



## 20 MISTAKES THAT CAN WRECK YOUR CAR ACCIDENT CASE

1

**Mistake 1. You admitted fault.** Never admit fault even if you think you're at fault because subsequent investigation may find you're only partially at fault or not at fault at all. In one of our cases, our client was a pedestrian who was struck by a vehicle while crossing the street. She told the police officer it was her fault. When we evaluated the accident scene, we determined the other driver was at fault based on the location of the impact. We settled that case for policy limits of \$100,000.00.

2

**Mistake 2. You didn't call the police to make a report.** In many instances, the at fault driver will try to convince you not to call the police. The at-fault driver may tell you he or she is at fault and his or her insurance company will pay for everything. You then trust that person and don't call the police. The at-fault driver then calls his or her insurance company and says you were completely at fault. Now you don't have a police report with an investigation and a decision as to who was at fault. You've now given the at-fault driver's insurance company a reason to deny your claim, or at least offer you much less money on your claim.

3

**Mistake 3. You didn't treat immediately or within a reasonable time.** One of the biggest mistakes you can make after a car accident is not going to see a doctor immediately. It's very important to seek prompt medical attention, not only for your health and well-being but also to document your injuries as soon as possible. If you delay getting medical treatment, it could be devastating to your case because the insurance company will take the position that you weren't hurt after the crash, or you were hurt less than you say you were. They might even argue your injury resulted from another cause other than the car accident. Don't let the insurance company diminish your claim or try to shift the cause of your injuries. Seek immediate medical attention. If you don't have a doctor, we can provide you with a list of doctors we work with in your area that will treat you right away without you paying until the end of the case. That means you could get immediate medical care for your injuries and the doctor will be paid at the end of your case from the proceeds of your settlement.

4

**Mistake 4. You had unreasonable gaps in your treatment.** It's vitally important to follow your doctor's recommendations and treatment plan. Having a gap in your treatment could be fatal to your case because the insurance company will argue that your injuries resolved once you stopped treating or that they were minor to begin with because you weren't following your own doctor's treatment plan. If some event happens in your life where you must take a break from treatment, such as a death in the family, make sure you let your doctor know so the doctor can document your file and provide an explanation for the gap in treatment. Then resume with your medical care as soon as you can.



5

**Mistake 5. You didn't tell the truth.** One of the worst things you can do is not tell the truth when you're asked a question about your case. Remember, the way the insurance company will attack you is to make it look like you're not telling the truth so they can accuse you of lying. They do this because they know jurors don't like to award compensation to someone who isn't truthful. Even if you think telling the truth may hurt your case, it could be far worse if you get caught in a lie. Your credibility at every stage of your case is crucial to a successful outcome.

6

**Mistake 6. You tried to hide your pre-existing injury by telling the doctor you've never had pain before when you did.** This is one of the most common traps people fall into. Some people don't remember having previous injuries while others think they can outsmart the insurance company or the defense attorney. They always fail miserably. Insurance companies share information and have databases that know if you've been injured in previous car accidents. After the lawsuit is filed, insurance defense attorneys are legally permitted to subpoena your prior medical records and will review them and know about your previous injuries. At a deposition, they will ask you if you've ever had a pre-existing injury to the same body part that is now injured in hopes that you say "no". Once you say "no", they can now paint you out to be a liar to the jury. CACI jury instruction number 107 is an instruction the jury will hear. It says "However, if you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said." If you're caught in a lie, a savvy insurance attorney is going to argue to the jury that they should disregard your entire testimony.

7

**Mistake 7. You filled out a doctor's intake sheet and said you never had neck or back pain when you did.** Watch out for this mistake. Take the time to think far back if you've ever complained to any health care provider about the same body part that's now injured in your case. The insurance company may get these intake sheets and then use them against you at trial. Here's how the cross-examination may go. "Ms. Doe, you remember filling out the intake sheet at Dr. Smith's office? Yes. This is your signature on the intake form, true? Yes. You were asked if you had any pre-existing injuries to your neck, true? Yes. And you answered "No" true? Yes. You weren't truthful when you made that statement, correct? No." Now they've made you out to be untruthful which is devastating in front of a jury. It's ok if you have a pre-existing injury because the law still allows you to be compensated if that pre-existing injury is aggravated by a car accident. Don't try to hide it.

