stack" this coverage with another motorist's coverage, meaning you cannot add this coverage amount to the at fault driver's insurance coverage. In other words, in South Dakota  $2 + 2$  does not equal 4;  $2 + 2 = 2$ . Consequently, the question to ask yourself when setting this limit is, how much money do I want available to pay for damages I suffer in a crash? For any damages above your limits, you must rely on yourself and your own savings.

**Medical Payments:** This coverage provides immediate payment for medical expenses incurred by you or others riding in your car. The "right" limit for this coverage depends on how much "cash on hand" you have and what health insurance coverage you have available to pay for health care. Having this coverage may provide access to immediate care and to care health insurance may not always cover. One drawback is that medical payments coverage may have to be paid back to your insurance company if you recover funds from a negligent driver (see Chapter 9 for more information).

Review your own policy "declarations page" to see what coverages you have. If you have questions about the coverages or amounts, schedule an appointment with a trusted insurance agent or advisor as soon as you can. You need the right coverage in place before a crash happens to have benefits available after it does.

**A Note on Coverages -  
The Most Difficult Conversation We Have**

You might think the most difficult conversation I have is when I tell someone they don't have a case. While that is certainly not an easy conversation, it is not the hardest one. Near the top of the list is when I have to tell someone who is injured that they do have a case, they did nothing wrong, the person who injured them did do something wrong, and there is not enough money available to cover their damages. This situation can violate our natural "sense of fairness" and seems wrong, but it is all too often the legally correct answer.

This typically happens when neither the person who committed the wrong (the defendant) nor the person who was wronged (the plaintiff) purchased enough insurance coverage prior to the crash. Like it or not, medical care is expensive. A visit to the emergency room after a car crash, especially one requiring x-rays, a CT scan or MRI, can easily cost \$10,000-15,000. Follow up care with doctors, therapists and similar conservative care providers can add another \$5,000-\$25,000 in costs. Even a "simple" surgery to help an injury can cost \$30,000, while a complex surgery may run well over \$100,000.

Compare these costs with the mandatory state minimum insurance coverage requirement in South Dakota of \$25,000. Other states require even less. Many drivers on the road, wooed by insurance advertising about saving the most money on premiums, are led into buying the cheapest policy without understanding they are also buying very little protection. As is readily apparent, the mandatory minimum insurance limit

of \$25,000 provides almost no money to cover medical bills, much less to provide for lost wages, disability, pain, suffering, loss of enjoyment of life and other damages a plaintiff suffers. And, unless the defendant has a huge amount of personal assets (which is extremely rare) there is nothing I can do about it after the fact.

On top of that, lienholders, subrogation interest claimants and medical providers all want a piece of the available money too (see Chapter 9). In those cases, I do my best to identify and negotiate with these entities to reduce the amount of money going to their pockets and maximize what is going to our clients. But sometimes there just isn't enough to go around. As I've seen before, everyone may leave the claim feeling unsatisfied that justice has been done.

So, is the situation hopeless? After a crash occurs, it may appear that way. I can search for more defendants if others might be liable. And I can look to the plaintiff's own insurance for additional money. If no others were involved in the incident, however, there may not be anyone else to collect from. If the plaintiff's insurance coverage matched the defendants, there may not be any additional money available due to a state statute that subtracts the defendant's coverage from the plaintiff's (ex: If the defendant had the state minimum and so did the plaintiff, there is no additional coverage, i.e. \$25,000 from the defendant's policy minus \$25,000 from the plaintiff's policy equals \$0 in additional coverage from the plaintiff's policy). In those cases, there is little or nothing that can be done aside from maximizing what goes to the plaintiff from what little is available.

## AFTER THE CRASH

---

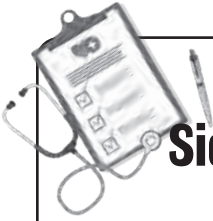
Often the only real solution to this problem must occur before the problem arises. You must purchase more insurance coverage to protect yourself. As stated above, uninsured and underinsured motorist coverages are insurance you buy to protect yourself. Buy as much as you can afford. Hopefully, you'll never be in a situation where you need the coverage. But, if you are, at least you know there will be coverage available for more of your damages.

# CHAPTER 2

## Impact and at the Scene

Wham! Maybe you saw it coming. Maybe you braced for impact. Maybe you had no idea and got a huge surprise jolt. In any event, your mind is probably shifting from your daily to-do list to a hundred different topics all clamoring for attention. What was that? Am I ok? Is my car ok? Is anyone else hurt? What do I do? Should I get out? Who do I call? Am I bleeding? How bad is it? These questions and a host of others will be going through your mind. The most important one to focus on at first is...none of them. Take a breath. One slow, deep breath in and back out. Panic never helped anyone in an emergency. You need to slow down so you can assess the situation.

