

**PRESENTED AT**  
**2021 Car Crash Seminar**

August 26-27, 2021  
Austin, Texas

**NEGOTIATING WITH INSURANCE COMPANIES: MAXIMIZING CASE  
VALUE THROUGH CASE PREPARATION AND EFFECTIVE  
PRESENTATION OF THE DEMAND PACKAGE**

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Negotiations with insurance companies can be a daunting challenge for lawyers entering the personal injury space. Although each entity is different, they all act in a manner that some perceive as arbitrary and unfair. Added to this frustrating reality is the steep learning curve many lawyers have when first handling personal injury cases. Indeed, many of us enter the profession without the knowledge needed to evaluate an injury claim, or of the physics behind a car accident. With every case different than the next, it may initially seem impossible to devise an effective strategy to negotiate with an insurance adjuster.

While it is true that the specifics of each case differ, success in negotiations comes down to same truth in every case: solid case preparation and effective presentation of the evidence. Case preparation involves gathering evidence and taking appropriate steps in the lead-up to negotiations. Presentation of this evidence typically is done through a demand package to the insurance company. The purpose of this paper is to provide an overview of the key steps associated with each. Specifically, the next sections discuss which evidence to focus on gathering, what measures to take throughout the case, and strategies on how to advocate a client's case through a demand package.

## **CASE PREPARATION: GATHER EVIDENCE AND ENSURE PROPER CASE DEVELOPEMENT**

Unlike cases handled by lawyers in other practice areas, those practicing personal injury law often do not sign up a case until after the facts have occurred. Rather, the average plaintiff seeking damages because of a car accident will retain a lawyer in the immediate days following a collision. The expediency in which most personal injury lawyers are engaged leads to their intimate involvement in their clients' claims from start to finish. Clients rely on their attorneys to guide them as the facts about their cases develop. This is especially true given that many individuals who seek legal representation following a car accident are doing so for the first time.

The main advantage of forming attorney-client relationships early on is the opportunity for personal injury attorneys to advise their clients to take action (and avoid others) that helps build their cases. In many ways, negotiations therefore start the moment the law firm takes the case and begins compiling evidence. This is because the adjuster will calculate a settlement offer based on what evidence the insurance company received to date along with new materials submitted by the plaintiff's attorney that reconstructs the facts of loss and details the injuries. Simply put, the more credible evidence presented in support of a claim to the insurance company, the more likely it is that the claimant will receive a favorable settlement. A firm understanding of what types of evidence are relevant to proving cases will enable you to maximize case value to yield higher settlements.

The following subsections provide an overview of what evidence to be on the lookout for and other practice tips on proper case development. These subsections are not meant to provide an exhaustive list of evidence that should be gathered and each step necessary in a personal injury case. Every case is different, and each will have its own specific needs. Rather, the ensuing discussion should leave you with knowledge of how to spot important issues when making your

case assessments, and ideas on how to tailor case development to meet the needs identified for a case.

## **1) Understand the facts of loss**

The first facts learned about the case are those surrounding the car accident. No matter what type of collision – rear-end, T-bone, or sideswipe –begin the investigation by searching for evidence that helps reconstruct how the wreck happened. The objective is to uncover evidence that pins liability squarely on the shoulders of the other driver(s). The evidence sought is broad in scope, ranging from materials gathered at the scene of the collision by clients and others to those that attorneys discover through their own investigations.

It is worth noting that just because an insurance company has “accepted liability” and covered the client’s property damage does not mean that, if the case were filed in court, the defense will continue to abide by this stance. Defense counsel may well plead an affirmative defense and not concede the facts of loss in the client’s favor. Moreover, the plaintiff has the burden of proving the defendant’s negligence. Do not rush to assume that the client’s position on the facts of loss is self-explanatory based on the initial evidence or obvious enough not to require further substantive proof needed to convince a jury. Be prepared for any change in position from the insurance company and its agents by collecting key pieces of evidence that proves the defendant’s responsibility for causing the collision.

A few other realities hang over an investigation as the case unfolds. First, physical evidence does not hang around indefinitely. Indeed, many important pieces of evidence—such as video footage and vehicle damage—disappear on the front-end of the case. Identifying which evidence may be important to a claim is crucial to prioritizing how to go about getting them in office. Second, witness recollections of car accidents become hazier as the case progresses. It is thus not advisable to wait until the demand package is being compiled to begin interviewing case witnesses. They may forget important details that add value to the case or even the collision altogether. Finally, never forget that insurance companies also have their own clients: their insureds. While adjusters will thoroughly scrutinize the client’s actions and experiences, they, too, must consider how their drivers will fare if a case is called for trial. Case preparation should include gathering negative details about the adverse party that will make early settlement an attractive option for the insurance company.

*Review the facts of loss with the client.* The initial consultation or meeting with the client predominately focuses on discussing how the accident transpired. A basic set of questions should be asked at every first meeting. *First*, make certain that the client provided the correct date and time for the collision. If the statute of limitations is near, this may impact the decision on whether to engage in pre-litigation negotiations with the insurance company or proceed to suit. *Second*, ask that questions aimed at painting the entire picture of how the collision happened from the client’s perspective. Useful information to gather includes, without limitation, the following: where clients were coming from and going, the speed and direction of their vehicles, weather conditions, the flow of traffic in their direction of travel, what happened immediately before and after impact, where the impact occurred, descriptions of the other parties, and if any distractions were ongoing in their vehicles. Answers to these questions provide insight as to whether the defendant driver is

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First appeared as part of the conference materials for the  
2021 The Car Crash Seminar session  
"Negotiating with Insurance Adjusters"