8

**Mistake 8. Not mentioning previous accidents.** People either forget they were involved in an earlier accident because it happened long ago or think that acknowledging an earlier accident will harm their case. Insurance companies all share information about who's been in accidents in the past, so if you're asked if you've been in a previous accident, tell the truth. They already know the answer to this question and they're hoping you say "no" so that they can attack your credibility and diminish your case.



9

**Mistake 9. You exaggerated your injuries.** Jurors won't believe you and neither will your own doctor which will ruin your case. Be truthful at all times.

10

**Mistake 10. You failed to report to your doctor all of your injuries.** If you don't tell the doctor all of your injuries, the doctor's report will not mention all of your injuries. This makes it very difficult to prove your unmentioned body part was injured in the accident. Here's what the cross examination at trial may look like. *"Ms. Doe, you treated with Dr. Smith for your back injuries? Yes. When you saw Dr. Smith two days after the accident, isn't true you never complained of neck pain? Yes?* How bad does this look that you didn't tell the doctor you had neck pain? It's devastating! Make sure you tell your doctor all of your injuries, even if the injury is minor, so at least you document the injury. That way if the injury gets worse, the insurance company can't argue you never mentioned it before.

11

**Mistake 11. You gave multiple doctors inconsistent information about your injuries.** Remember that the insurance company is looking to find ways to attack your truthfulness. They are looking for you to say different things to different doctors at different times so they can label you a liar. Try to be consistent with all of your doctors. If you're treating with a podiatrist for your foot injury, let them know you also have neck pain.

12

**Make 12. You made inconsistent statements.** During your case, there will be several instances when you make statements. You might make a statement to the police at the scene. Maybe you gave a recorded statement to the insurance company. Every time you saw a doctor you made a statement about your injuries that will be documented in your records. You may even have your deposition taken where you'll be asked many questions under oath. You may be required to be evaluated by a doctor hired by the insurance company who will ask you many questions about your health history, which will then be recorded into a medical report. Finally, if your case proceeds to trial, you'll make even more statements when you testify before a jury. Think about all the statements you've made about your injuries and your case. The insurance company lawyer will look for these inconsistencies you made at every stage and point those inconsistencies out to a jury and argue that you weren't being truthful because your statements were inconsistent and ask that they disregard your entire testimony. The insurance company lawyer will then point to California Jury Instruction 107 to impeach your credibility. Make sure that you keep in mind that every time you make a statement, whether it's to your doctor or someone else, that you're being consistent.



# 13

**Mistake 13. You gave a recorded statement to the insurance company.** The at-fault driver's insurance company may call you after the accident and ask you to give a recorded statement. They want a recorded statement for the following several reasons:

- i. **First**, if fault is at issue, they may get you to make a statement that supports their position that you caused the accident.
- ii. **Second**, if fault is not at issue, they'll want to pin you down on your statements about your injuries. Here's an example. Suppose Jane is involved in a rear-end auto accident on January 1<sup>st</sup> and injured her neck and back. The next day, on January 2<sup>nd</sup>, an adjuster calls her to take her recorded statement. During the recorded statement, the adjuster asks Jane to state all of her injuries. Jane's back hurts much more than her neck so she says "I've got bad back pain". The adjuster then asks Jane to rate her back pain on a scale of 1 to 10. Jane says "it's a 5 out of 10". The adjuster then asks, "Have you told me about all of your injuries?" Jane says "yes". Then, a week later, Jane's neck pain gets worse and she notices she's got shooting pain (now an 8 out of 10) running from her lower back down to her right leg. If the case goes to court, here's what the insurance defense attorney will likely argue to the jury. *"Ladies and gentlemen, we asked Jane in a recorded statement that you'll get to hear the very next day if she had any injuries from the accident. She told us that she had back pain and the level of her back pain was a 5 out of 10. When we asked her if she had any other injuries, she said no. She never told us about any neck pain or any pain running down her right leg and now she claims it's an 8 out of 10."* The defense attorney will make Jane out to be an exaggerating liar who sees this as an opportunity to make money. All this could have been avoided if Jane simply didn't give a recorded statement.
- iii. **Third**, they want you to make inconsistent statements. See above about the dangers of making inconsistent statements.