Once you are calm, you can more accurately determine what to do next. Call 911, especially if your car is smoking, leaking fluids or if you know you are hurt. If you are injured, limit movement to only what is necessary for safety purposes. Once medical personnel arrive on scene, they will best be able to ensure your injuries are evaluated and the next level of care is determined.



## Sidebar—On being “fine”

“I’m fine.” “We’re fine.” “Thank goodness no one was hurt.” These are extremely common phrases I see in police reports and insurance statements taken shortly after a crash. I see them even when the person making them is badly injured and doesn’t know it. After a crash, adrenaline is coursing through your body. It is affecting your brain to such an extent that you cannot accurately determine whether you are injured. It can take hours or even days for your body to calm down enough to make this determination. That is why you need to get assessed by a medical professional.

Your physical condition and well-being should be the number one priority at the scene. All the other advice you may have read or been told about collecting evidence, taking photographs, making a diagram of the scene, exchange information with the other driver and getting witness contact information are secondary to your health and safety. Keep things simple. Focus on your safety. Save collecting evidence of what happened for later and only do those things if you can safely do so with a clear head. Also, I’ve seen conflicting informa-

tion about talking with the at fault driver. In my experience, that can lead to disagreements or even fights more than it can lead to anything productive. If you do interact with the other driver, again, keep it simple. See if everyone is ok (but see the sidebar here) and if someone has contacted authorities. After that, retreat to neutral territory and wait for help.

When you are released from the scene, unless you are transported by ambulance to the hospital, your priority should be getting checked out medically as soon as practicable. You are not in any state to determine what is “fine” and what is injured. In fact, many serious injuries don’t even manifest symptoms for hours or days after impact. That is why you need to see a medical provider. Make sure you listen to their recommendations and follow their directions for additional evaluation if things don’t improve as expected.

**Many serious injuries don’t even manifest symptoms for hours or days after impact.**





# CHAPTER 3

## The First Week

A word to the wise—this is going to be a difficult week. Your physical condition will be changing. Insurance companies will be calling. And you're going to be trying to figure out a hundred different things from whether you can work to how to get your kids to practice or how to get groceries without a vehicle. Again, slow down. Many of the people asking you for information legitimately need it, but they don't necessarily need it the same moment they ask for it. You can take the time necessary for informed action.

First, your physical condition. Soreness will appear in both expected and unexpected places. Back pain, neck pain and arm/shoulder pain usually show up in this time. Headaches develop. Bruises and abrasions will become apparent. While no one I know likes to go to the doctor, too many people I meet with try to “tough it out” during this time. Spending a reasonable amount of time icing, using heat packs, and taking over the counter medicine before seeking more medical care is fine—if it is done at the direction of a medical professional. Waiting just to wait or hoping things will get better is not a

solution. Rarely do injuries heal properly on their own without intervention. Many times, a serious injury can go undiagnosed while someone hopes things will improve. Don't make this mistake. Visit your medical provider and follow your doctor's orders.

Also, this is a good time to start documenting your injuries. Take photos of cuts, abrasions, and bruises. A picture will go much further in explaining your injuries than words ever will. This is also a good time to start a journal or calendar tracking system to record how your injuries are progressing and what life activities they are impacting. This can be helpful both to better inform your medical provider about your physical condition and to present a more accurate and thorough claim for your damages later.

Second, property damage claims. If there is one area car insurance companies deliver on much of the time, it is in resolving property damage claims quickly. Frequently an adjuster will look at your car or have it looked at by a repair shop of your choosing and the car will be repaired or the

### **Take photos of cuts, abrasions, and bruises.**

insurance company will pay the fair market value of the car if it can't be repaired. Many times, the insurance company will pay for a rental car for you until your car is repaired or the fair market value is paid. An important point here—the law says you are entitled to be paid for the fair market value of your car. That may be different than the value of your car *to you*. It may be far different from what you owe on your car. More than one person has walked away from the property damage

settlement feeling cheated by the system because of the difference between what their car is worth and what it is worth *to them*. While there is usually room for some negotiation in price, make sure to set reasonable expectations for the property damage portion of your claim. For more on this topic, read Chapter 5.

Third, bodily injury claims. This is a tough area and one filled with variations, pitfalls, and traps. An adverse driver's insurance company is liable for the fair and reasonable value of the harms and losses you've suffered. At the same time, they are driven by metrics, financials and data that tell them to close claims quickly. Just remember, you are a person, not a data point. Your experience is unique to you. It is not exactly like another "similar" person in a "similar" impact such that the insurance company's artificial intelligence system can say you will fully heal in 4-6 weeks with conservative treatment.<sup>1</sup> Just know the adverse insurance company is going to call you to take your statement on what happened. You can agree or disagree. They will say they record it for quality assurance purposes. It isn't. They are collecting evidence for litigation, something they will be forced to admit later in the process. They may be sympathetic and perhaps helpful. But beware. They aren't in it for you. They only want to close your claim and move on. If the calls, text messages, emails and letters from insurance companies become overwhelming, slow things down. And consider looking for help (see Chapters 11 and 12). More information on these claims is presented in Chapter 6.

---

1 No kidding. I've seen this statement from virtually every major insurance company in all types of crashes, regardless of crash severity or type of injury.



# CHAPTER 4

## Medical Treatment

If you've read the previous chapters, you'll know I am an advocate for professional medical evaluation and care. No one knows your body better than you. You know when something isn't right. But a medical professional knows better than you what to do about it. Too many people suffer needlessly for too long because they hope things will get better. Conservative treatment can be a good option and so can self-care at home. Just do it under the supervision of a medical professional.

There is another reason to make sure you are taking actions with the advice of a medical professional—they keep records. There is a saying in the litigation world (rightly or wrongly) that if it isn't in a record, it didn't happen. Countless times I've seen insurance companies and defense lawyers claim my clients were either not injured, not in pain, or injured by some other event besides a crash just because there is no medical record showing treatment. In the real world, there are very good reasons people don't go to the doctor. In the insurance world, these “gaps” in treatment can be a get

**... if it isn't in a  
record, it didn't  
happen.**

out of jail free card to pay less on claims or deny them entirely.

Over the years, through my clients' claims and my own medical conditions, I've seen a

pattern of care develop for many injuries. Family physicians start with conservative care—usually x-rays, muscle relaxers and anti-inflammatory medicine. If those are not successful, a referral to physical therapy is made, followed by additional imaging (like CT scans and MRIs) and referral to experts for care. There is a reason care progresses in this fashion—many times, it works. So, don't be afraid to start the progression. As long as you do your part—and you need to put forth effort to do that—you may find relief a lot earlier than you think.

Throughout your treatment, I am a huge believer in being your own best advocate. This starts by asking good questions. Ask your doctors what diagnoses you are being given and why. Ask what treatment options are available and make sure you fully understand each option before choosing one. Ask what you can expect from each option and when you can normally expect to feel a difference. Ask when you should present for follow up care or seek more aggressive treatment. Basically, you need to have conversations with your doctors, not just visits.

Being an advocate for your own care can sometimes mean seeking a second opinion. Many times, people plateau with care to the point they just aren't improving. Sometimes a rift or even resentment can develop between a patient and a care provider. These things happen. It is normal. In those cases, a second opinion can be just the thing to lead to a

breakthrough. Sometimes, you just need to be curious for long enough to find help. Many people, me included, have been helped tremendously by never giving up the search for a treatment that provides relief. If you don't know where to start, ask around. If you are represented by a lawyer, that is a great resource to ask (see Chapter 12).





# CHAPTER 5

## Property Damage Claims

According to South Dakota law, a negligent driver is liable to pay for the fair and reasonable costs of any property damaged in a crash. That can be either 1) the difference between the fair market value of the property immediately before the crash and immediately after the crash; or 2) the reasonable expense of making any necessary repairs to the damaged property plus the difference, if any, in the fair market value of the property immediately before the occurrence and its fair market value immediately after repair. That sounds easy enough, but “fair” is often a matter of opinion. To complicate things further, case law has often limited these damages to *either* the value to repair the property *or* the difference in value before and after the crash.

To put yourself in the best position to negotiate property values, start by researching the “fair market value” of your property. Pay attention to what market you are researching. There can be a large difference in the value of a car in South Dakota as compared to Texas, for example. Also, property condition matters. Mileage, vehicle trim level, wear and

## **Research the “fair market value” of your property**

tear, and vehicle history affect values greatly. Finally, don't rely on just one data point for value. If you are researching car values, calculate an average of at least three website opinions and compare that with vehicles for sale in the local market.

If you find yourself significantly disagreeing with an insurance adjuster on the value of your property, here are some things you can try to increase an offer:

- 1) Ask the insurance company to show you how they calculate their value—you may discover they have inaccurate information about your vehicle or are comparing it to a different market. More than once I've seen insurance claim files where vehicle values were based upon little more than Google searches for a similar year, make and model vehicle without regard to mileage, vehicle trim level or location.
- 2) Show proof of upgrades. Many times, you've upgraded your vehicle beyond what “stock” values reflect or you recently made a recent repair. Did you have new wheels or tires? A performance muffler? Upgraded trim or interior parts? A recent brake job? If so, and you can prove the value of those items, you may be able to be compensated for them.
- 3) Work your local contacts. If you still disagree on values, go to local car dealers. Show them the insurance

company data and ask them how realistic it is. With your friendly attitude (and knowing you are now in the market for a car) some dealers will give you a letter stating that the insurance company value is not realistic for your area and give an opinion on a more accurate local value.