Beware if a seemingly friendly insurance adjuster calls you after an accident. These people are highly trained, and you should never speak to them. In California, you're not under any legal obligation to give the other driver's insurance company a recorded statement, so don't do it. At our office, our attorneys control the information the insurance adjuster receives, and we give them only what we want them to see.

# 14

**Mistake 14. Signing a Medical Records Release.** The insurance company may ask you to sign a HIPPA medical release. This release authorizes them to obtain copies of your confidential medical records so that they can go on a fishing expedition through your past medical records to try to find injuries that are similar to the injuries you're claiming were caused by this accident. They will then argue your injuries weren't caused by this accident but were pre-existing and that they are not responsible. This is another way they diminish your claim so don't sign the medical release. They are not entitled to get a release from you, so don't give it to them.

Here's an example. Suppose Jane saw her doctor six months before her accident because she slept wrong and had some back pain. The doctor's report from six months ago states "Patient





complains of lower back pain,” but doesn’t mention anything about the cause which was that Jane just slept on it wrong. Six months later, Jane is rear-ended in an auto accident and complains of lower back pain. If the insurance company gets Jane’s previous records, they will argue the car accident didn’t cause Jane’s lower back pain, that it was a preexisting injury evidenced by a doctor’s report six months before the accident.

15

**Mistake 15. You failed to take photographs of the evidence.** After a car accident, if you’re able to photograph the evidence, you should. For instance, if there are shards of glass from a headlight that were found in the number two lane, take a photo of the shards which shows they are located in the number two-lane. This way, if the at-fault driver argues you came into his number one lane and crashed into him, you’ve got the evidence to prove otherwise. Also, many car accident victims sustain bruises over their bodies which should be photographed and preserved as evidence. This is especially important in minor impact cases where the insurance company argues based on the low property damage to your vehicle, that you could not have been injured. The bruising shows the severity of the trauma to the injured area.

16

**Mistake 16. You posted damaging or contradictory statements on social media.** Insurance companies love reading your posts on social media sites. Posting “I had the best day of my life” on social media while you claim in your lawsuit that you suffer from constant depression resulting from a car accident is an example of a contradictory statement that can wreck your entire case.

17

**Mistake 17. You posted on social media multiple travel photos during your case.** Insurance companies especially like looking at your vacation photos showing you doing a strenuous activity that you claim your injuries have restricted you from doing such as skiing, swimming, or maybe hiking. They might take such a photo, enlarge it, and show it to a jury which can make you look bad. Be careful of what you post on the internet.

18

**Mistake 18. You gave the insurance company too much information including your health insurance information.** Prior California law required insurance companies to pay your gross medical charges. Currently, California case law allows insurance companies to pay only the amount your health insurance paid plus co-pays. You are under no obligation to do the insurance companies’ homework.

19

**Mistake 19. You blew the applicable statute of limitations.** There are time limits that apply to bring a lawsuit. In California, absent certain exceptions, you have a two-year statute of limitation to file a lawsuit against the at-fault driver. If you delay beyond two years, you may be time-barred and forever lose your right to bring a claim.



ELIA LAW FIRM, APC  
INJURY ATTORNEYS

# 20

**Mistake 20. You waited too long to hire an attorney.** If you make one or more of the above-mentioned mistakes before you hire a lawyer, these mistakes could significantly devalue your case. Unlike you, insurance adjusters and their attorneys are trained to evaluate and handle claims. Remember, insurance companies are not in business to pay you compensation; their goal is to maximize profits for their shareholders. An experienced personal injury attorney is in a better position to evaluate, handle, and negotiate your case on your behalf. In many instances, certain laws apply when you hire a lawyer that allow you to substantially reduce your medical bills and save you money. If you're looking to hire a lawyer for your personal injury case, give us a call to discuss your case at no charge and without any obligation for honest and accurate advice.

**DON'T MAKE YOUR OWN MISTAKES. TAKE THE FIRST STEP TOWARDS RECOVERY.**

If you're in the San Diego area...

**Schedule a FREE CONSULTATION and get answers to...**

1. Do you have a case?
2. What is your case is worth?
3. Why you should be talking to an attorney even if you think you don't need one.
4. Learn the tricks insurance companies use to get out of paying you what your case is really worth, and more.

**Delays can only hurt your case.  
Pick up the phone and call today!**



**CALL (619) 444-2244**

 [www.elialaw.com](http://www.elialaw.com)

Scan to request  
consultation online