- 4) Lastly, don't forget about other property. Often your car is not the only damaged property. Were your glasses broken? Clothing ruined? Groceries or other purchases strewn about the roadway? If so, they are also items of property damage you can claim.

A final note of caution on negotiating property values. If you have a rental car provided by the adverse insurance or if they are storing your totaled car until a value is reached, you must recognize there is a cost to those things to the insurance company. And those are not costs the insurer will pay indefinitely while you disagree on values. At some point, the insurer will threaten to stop paying for the rental or start charging you for storage. Yes, they may be able to do that. It is in your best interests to gather information and negotiate without unnecessary delay.



# CHAPTER 6

## Claims Against the At-Fault Driver

Insurance companies sometimes refer to other claims against the at fault driver as “bodily injury” claims. In a sense, this is true because most people focus first on injuries and medical treatment. Taking a broader view though, there are many other claims that fall under this same umbrella. Just a few examples include lost time at work, loss of vacation days, use of paid time off benefits for injury reasons, pain, suffering, loss of enjoyment of life, disability, scarring and loss of earning capacity. Many of these items affect those involved in a crash into the future and, for some, the rest of their lives. Below, two general classes of damages are discussed, along with some things to keep in mind when placing a value on them.

### **“Special Damages”**

Special damages are really just damages on which you can place a dollar value. Medical bills are probably the most common example. When you see your medical provider you,

or your insurer, gets billed a certain amount. That amount, so long as it is reasonable and medically necessary, can be claimed as an item of damage.

Another common item of special damages are lost wages. When you miss time from work for which you don't get paid, or when you use vacation or PTO due to your injuries, the law recognizes you should be compensated for it. That lost time or used days have dollar values associated with them. There are two important things to keep in mind when presenting a wage loss claim. First, insurers expect to see a medical need for wage loss. You should get a doctor's note stating you need to miss work due to your injuries. Insurers are far more likely to believe a doctor than to take your word for it. Second, you will need to provide proof of the values. Your employer will have to provide payroll information, and you may have to provide W-2 forms or past tax records to prove your income.

That theme continues for other special damages. If you can place a dollar value on something, you will need proof that the value is what you claim. Research will be involved. Although the law recognizes you can testify about the value of certain things, you may need to provide other, independent evidence of the values you are claiming.

### **“General Damages”**

General damages are those for which it is not possible to place an exact dollar value. It may seem obvious, but there is no calculator or formula for placing a value on these types of

injuries. Below I discuss a few things to keep in mind when bringing these types of claims.

Physical pain comes with most car crash injuries. That pain leads to suffering when you miss out on activities, lose sleep, experience a loss of enjoyment of activities and generally miss out on the best parts of life. When it comes to putting a value on this pain and the suffering that comes with it, the focus is on 1) intensity 2) frequency and 3) duration.

Intensity is the amount of pain you experience. Doctors usually have you rate your pain on a scale from 1 to 10. Pain with a lower intensity has less value than pain with a greater intensity. Frequency is how often you experience pain. Generally, the more often you experience pain, the higher the value of the claim will be. Duration is how long the pain lasts. Duration has two components, duration of each event of pain and duration of pain overall. For example, a migraine headache may last an hour or a day. The longer it lasts, the greater the compensation should be to adequately value the pain. Similarly, headaches may last for a few weeks after a crash or for years. The longer in time you will experience the pain, the greater value that must be provided to fairly compensate you for it.

Another important component of general damages is the time in your life at which they occur. This is where insurance companies tend to fail to adequately compensate people. Again, you must remember, and reinforce to the insurance company, that you are not a data point. You are a unique person with unique life experiences.

Once of the more common, and disgusting, experiences I've seen of this factor comes with valuing claims of the el-



derly. Too many times insurance companies hold the view that suffering while older doesn't matter as much because people were close to death anyway. This is not just a lie but is incredibly hurtful and demeaning to the injured person and their family. Often, the last few moments are the most precious. Think of it in these terms...we rarely remember the first trip we took with our spouse or a parent or the first holiday spent together, but we will always remember the last. Life is most precious when there is little of it left. And a negative impact later in life can have a greater adverse effect. When it does, the claim should increase in value to recognize the enhanced loss.

Of course, age is not the only factor. You may have been injured while pregnant, which caused a huge scare for the life and wellbeing of your unborn child. You may be a new parent and not able to care for your baby. You may have been passed over for a promotion at work because you physically couldn't perform the same as before the crash. There are almost limitless life experiences that are impacted by a crash. They are specific to you and impact you in a unique and sometimes profound way. Those losses need to be appropriately valued to account for the losses you have suffered.

### **Don't Believe the Lie—the “Factor” Theory**

More times than I can count, people tell me they've heard from a friend or read on the Internet that they should receive “X” times their medical bills for pain and suffering. Even worse, a huge number of lawyers believe this is true too.

Think of the hypocrisy involved with this statement—saying there is no calculator for general damages and then placing a value on those damages by using a calculator to multiply your medical bills times 2, 5 or 10. That is the same as saying there is a calculator! And it completely ignores every factor set forth above for considering general damages. Most troubling to me, it treats every unique person as an indistinguishable data point. In essence, it says your life is worth no more than a simple factor of the number of times you've been to the doctor. This lie wholly fails to properly value claims. Don't buy the lie and don't use this shortcut method to place a value on your life experience.

As you can see, the issue of general damages is complicated. It certainly takes a lot of work to discover the extent of losses and to provide evidence of them. This can be a labor-intensive process and there is no shortcut for the work. If you find yourself unsure of what to do with these damages, read Chapters 10 and 11 for more information.

**DO NOT use  
this shortcut  
method to  
place a value  
on your life  
experience.**



# CHAPTER 7

## When to Talk Settlement

When it comes to discussion settlement, you need to first understand there are two factors working together and those two things may not be in your best interests. First, insurance companies have a desire to close claims quickly. Doing so looks good for the data points they track and tends to save money by paying early before damages are fully developed. Second, you may also be experiencing pressures to settle. Many people have mounting bills that need to be paid or they may simply want to “move on.” When these two factors combine, there is a risk you will be undercompensated for your losses.

Most importantly, before talking numbers, take the time to fully investigate your damages. That involves treating for medical problems and being patient to see if things get better, worse or stay the same. It can take a lot of time to figure things out, but it is impossible to know the extent of your claim’s value without knowing the extent of your damages. At a minimum, I recommend waiting 6 months before engaging in settlement talks. Even when you think you’re better,

## **Wait six months before engaging in settlement talks.**

there may be a nagging pain, even a little, that just doesn't go away. More than once I've seen those little things turn into big things. If you've settled your claim early, it is too late to get additional compensation.

This brings me to the next big point...if insurance companies pay, they will do so only once. As frustrating as it may be, adverse insurance companies will not pay your medical bills as they are incurred. They will pay one time at the end of your claim and only in exchange for a Release of Claims that says you will never make another claim for the same incident again. You get one shot at this, so make sure you get it right.

The way to get it right is to take your time. Make sure you've fully thought through all the ways this crash has impacted your life and the lives of those around you. For some of your damages, you will need to collect other evidence to support your claims. Make the effort to collect it. Taking your time up front will save you time in the end and improve your chances of obtaining a fair settlement when the time is right.

# CHAPTER 8

## When There's not Enough Insurance

Hopefully, you've already read Chapter 1, and specifically the subsection entitled **A Note on Coverages — The Most Difficult Conversation We Have**. If not, I recommend doing so now. This can be another complicated area of the law, so you may need additional help if you find yourself in the position of not identifying enough coverage to pay for your damages. Given the complexity of this topic, a general overview is all that can be presented here.

The primary source of recovery for car crashes is the at-fault driver's insurance policy. That policy will have a limit. In South Dakota, it could be as little as \$25,000. Some states require more and some less. Hopefully, the person who hit you made a responsible choice to purchase more coverage. If not, you'll have to identify another source to pay for your damages.

Once the at-fault driver's policy limit is exhausted, the at-fault driver becomes personally liable for your damages. It is an unfortunate reality of our world today that many people do not have sufficient assets to pay for those damages. That

makes it very unlikely, though not impossible, the at-fault driver will be a source of recovery.

The next most common source of recovery are other defendants. If the at-fault driver was on the job at the time of the crash, his or her employer may have an insurance policy to cover some of your damages. Or perhaps another driver or circumstance also caused the crash or created circumstances that made it worse. In those cases, there may be other negligent parties who may have insurance available to assist with your damages.

Once other parties' insurance policies are exhausted, you may need to rely on your own insurance policy by way of your Uninsured or Underinsured Motorist coverages. It is critically important, and often required as a part of your insurance policy, to involve your insurance company in any underlying action with at-fault companies. Failure to do so may prevent you from being able to bring a claim against your own insurance company. For this reason, it is best to notify your

**Involve your insurance company in any underlying action with at-fault companies.**

insurance company early if you are involved in a crash and keep them informed of any settlement discussions. Certainly, discuss your potential claims with them prior to signing any Release of Claims for at fault parties.

In some cases, there just isn't any further coverage for your damages available. That is a difficult reality to face. In those cases, sometimes the best result

is a combination of pre-planning (like disability insurance, health insurance and savings), community-based support programs and your personal support network. It is important to identify and develop these networks before you need them. If you haven't done so though, it's never too late to start. And sometimes, the biggest need you'll have is the humbleness to ask for help. You'll be surprised at how many people and organizations are willing to help if they know you have a need.





# CHAPTER 9

## **Recovered Money— But Can You Keep It?**

One conversation I have with every potential client the first time we meet is the “hands in your pocket” talk. This is when I describe the reality that, at the end of a case, there are many hands that want to reach into the potential client’s pocket to take back some of the money they recover on their claim. There are always more hands than what the potential clients have considered.

The biggest source of “hands” comes by way of the concepts of subrogation and liens. You don’t need to understand the legal complexities of these terms at this point. For now, it is enough to know that your insurance policies are exchanges of promises. Your insurance company has promised to pay certain money for your benefit under certain circumstances. In return, you have promised to pay a premium for the policy and to reimburse the insurance company if you collect those same benefits from a negligent third party. The most common subrogation interests and liens come from health insurance benefits paid and auto insurance medical payments coverage.

For that reason, it is important to involve those insurance companies early in the claims process. You need to know what expectations insurance companies have for reimbursement before you can consider any offers. By way of example, \$1,500 for your claim may sound like a fair deal but will seem far less fair if you later learn your health insurance company wants to be reimbursed for \$1,200 worth of benefits paid toward your medical care.

Yes, this can be complicated, and it does involve a lot of coordination with insurance companies. But don't skip this step. Many times, these insurance policies have terms that allow them to deny you future benefits until the money is repaid. That means the company may be able to deny you coverage for an annual physical or emergency room visit on an unrelated matter until they are reimbursed for the value of the care they paid towards the car crash. This is another area where asking questions up front and taking the time to do it right will lead to a better outcome at the end.

**Many insurance policies have terms that allow them to deny you future benefits**

Finally, another big source of “hands” at the end of a claim are unpaid medical bills. These providers need to be repaid as well. If you forget or forego this step, you may find yourself on the wrong end of a bill collector's call or even a lawsuit. Make sure you know what bills you've incurred and what the balances are prior to settling your claim.

# CHAPTER 10

## **When to Settle a Claim on Your Own**

Value is the most important factor when determining whether to settle a claim on your own or whether to hire help. Value is unique to each person, and we all place different values on different things. For some, money in their pocket as quick as possible has great value, even if it is less money than they otherwise could achieve. For others, there is great value in not having to deal with insurance adjusters or figure out medical provider balances and subrogation interests.

Value is also a consideration, and business reality, for a law firm. I recognize that even for “simple claims,” my firm will spend dozens of hours building the claim and coordinating with the entities I’ve mentioned previously. A claim needs to be worth enough that my firm can be fairly compensated for the work we’ve done while providing a fair recovery for you as well. As I mention in my “hands in your pocket” talk (see Chapter 9), I recognize my firm is one of those hands. For that reason, you need to be convinced there is value in having

someone do the work for you even when that means paying a percentage of your claim for help.

If, after considering all the above, you believe the value equation favors a do-it yourself approach, great! Many times you can achieve a good result and save money in the process. Make sure to follow the advice above about collecting your evidence to support your claim. Once you have a good package of supporting evidence, present your claim. But there a few pitfalls to be aware of as you try to settle your claim.

Beware of insurance company gamesmanship with language. Far too many insurance companies have trained their employees to say things that sound like promises to pay which, in reality, are not. Common phrases include, “You can forward your bills to us,” “We will consider all your bills,” or

**Beware of  
insurance company  
gamesmanship  
with language.**

“We want to make sure we have all your bills.”

These are not promises to pay, so don’t believe them and don’t rely on them. Collect your evidence and present a compelling case.

Also, you need to be aware of a common insurance practice employed when “considering” medical bills. That is, insurance companies unfairly reducing the value of medical bills paid by injured people and then only offering to repay the lesser amount. Some companies call it “location-based billing”. Others call it “best practice billing” or making a “regional adjustment”. Some won’t come out and say it, instead hiding behind cryptic statements like, “We’re paying

you for all the bills we have considered,” or “all reasonable medical bills”.

Any way they try to label it, it is unfair. It leaves injured people in a position of having to pay a medical provider one amount and then being reimbursed for less. Even more disturbing, this is happening in situations where the injured person bears no fault for what happened. The end result is to leave more money in the insurance company’s coffers and less in the pockets of people injured by the negligence of others.

The good news is you can do something about it. The first step to solving this problem is to call it out. Make sure the insurance company tells you, in writing, what the company is doing. They need to “show their math” on calculating medical bills. Don’t let them hide behind confusing statements and watch out for the buzzwords above. Make them own what they are doing. Next, report what is going on to the South Dakota Division of Insurance. You could even file a complaint online at [dlr.sd.gov/insurance](http://dlr.sd.gov/insurance). Make every effort to get full justice, not partial justice, for your claim.



# CHAPTER 11

## **When to Look for a Lawyer— and How to Find One**

If you've read Chapters 1, 9 and 10, then you know bringing a claim is not for the faint of heart. There will be a lot of coordination, communication and gathering of documents, along with letters and phone calls both to and from insurance adjusters. If the things described previously about supporting a claim and coordinating payment of any recovery sounds overwhelming, that's OK! That is in part why my profession exists. I tell clients my firm is here to free up their time and resources so they can focus on recovering from a crash. So, if you've made the decision to get help with your claim, good for you...but now, how do you find a good lawyer?

There is no one best way to find a lawyer, but it usually involves more than one step. Many people ask family and friends for recommendations. Many also search the Internet for a lawyer. Recommendations and having an online presence are great starters, but neither of those things guarantees you will find the right lawyer for you. To do that, I recom-



mend doing a little homework and then meeting with your prospects. Not every great lawyer and great client make a great team. When you meet with a lawyer, ask yourself if you feel like you were provided with helpful information. Did you have a comfort level with the lawyer? Did they seem to have a good concept of your case and what claims are available? Were they clear in what they could do and could not do for you? Did they have helpful recommendations about other resources? Do you feel like you were listened to? How well did the lawyer understand you and your concerns?

This may be surprising, but disagreement is OK! It is not a lawyer's job to tell you that you're right or to tell you what you want to hear. In fact, sometimes they need to tell you what you don't want to hear to protect your rights and maximize your recovery. Remember, you're trying to hire an expert who knows more about this system than you. Trust them to apply their knowledge. I've always told clients they don't have to agree with me, but they do have to trust me. Make sure you trust the lawyer you hire.

Of course, plaintiffs' lawyers don't all enjoy a good reputation and for some, that is with good reason. Below are a few "red flags" to watch out for when meeting with lawyers. If you see any, consider carefully how much you should trust the lawyer.

- "Just sign our agreement and then we can talk about all that." Beware of someone more interested in your claim than in you.

- “Your case is worth X dollars.” The first time someone meets you, they can’t possibly understand enough about your medical treatment, life situation and the harms and losses described earlier. If they don’t know that, how can they know what your case is worth?
- “I’m sorry, but the attorney is not available. I can have someone else call you though.” There are legitimate reasons for law firm staff to deal with you on all kinds of matters, such as initial case intake, but you should have access to the legal professional ultimately responsible for your case. At my firm, we use a team concept where all members have roles to play at each phase in the case. For that reason, you may hear from any or all of them on any given subject during your case. Nonetheless, I am available to clients and will discuss their concerns with them directly. If an attorney is not willing to do that, consider looking elsewhere.

**Make sure  
you trust the  
lawyer you  
hire.**



# CHAPTER 12

## **What You Should Expect from Your Lawyer**

The best place to learn what to expect from your lawyer is directly from the lawyer at your initial consultation. They should be able to lay out a plan of what needs to happen for your case and who is responsible for each step. Another important place to look is in the Fee Agreement you sign. That document is the legal and binding contract between you and the law firm and should set forth what the attorney is doing for you and what you are paying in return.

Also, make sure you know your lawyer has your back all the way through trial. More than one injured person has learned the hard way that their lawyer was only available if a case could be settled quickly and they would need to find someone else when things got tough. At our firm, we evaluate each case at the outset and discuss with the client the probability of trial and likelihood of success. Our goal is to never sign up a case we wouldn't take to trial if that is the right thing to do for the client.

**Our goal is to never sign up a case we wouldn't take to trial if that is the right thing to do for the client.**

As I tell clients, my firm's job is to free up your time and resources to focus on recovery. Along with that, we coordinate with multiple insurance companies, identify potential sources of recovery, and generally direct the processing of your claims from the claimant's side. But that is not all we can do.

Many clients we encounter either do not have health insurance or don't have coverage for medical care they need. In those cases, a lawyer cannot pay for care for you, but we can help identify possibilities to obtain care. Any lawyer that does a lot of this work should have a good network of contacts they can put you in touch with who might be able to help. Also, in the event medical providers take collection action on bills, a lawyer may be able to work out a deal with the provider to withhold collection actions or limit late fees in exchange for payment upon recovery of funds from a third party.

If you reach one of the medical plateaus discussed earlier or are looking for a second opinion, a lawyer may be able to recommend someone. Again, any lawyer practicing a lot in this area sees thousands of medical records and talks with hundreds of patients. After a while, you get a good idea of which doctors listen to their patients, what types of care might be available that aren't always apparent and alternative types of medical providers who have provided relief to others.

As your claim progresses, you want to stay fully informed about your claim status. That requires regular communication between the firm and the client. At my firm, we try to contact every client at least once a month just to check in. I also tell each client they should never wonder what is going on in their case. If you find yourself wondering what is happening, it's time to pick up the phone and call or send an email to ask. We will accept responsibility for not making sure you knew and give you an update on what is happening now and next in your case.

Finally, at the end of the case, you want 1) a full say in the resolution of your case and 2) a complete explanation of the outcome. This includes explaining in writing what funds were recovered, where every penny is going, and why it is going there. There should not be any surprises during this process if there was a good intake discussion before hiring the lawyer and good communication throughout the case.



# CHAPTER 13

## How to be a Good Client

The foundation of any good client-lawyer relationship is trust. Each needs to be able to trust that the other one is being fully honest in what they say and will follow through on things they agree to do. Another aspect of trust is trusting your lawyer to know what needs to happen next. Nothing breaks down the client-lawyer relationship faster than second guessing whether the lawyer is right or refusing to listen to sound advice on your case. Remember, you are hiring someone with expertise in this area that you do not possess. You need to trust the lawyer to be good at what they do, and then help them do it.

Right behind trust in order of importance is good communication. Just like the lawyer needs to communicate with you, you need to stay in contact with the lawyer. You'd be surprised at how many times over the years I've been hired by someone ready to proceed one day who later "falls off the map" and won't return calls, emails or letters. A lawyer can't protect your interests or advance your claim without infor-



mation and cooperation from you! That requires good communication.

Good communication also means talking to your lawyer about your questions and concerns. This is helpful for at least two reasons. First, while it is normal for case concerns or questions to come up, most can be alleviated quickly and answered with early communication about expectations or case plans. Second, it can be tempting to seek information from family, friends, or the Internet about your case—even when those sources know little or nothing about it. When questions, concerns or ideas come up that may apply to your case, talk with your lawyer about them openly. And don't decide someone else is right and your lawyer is wrong without a full discussion first. Remember, you've hired an expert in

**Good communication also means talking to your lawyer about your questions and concerns.**

this area of the law. When in doubt, refer back to the most important rule of lawyer-client relationships. You must trust each other.

Cooperation towards a common goal of a full and fair recovery, combined with mutual trust and good communication will put you in the best possible position for a good result.

# ABOUT THE AUTHOR



## **William D. "Bill" Sims**

co-founded Northern Plains Justice with attorney Jeff Cole in 2018, following a successful stint as a partner at a prominent Sioux Falls law firm. He brings a wealth of experience in civil litigation cases. Bill's practice focuses

on helping people who have been injured in all types of accidents be compensated for what they've lost and assisting small businesses in managing their legal disputes.

Bill is an honors graduate of Evangel University and the Drake University Law School. After graduation, he was commissioned as an officer in the United States Air Force, where he served as a Judge Advocate, prosecuting and defending military crimes. He continues to serve our state and country

as an officer in the South Dakota Air National Guard. He has also served as an Adjunct Professor of Military Law at the University of South Dakota School of Law. Bill is licensed to practice in both South Dakota and Iowa.

### **Bill in His Own Words**

“I’m proud to serve as an advocate for those facing The System—a complex network of insurance adjusters, investigators, computer systems, and lawyers that claim to “help” while all-too-often failing to do so.”

“My philosophy on representing clients is simple: fight for what is right. I can’t guarantee a perfect outcome of a matter, but I can guarantee we will work to solve the many problems you are facing. You will be treated with the respect and dignity you deserve. Questions will be answered, and rights will be vigorously upheld. Throughout any case, you will likely experience a lot of ups and downs, and we’ll be there to guide you through them.”

# **NORTHERN PLAINS JUSTICE**

---

SIOUX FALLS, SOUTH DAKOTA

**PHONE: 605-306-4100**

**[WWW.NORTHERNPLAINSJUSTICE.COM](http://WWW.NORTHERNPLAINSJUSTICE.COM)**

WA

# ***Why does dealing with the aftermath of a car crash have to be so stressful?***

The phone calls and emails with insurance companies, time spent on the phone with claims adjusters—all meant to wear you down.

You're in dangerous territory, receiving conflicting advice about what you should be doing when what you need most is the honest truth.

*After the Crash* shines like a beacon in the dark night, providing guidance every step of the way—from what to do at the scene of the crash, to how to interact with your doctor and what you can include in your claim.

This book helps you to know when you can do-it-yourself and when you must seek professional help. It walks you through finding the right lawyer and becoming a good client.



**ATTY. WILLIAM D. SIMS**

*After the Crash* is like a steady, calming friend, telling you what to expect when you've been injured and how to position yourself to receive the best possible outcome.

I'm proud to serve as an advocate for those facing The System—a complex network of insurance adjusters, investigators, computer systems, and lawyers that claim to “help” while all-too-often failing to do so.

**NORTHERN PLAINS JUSTICE**  
SIOUX FALLS, SOUTH DAKOTA

**phone: 605-306-4100    [www.northernplainsjustice.com](http://www.northernplainsjustice.com)**

LAW | \$16.95

**WA** WORD ASSOCIATION  
PUBLISHERS

[www.wordassociation.com](http://www.wordassociation.com)  
1.800.827.7903  
Tarentum, Pennsylvania

